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

COMMITTEE ON FINANCE
UNITED STATES SENATE

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

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ADDITIONAL VIEWS OF SENATOR HATCH

PREPARED BY REPUBLICAN STAFF

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I. EXECUTIVE SUMMARY

The mission statement of the Internal Revenue Service (IRS) charges its employees to "[p]rovide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."[1] The IRS believes that "[t]his mission statement describes our role and the public's expectation about how we should perform that role."[2] Indeed, the public has a right to expect that the IRS will administer the tax code with integrity and fairness in every context. Yet for many conservative organizations that applied for tax-exempt status during the last five years, the IRS fell woefully short of this standard.

The Majority staff of the Senate Committee on Finance has conducted a thorough review of the evidence presented during the course of this investigation. Our findings are set forth in these Additional Views of Senator Hatch Prepared by Republican Staff (Additional Republican Views), which include the following five primary conclusions.

First, we found that the IRS systemically selected Tea Party and other conservative organizations for heightened scrutiny, in a manner wholly different from how the IRS processed applications submitted by left-leaning and nonpartisan organizations.

Our investigation affirmed the conclusion of the Treasury Inspector General for Tax Administration (TIGTA) in its May 2013 report that "[t]he IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention."[3] The inappropriate criteria were initially developed and applied by revenue agents in the Cincinnati Exempt Organizations Determinations office. While these actions were arguably outside the scope of normal IRS operating procedure, the hallmarks of disparate treatment – and the resulting harm to conservative organizations – occurred after the applications were raised to IRS managers in the Washington, D.C. headquarters in March 2010. From that point forward, Lois Lerner and other senior managers directed the course of the applications and made decisions that directly resulted in increased scrutiny, long delays, and requests for inappropriate information.

A key finding is that at the time when the IRS developed and employed the inappropriate criteria to process Tea Party applications, it did not consider how each of the affected groups operated. The initial Sensitive Case Report for Tea Party applications, prepared in April 2010, indicates that "[t]he various 'tea party' organizations **are separately organized**, but appear to be part of a

[1] IRS, The Agency, Its Mission and Statutory Authority.
[2] *Id.*
[3] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review, Audit Report 2013-10-053 (May 14, 2013), Highlights. We commend TIGTA for their thorough audit and report on this issue.

national political movement that **may be involved** in political activities."[4] Soon thereafter, the IRS considered developing a "template" questionnaire to send to Tea Party applicants – an approach that had been used successfully in the past when the IRS received numerous applications from groups that shared common characteristics. Holly Paz explained why the IRS rejected this approach for the Tea Party applications:

> Generally, you know, in situations where you are talking about using a template or – our goal is to group things for consistency. You wouldn't want similarly situated organizations that are engaged in similar activities to get different answers. Some to get approved and some to get denied. **But here, from what Carter Hull was saying, the organizations were very different. Some were represented by attorneys and appeared very sophisticated. Some were very small grassroots organizations. Some had talked about educational activities. Others talked more about candidate activity. So there was a lot of variety.**[5]

Although the IRS knew that the Tea Party applications were too dissimilar to be grouped under a common template, it continued to segregate them for screening and processing based on the presence of certain key words or phrases in the applicants' names or applications like "Tea Party," "9/12" and "Patriots," as well as indicators of political views that included being concerned with government debt, government spending or taxes, educating the public via advocacy or lobbying "to make America a better place to live," or being critical of how the country was being run.[6] At the time when the IRS segregated the Tea Party applications, they had little or no firsthand knowledge of the organizations' actual or planned activities. Thus, the unifying factor for how Tea Party applicants were handled was not specific activities, but rather an underlying political philosophy.

This factor sets apart the IRS's treatment of conservative organizations from left-leaning and nonpartisan organizations. With one exception that affected just two organizations, all left-leaning organizations that the Minority alleges were improperly treated participated in activities that legitimately called their tax-exempt status into question.[7] The IRS did not "target" these groups based on their names or ideologies, but instead evaluated their actual activities that were known to the IRS – activities that, in many cases, properly resulted in denial or revocation of tax-exempt status. Although some left-leaning organizations that applied for tax-exempt status also

[4] Email from Richard Daly to Sarah Ingram, Joseph Grant and others (June 6, 2010) IRS0000163997-164013 (email attachments containing taxpayer information omitted by Committee staff).
[5] SFC Interview of Holly Paz (July 26, 2013) p. 71 (emphasis added).
[6] Email chain between John Shafer, Cindy Thomas, Steve Bowling, and others (June 1-10, 2011) IRS0000066837-40.
[7] The two liberal organizations that were improperly handled were affiliated with the Occupy movement. As discussed below in Section V(B)(3), the IRS briefly delayed these applications based on a poor decision by EO managers in Cincinnati. The Minority does not allege that these groups were subject to a concerted effort by IRS senior management to delay processing, nor do they allege that these groups were actually harmed by the IRS's actions.

experienced delays, we found no evidence that the IRS scrutinized left-leaning organizations in the same manner, to the same extent, or for the same politically-motivated reasons as it targeted Tea Party and other conservative organizations. Instead, those delays were merely a symptom of a culture within the IRS that does not value customer service.

The IRS's inequitable treatment caused great harm to conservative organizations, the vast majority of which were small, local groups. These groups had limited funding and were ill-equipped to respond to the IRS's tactics of delaying their applications and then buffeting them with an almost innumerable number of requests for information. As a result, many of the Tea Party groups seeking tax-exemption gave up on the process; and some of these groups ceased to exist entirely, based at least in part on their failure to secure tax-exempt status.

Second, our investigation revealed an environment within the IRS where the political bias of individual employees like Lois Lerner can, and sometimes does, influence decisions.

Structurally, the IRS is a bureau within the Treasury Department, which precludes the IRS from being truly independent of the governing administration. We found that within the IRS, the union exerts extreme influence on employees in nearly every facet of their employment. The union itself favors the Democratic Party and contributes money almost exclusively to its candidates, which makes it difficult for the agency to remain apolitical. These influences are borne out in the number of IRS employees who have violated Federal laws designed to prevent government employees from exerting personal political bias while on the job.

Within this atmosphere, IRS upper management gave the Director of Exempt Organizations Lois Lerner free rein to manage applications for tax-exempt status. We found evidence that Lerner's personal political views directly resulted in disparate treatment for applicants affiliated with Tea Party and other conservative causes. Lerner orchestrated a process that subjected these applicants to multiple levels of review by numerous components within the IRS, thereby ensuring that they would suffer long delays and be required to answer burdensome and unnecessary questions. Lerner showed little concern for conservative applicants, even when members of Congress inquired on their behalf, allowing them to languish in the IRS bureaucracy for as long as two years with little or no action. The IRS began to resolve these applications only after some of the problems became public in 2012. By that time, the damage had been done.

Third, the IRS has shown a pattern of continually misleading Congress about its handling of applications submitted by Tea Party organizations.

Top IRS management including Doug Shulman, Steve Miller, and Lois Lerner made numerous misrepresentations to Congress in 2012 and 2013 regarding the IRS's mistreatment of Tea Party organizations. These three individuals made oral and/or written assertions to Congress justifying and defending the IRS's processing of applications for tax exemption from Tea Party groups during this time period. In reality, that IRS processing included subjecting the organizations to

extraordinary delays and causing them to divulge unprecedented amounts of highly irrelevant and, in many cases, confidential information. Contrary to their oral and/or written statements to Congress, Shulman, Miller and Lerner knew, or had reason to know, that the IRS's processing of those applications was improper and that the IRS's demands for information from those groups was unwarranted. Moreover, Shulman, Miller and Lerner concealed information from Congress regarding the processing of those applications which included the fact that the IRS had singled out Tea Party groups for additional scrutiny based on their political views.

The pattern of deception engaged in by Shulman, Miller, and Lerner from 2012 to 2013 was designed to throw Congress off the scent of IRS wrongdoing so as to allow the IRS to put into place remedial half-measures aimed at addressing the targeting, the long delays, and the collection of highly detailed but irrelevant information from Tea Party applicants. By actively misleading Congress about the IRS's mistreatment of Tea Party groups, Shulman, Miller and Lerner effectively obstructed Congress in the exercise of its authority to oversee the activities of the IRS.

Fourth, soon after the Obama Administration began a concerted effort to constrain spending on political speech, the IRS and other executive agencies began scrutinizing conservative organizations that had, or sought, tax-exempt status.

The White House's focus on this issue intensified after the Supreme Court issued its *Citizens United* decision in January 2010, starting with President Obama's castigation of the Court in his State of the Union address and continuing throughout 2010 until the mid-term elections.

We found clear evidence that the IRS and other agencies heeded the President's call. Just a few weeks after the President's State of the Union address, the IRS made the pivotal decision to set aside all incoming Tea Party applications for special processing – a decision that would subject those organizations to long delays, burdensome questions, and would ultimately prove fatal to some of them. Around that same time, the Department of Justice was considering whether it could bring criminal charges against 501(c)(4) organizations that engaged in political activity. The Federal Election Commission had also opened investigations into conservative organizations that aired political ads. The IRS met with both agencies, providing input on the Department of Justice's proposals and information to the Federal Election Commission on organizations that were under investigation. These actions leave little doubt that when Congress did not pass legislation to reduce spending on political speech, the administration sought alternative ways to accomplish the same goal.

Regrettably, the Majority staff was not able to determine the full extent of Treasury Department and White House involvement in this matter. The Treasury Department did not fully cooperate with the Committee's requests to make witnesses and documents available to the Committee. As a result, the Committee interviewed only three current and former employees of the Treasury Department and did not have access to the full scope of relevant documents. Similarly, the

Committee did not have sufficient access to White House records or employees. Together, these gaps in knowledge prevent us from determining when the Obama Administration and the Treasury Department first became aware that the IRS was targeting Tea Party groups. They also prevent us from concluding that the Obama Administration and the Treasury Department did not direct, approve of, or allow any aspect of the targeting of Tea Party groups.

Regardless of whether an explicit directive was given, the President's use of his bully pulpit had the effect of increasing scrutiny on conservative organizations, rendering a direct order to individual employees unnecessary.

Finally, the IRS harmed the Committee's investigation by failing to properly preserve a significant portion of Lois Lerner's email, resulting in its loss, and then concealing that loss from the Committee for months.

As discussed more completely in Section II(C) of the Bipartisan Investigative Report, in early February 2014, the IRS determined that it could not locate many of Lois Lerner's emails dating from 2010 and 2011, a period crucial to the Committee's investigation. Upon conducting an inquiry into the matter, the IRS discovered that many of these emails had been stored on Lerner's laptop computer and that the computer suffered a hard drive failure in June 2011. While IRS officials were able to determine why many of Lerner's were missing, they incorrectly assumed that server backup tapes containing copies of those emails had been overwritten, and thus failed to attempt to recover records from those backup tapes. Based on that faulty assumption, the IRS ultimately concluded in April 2014 that Lerner's missing emails were permanently lost and so advised the Treasury Department, which in turn, notified the White House. However, the IRS failed to simultaneously inform the various Congressional committees conducting investigations into the IRS's treatment of Tea Party organizations, choosing instead to conceal this fact from Congress.

In March 2014, this Committee asked the IRS to provide it with a written statement attesting that all documents requested by the Committee and relevant to its investigation had been produced to the Committee. Rather than provide the attestation, the IRS submitted to the Committee on June 13, 2014 a rambling, nearly incomprehensible letter that, with attachments, was 27 pages in length. Buried nearly halfway through the letter was an admission that the IRS had lost an undetermined number of Lerner's emails from 2010 and 2011, and that backup tapes that once contained those emails no longer existed. The circumstances surrounding the IRS's dilatory admission regarding the lost emails is troubling, as it strongly suggests that had it not been for the Committee's request for an attestation, the IRS may never have revealed to it the existence of the missing emails.

Moreover, in a March 19, 2014 letter to the Committee, the IRS asserted that it had completed its production of documents as requested by the Committee and urged it to release its final report on the investigation. As explained above, in February 2014, IRS officials knew that a substantial number of Lerner's emails had been lost as a result of the hard drive failure, and might not be recoverable from any other source. Accordingly, it is difficult to reconcile the IRS officials'

awareness of the missing emails in February 2014 with their subsequent assertion to the Committee in March 2014 that the document production was complete and that the Committee should release its report. Indeed, in light of this knowledge, it would appear that the assertion was false and intended to hasten the Committee to complete its investigation, thus foreclosing the possibility that it would ever find out about the missing Lerner emails.

Furthermore, IRS staff had numerous interactions with Committee staff after the March 19, 2014 letter and before the IRS's reluctant admission on June 13, 2014 that it had lost many of Lerner's emails. At no time during any of those interactions did IRS staff attempt to correct the inaccurate impression created in the March 19, 2014 letter that the IRS had completed its production of requested documents.

In addition to concealing the loss of Lerner's emails, IRS officials also failed to take adequate steps to preserve backup tapes that contained copies of those emails. Upon concluding in February 2014 that many of Lerner's emails from 2010 and 2011 were missing, IRS officials failed to conduct a proper search for backup tapes that might contain copies of those emails. In what appears to be an exercise in pure expediency, those officials simply concluded that no such tapes existed because they should have been overwritten by then in accordance with the IRS's practice to recycle backup tapes every six months. In truth, in February 2014, the IRS had in its possession nearly 1,200 backup tapes that could have contained Lerner's emails from the period in question. Because the IRS failed to look for, identify and preserve the backup tapes, 422 of those backup tapes were erased by the IRS in March 2014, resulting in the loss of Lerner emails relevant to the Committee's investigation.

The actions taken by IRS officials, as well as those they failed to take after discovering the missing Lerner emails, harmed the Committee's investigation. IRS officials concealed from the Committee for as long as possible the fact that Lerner's emails were lost. Moreover, those officials misled the Committee into believing that the IRS had completed its document production, when in fact, they knew that many of Lerner's emails from a period of time of great interest to the Committee were missing. Further, those officials failed to discharge their responsibility to take adequate steps to preserve thousands of Lerner's emails, resulting in the irrevocable loss of as many as 24,000 of those emails. These actions not only deprived the Committee of information important to its investigation and caused substantial delay in its completion, but also further eroded the Committee's confidence that the IRS has been forthcoming in all of its other representations to Congress regarding this investigation.

The Committee undertook a number of measures aimed at mitigating the consequences of the harm caused by the IRS's failure to preserve copies of the backup tapes containing Lerner's email. For example, in an effort to bridge the gap in the missing emails, the Committee secured from alternate sources, including the Treasury Department, the Department of Justice, the Federal Election Commission, TIGTA, a private organization, and the White House, copies of emails between their employees and Lerner. In addition, TIGTA undertook extraordinary efforts to recover missing Lerner emails. Within two weeks of commencing its investigation into the

lost emails, TIGTA located 744 backup tapes that the IRS erroneously determined contained no information relevant to the Committee's investigation. After recovery efforts, those 744 tapes yielded over 1,000 Lerner emails not previously provided to the Committee by the IRS – some of which proved relevant to this investigation. Additional recovery efforts by TIGTA from other sources resulted in over 300 more Lerner emails. In total, TIGTA was able to provide the Committee with 1,330 Lerner emails that the IRS had been unable to produce and that the Committee had not seen before. Although it was not possible to reproduce a full record of Lerner's communications during 2010 and 2011, we believe that these efforts have provided the most comprehensive record that is possible.

In addition to the findings set forth herein, the Majority staff fully supports the joint findings contained in the Bipartisan Investigative Report. Those findings reveal several other serious problems at the IRS, including:

- Management lacked an appreciation for the sensitivity and volatility of the political advocacy applications and allowed employees to use inappropriate screening criteria. (See Sections III(A) and III(B) of the Bipartisan Investigative Report.)
- The IRS lacked any sense of customer service for organizations that applied for tax-exempt status. (See Section III(E)(1) of the Bipartisan Investigative Report.)
- The IRS improperly disclosed taxpayer information of numerous conservative organizations. (See Section IX(C) of the Bipartisan Investigative Report.)
- In 2010, a freelance reporter made a FOIA request for documents related to the IRS's handling of Tea Party applications. The IRS identified responsive documents, but elected not to produce them, thereby precluding early public scrutiny of its treatment of Tea Party applicants. (See Section IX(B) of the Bipartisan Investigative Report.)

In all, Committee staff reviewed more than 1,500,000 pages of documents and conducted 32 interviews in the course of this investigation. We believe that the findings described in the Bipartisan Investigative Report and in these Additional Republican Views are supported by the record.

As a result of the practices described in both the Bipartisan Investigative Report and in these Additional Republican Views, the public's confidence in the IRS has been justifiably shaken. There is much work that needs to be done to restore the public's trust in the IRS's ability to administer the tax system in a fair and impartial way.

II. LOIS LERNER'S PERSONAL POLITICAL VIEWS INFLUENCED THE IRS'S PROCESSING OF APPLICATIONS FOR TAX-EXEMPT STATUS FROM TEA PARTY AND CONSERVATIVE ORGANIZATIONS

Lois Lerner supported the Democratic Party and President Obama, and she held extreme views on campaign finance reform. Lerner's bias influenced the IRS's handling of Tea Party applications and these organizations were harmed by her actions.

A central aim of the Committee's investigation was to determine if any IRS actions toward conservative taxpayers were influenced by political bias. Assuredly, employees working in the executive branch are entitled to hold personal political views – and indeed, many citizens who serve in federal agencies can and do play a valuable part in the democratic process using personal time and resources, and subject to limits the law imposes on such activity by government employees. However, the personal political views of a federal employee working in an apolitical position should never influence their official actions. If this were to happen, the public could question whether the government has acted in a fair and impartial manner. The danger of political bias is particularly acute at the IRS, which has been entrusted to "enforce the law with integrity and fairness to all."[8]

As the senior executive in charge of Exempt Organizations (EO), Lois Lerner was the person with ultimate responsibility for overseeing all of the employees involved who processed applications for tax-exempt status. By virtue of her position, Lerner had the potential to exert tremendous power over many taxpayers who sought to exercise their right to political speech.

Amidst allegations that Lerner's political views influenced IRS actions, our inquiry focused on three questions. First, what are Lois Lerner's political views? Second, did she hold any political views relevant to her specific responsibilities at the IRS? And finally, is there any evidence that her political views influenced official actions of the IRS? We address these questions in turn below.

In resolving these questions, the Committee sought to interview Lerner as part of its investigation. Indeed, because of her position in the IRS, Lerner would be uniquely able to explain how conservative applicants were treated by the IRS. Lerner declined the Committee's request for an interview, citing her Fifth Amendment right to remain silent. In the absence of her testimony, the Committee has been able to reach conclusions about her role after careful review of over 1,500,000 pages of documents and dozens of interviews with IRS and Treasury employees, many of whom worked directly with Lerner.

[8] IRS, The Agency, Its Mission and Statutory Authority.

In response to our first question, the Senate Finance Committee's investigation revealed that Lerner was a Democrat who consistently supported Democratic politicians, particularly President Obama, during her tenure at the IRS. Her communications also suggest that she felt animus toward the views of the Republican Party.

In response to our second question, we found that Lerner favored campaign finance reform efforts and had deep disdain for the Supreme Court's loosening of these restrictions in the *Citizens United* decision, which she deemed "by far the worst thing that has ever happened to this country" and feared would lead to "the end of 'America.'"[9]

In response to our third question, we conclude that Lerner's partisan bias directly harmed conservative organizations applying for tax-exempt status from early 2010 until May 2013. Under Lerner's leadership, Tea Party organizations were systemically targeted and set aside for special processing. The impact of Lerner's bias was exacerbated by her superiors' failure to oversee her, and directly caused conservative organizations to suffer long delays and endure numerous rounds of burdensome questions. Her biases are particularly evident when comparing her inaction on Tea Party applications to her quick responses to inquiries from Democratic politicians. We also found evidence that Lerner's bias led to audits of some conservative organizations, which imposed even greater burdens and further stifled their political speech.

A. LERNER'S PERSONAL POLITICAL VIEWS: LERNER SUPPORTED THE DEMOCRATIC PARTY, PRESIDENT OBAMA, AND OTHER DEMOCRATIC POLITICIANS

A primary focus of our investigation was whether Lerner's personal political views favored one political party or the other. Lerner has acknowledged that she is a registered Democrat but she publicly stated that she is "not a political person."[10]

Our review of Lerner's communications casts doubt on her claim of being "apolitical." To the contrary, her conversations with family and friends show that Lerner followed politics closely and supported the Democratic Party and Democratic politicians, particularly President Obama. These conversations – all on Lerner's government email account – also show that Lerner's friends and family uniformly shared her views and sometimes made disparaging comments about Republicans and the Tea Party to Lerner:

- In an October 2004 email conversation with a former colleague from the Federal Election Commission (FEC), Lerner said, "[A]fter the election, we'll get together – hopefully to celebrate, but it sure looks iffy!"[11] The next month, Republican George W. Bush defeated Democrat John Kerry in the presidential election.

[9] Email chain between Lois Lerner and Mark Tornwall (June 1, 2012) IRS0000800024.
[10] *Politico*, Exclusive: Lois Lerner Breaks Silence (Sep. 22, 2014).
[11] Email chain between Lois Lerner and FEC Employee (Oct. 12, 2004) FECSUBP5001079.

- In October 2012, a friend wrote to Lerner about the upcoming election: "The Romney/Ryan ticket is really scary. How did a creep like Romney ever get elected to be governor of Massachusetts, anyway?"[12]
- In November 2012, a friend invited Lerner to an election-night party that she decided to host "now that Nate Silver has raised Obama's chance of winning to 85.1%." The party invitation included a picture of the Democratic Party logo.[13] Lerner responded, "Would have loved to, but am in London." Lerner passed the invitation along to her husband and told the host, "[I]f he's smart he'll join you." Lerner noted that she was "[k]eeping my fingers crossed. And, I did vote!"[14]
- On Election Day in 2012, Lerner's husband told her that it was "hard to find the socialist-labor candidates on the ballot, so I wrote them in." Lerner described the election as "[o]nce in a lifetime stuff" and said that "[people in London] get that it's close but they don't seem to think Obama could really lose. They all want to know who the heck this Romney guy is."[15]
- On November 7, 2012, a family member wrote an email to Lerner with the subject "Hurray, Hurray – OBAMA for 4 more years."[16]
- On November 7, 2012, Lerner's husband described her as being "in that post-election state of bliss" after the election results were announced.[17]
- In a November 2012 email with a family member, Lerner was informed that Democrats retained control of the U.S. Senate. Lerner responded: "WooHoo! I[t] was important to keep the Senate. If it had switched, it would be the same as a Rep president." In the same conversation, Lerner celebrated Maryland's legalization of same-sex marriage. Lerner's family member commented, "I think there were 3 seats that switched from tea party republicans to democrats so that's exciting!"[18]
- In November 2012, Lerner had the following email exchange with her husband, Michael Miles:

> Miles: Well, you should hear the whacko wing of the GOP. The US is through; too many foreigners sucking the teat; time to hunker down, buy ammo and food, and prepare for the end. The right wing radio shows are scary to listen to.
>
> Lerner: Great. Maybe we are through if there are that many assholes.
>
> Miles: And I'm talking about the hosts of the shows. The callers are rabid.

[12] Email chain between Lois Lerner and Mark Tornwall (Oct. 11-17, 2012) IRS0000793954.
[13] Email from friend to Lois Lerner and others (Nov. 4, 2012) IRS0000794177-78.
[14] Email chain between Lois Lerner and friend (Nov. 4, 2012) IRS0000794185.
[15] Email chain between Lois Lerner and Michael Miles (Nov. 6, 2012) IRS0000794247-48.
[16] Email chain between Lois Lerner and family member (Nov. 7, 2012) IRS0000794253.
[17] Email chain between Lois Lerner and Michael Miles (Nov. 7, 2012) IRS0000794265.
[18] Email chain between Lois Lerner and family member (Nov. 6-7, 2012) IRS0000317155-56.

> Lerner: So we don't need to worry about alien terrorists. It's our own crazies that will take us down.[19]

- In January 2013, Lerner remarked that she might look for a position at the Washington, D.C. office of Organizing for Action, the successor organization of President Obama's 2012 re-election campaign – a possibility that her subordinates appear to have taken seriously.[20]
- After the Tea Party scandal broke in May 2013, a friend wrote to Lerner to offer support. The friend said, "My brother was here when I read the paper, and frankly, he was hoping you would 'nail' the tea party, but I realize that you are just doing your job, ha ha."[21]
- In a March 2014 conversation, a friend informed Lerner that "[t]his Republican crap has become really bad in Texas." The friend then offered negative comments about several Texas Republicans, including former Governor Rick Perry, Ted Nugent, and Greg Abbott, whom the friend believed was "still likely to be the next Governor of Texas simply because he claims to be in favor of gun rights and against same-sex marriage." The friend concluded, "As you can see, the Lone Star State is just pathetic as far as political attitudes are concerned." This prompted Lerner to state the following:

  > Look my view is that Lincoln was our worst president not our best. He should'[v]e let the south go. We really do seem to have 2 totally different mindsets.[22]

  This was not the first time that Lerner expressed this sentiment about the United States. In a December 2012 email to a different friend, Lerner said:

  > We're in Ohio for the holiday and waiting to go over the fiscal cliff! I truly believe this country is out of its head with ridiculousness! We really need to split in two – we are so polarized that we can't do anything constructive.[23]

The Majority staff's review of approximately 1,500,000 pages produced by the IRS and other entities did not reveal find any instances when Lerner expressed positive sentiments about the Republican Party, a specific Republican candidate, or the Tea Party. Similarly, we found no instances when any friend of family member of Lerner's expressed such sentiments in a message to Lerner. Indeed, it is highly probable that the individuals who sent Lerner these politically charged messages, which were supportive of Democratic politicians and often critical of their Republican counterparts, did so because they were aware of her political beliefs and knew that she shared in their convictions.

[19] Email chain between Lois Lerner and Michael Miles (Nov. 8-9, 2012) IRS0000890492.
[20] Email chain between Lois Lerner, Sharon Light, Holly Paz, and others (Jan. 24, 2013) IRSC007157.
[21] Email chain between Lois Lerner and friend (May 12, 2013) IRS0000662634.
[22] Email chain between Lois Lerner and Mark Tornwall (Mar. 6, 2014) 00064-66.
[23] Email chain between Lois Lerner and Lisa Klein (Dec. 23-24, 2012).

As a whole, these communications establish that Lerner staunchly supported President Obama and the Democratic Party and, contrary to her assertions, followed politics closely. The also suggest that Lerner held disdain for those who supported conservative values and Republican ideals.

B. LERNER'S POLITICAL VIEWS RELEVANT TO HER IRS POSITION: LERNER HELD EXTREME VIEWS ON LIMITING CAMPAIGN FINANCE EXPENDITURES AND POLITICAL SPEECH

Next, we consider whether Lerner held any political views that were relevant to her position at the IRS. As described below, we conclude that Lerner supported campaign finance reform efforts and was generally in favor of restraining political speech by tax-exempt organizations. These views were directly relevant to her oversight of the EO Division at the IRS.

Before joining the IRS in 2001, Lerner spent most of her career in elections law. Lerner joined the FEC in 1981 and served in several senior positions during her 20-year tenure, including head of the Enforcement Division and Acting General Counsel.[24] A colleague from the FEC who has known Lerner since 1985, attorney Craig Engle, described Lerner's views of campaign finance laws as follows:

> Engle describes Lerner as pro-regulation and as somebody seeking to limit the influence of money in politics. The natural companion to those views, he says, is her belief that "Republicans take the other side" and that conservative groups should be subjected to more rigorous investigations. According to Engle, Lerner harbors a "suspicion" that conservative groups are intentionally flouting the law.[25]

While Lerner was head of the FEC's Enforcement Division, she was reported to have improperly threatened a Republican candidate for the U.S. Senate, allegedly saying, "Promise me you will never run for office again, and we'll drop [the pending charges against you]."[26]

Lerner's expertise in election law certainly shaped her view of the role of tax-exempt organizations in the political process when she joined the IRS in 2001 as the Director of Rulings and Agreements. While she was at the IRS, Lerner continued to support spending restrictions on political speech. In a February 2002 message to a former colleague at the FEC, Lerner stated that it was "pretty exciting that the campaign finance [reform bill] may actually go through."[27] Lerner was referring to the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold Act), which became law on March 27, 2002. More recently, Lerner supported the DISCLOSE Act, a proposed law that would require donor disclosure by tax-exempt organizations that engage in political campaign activities, although she apparently realized it was not likely to pass. When

[24] Resume of Lois Lerner (undated) IRS0000798764-65.
[25] *National Review*, Lois Lerner at the FEC (May 23, 2013).
[26] The *Washington Post*, Lois Lerner: The Scowling Face of the State (June 12, 2013).
[27] Email chain between Lois Lerner and FEC Employee (Feb. 22, 2002) FECSUBP5001236.

informed that Democrat Chris Van Hollen introduced the DISCLOSE Act in the House, Lerner said, "Wouldn't that be great? And I won't hold my breath."[28]

Given Lerner's support for the McCain-Feingold Act, it should come as no surprise that she was disappointed when the Supreme Court struck down parts of the Act in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010). The depth of Lerner's emotion, however, is surprising. Lerner bluntly told a friend:

> *Citizens United* is by far the worst thing that has ever happened to this country.[29]

After her friend agreed that it was a "total disgrace that the Supreme Court has endorsed this concept," Lerner expanded on her view of the case to explain why the decision had repercussions far beyond campaign finance rules:

> We are witnessing the end of "America." There has always been the struggle between the capitalistic ideals and the humanistic ideals. Religion has usually tempered the selfishness of capitalism, but the rabid, hellfire piece of religion has hijacked the game and in the end, we will all lose out. [I]t's all tied together – money can buy the Congress and the Presidency, so in turn, money packs the SCt. And the court usually backs the money – the "old boys" still win.[30]

These extreme views would be troubling if held by any government official; but they are particularly troubling when held by a senior IRS official charged with oversight of tax-exempt organizations, including those that engage in political speech.

While employed at the IRS, Lerner maintained close ties to numerous outside advocacy groups that shared her goal of limiting spending by tax-exempt organizations on political speech. These groups took advantage of their direct access to Lerner and other senior IRS officials, frequently asking the IRS to tighten its control over political spending by tax-exempt organizations as described in Section IV(D) of the Bipartisan Investigative Report. Lerner even met with some of them in person to discuss their proposals.

One group that had particularly close ties to Lerner is the Americans for Campaign Reform (ACR). ACR describes itself as "a community of citizens who believe passionately that public funding [of elections] is the single most critical long-term public policy issue our nation faces."[31] Lerner's ties to ACR were strong enough that when ACR was searching for a new CEO in 2012, they sought Lerner's opinion on Larry Noble, who had been the General Counsel at the FEC during Lerner's tenure, and thanked Lerner "for [her] contribution to this search."[32] Lerner recommended that ACR hire Noble and told him that she was "[g]lad I could be a part of their

[28] Email chain between Lois Lerner, Joseph Urban and others (Feb. 13, 2012) IRS0000694708-10.
[29] Email chain between Lois Lerner and Mark Tornwall (June 1, 2012) IRS0000800024.
[30] *Id*.
[31] Americans for Campaign Reform, About Us.
[32] Email chain between Lois Lerner and Larry Noble (Aug. 17, 2012) IRS0000683618-20.

decision."[33] Lerner and Noble made plans to have lunch, and Lerner asked Noble, "So, when should I expect your first letter yelling at me about the c4s?"[34] Noble replied, "That's Fred's job," apparently referring to Fred Wertheimer, President of Democracy 21 – another group that was regularly in touch with Lerner.

Lerner also maintained close ties with Kevin Kennedy, the Director and General Counsel of the Wisconsin Government Accountability Board, which administers and enforces Wisconsin campaign finance and election laws.[35] Kennedy shared many of Lerner's views on campaign finance and the need for increased regulation of political speech.[36] In 2008, Kennedy organized a panel discussion for the Council on Government Ethics Laws on "regulating political speech."[37] Lerner spoke at this panel along with Larry Noble (who was then practicing at a private law firm), FEC Commissioner Ellen Weintraub, and Campaign Legal Center attorney Paul Ryan.[38] Kennedy and Lerner regularly discussed election law, and in 2011 Kennedy bemoaned Wisconsin's loosening campaign finance regulations, saying, "[T]he legislature has killed our corporate disclosure rules."[39] Kennedy described Lerner as his "favorite IRS person" and, "a professional friend [he has known] for more than 20 years. [40]

Lerner's views on campaign finance laws and her close ties to organizations and government officials that sought to limit political speech must be taken into consideration when evaluating how Lerner administered the tax law as Director of EO.

[33] Email chain between Lois Lerner and Larry Noble (Aug. 10, 2012) IRS0000801074-77.
[34] Email chain between Lois Lerner and Larry Noble (Aug. 10, 2012) IRS0000801105-08.
[35] The Wisconsin Government Accountability Board is reported to have provided assistance to prosecutors in a secret John Doe investigation of conservative organizations' political activities during the 2011 and 2012 Wisconsin recall elections. On July 16, 2015 the Wisconsin Supreme Court ended the John Doe investigation, ruling that Scott Walker's campaign did not violate campaign finance laws. *See Milwaukee Journal Sentinel*, Q&A: Untangling Wisconsin's recent John Doe Investigations (Sep. 10, 2014); *Wall Street Journal*, Wisconsin Targets the Media (Dec. 21, 2014); *Wall Street Journal*, Wisconsin's Friend at the IRS (July 9, 2015); *Milwaukee Journal Sentinel*, Wisconsin Supreme Court ends John Doe probe into Scott Walker's campaign (July 16, 2015).
[36] Email chain between Lois Lerner and Kevin Kennedy (July 22, 2011) IRS0000796497-98; Email chain between Lois Lerner and Kevin Kennedy (Nov. 1, 2012) IRS0000726736; Isthmus, Wisconsin elections director Kevin Kennedy is at the center of state's political storm (Nov. 1, 2012). Kennedy characterized this piece as a positive piece from the progressive media about himself.
[37] Email from Kevin Kennedy to Lois Lerner and others (Dec. 10, 2008) FECSUBP5001025-44; Email from Kevin Kennedy to Ellen Weintraub, Lois Lerner and Paul Ryan (Dec. 3, 2008) FECSUBP5001131.
[38] *Id.*
[39] Email chain between Lois Lerner and Kevin Kennedy (July 22, 2011) IRS0000796497-98; Email chain between Lois Lerner and Kevin Kennedy (Feb. 6-7, 2013) IRS0000667365; Email chain between Lois Lerner and Kevin Kennedy (Jan. 28, 2013) IRS0001163477; Email from Lois Lerner to Kevin Kennedy (Feb. 20, 2013) IRS0000052989-90.
[40] Email chain between Lois Lerner and Kevin Kennedy (Mar. 7, 2013) IRS0000811079; *Wall Street Journal*, Wisconsin's Friend at the IRS (July 9, 2015).

C. LERNER'S BIAS HARMED CONSERVATIVE ORGANIZATIONS

Finally, we consider whether Lerner's personal political views influenced her work at the IRS. We found evidence of five ways that Lerner's bias affected IRS actions, all of which resulted in harm to conservative organizations that came into contact with the IRS during Lerner's tenure.[41]

1. LERNER AND SENIOR IRS MANAGEMENT DEVISED WAYS TO SYSTEMICALLY CONSTRAIN TAX-EXEMPT ORGANIZATIONS THAT ENGAGED IN POLITICAL SPEECH

As described in Section IV of the Bipartisan Investigative Report, various external forces – including several of the left-leaning groups noted above – pressured the IRS to monitor and curtail political spending of 501(c)(4) organizations in the wake of the Supreme Court's *Citizens United* decision. Perhaps no one was more aware of this pressure than Lerner, particularly given her personal disdain for the ruling. As described below, Lerner encouraged senior IRS management to use the agency's tools to dampen the effect of the Supreme Court's decision.

On the day after the *Citizens United* decision was announced, Lerner brought the decision to the attention of upper-level management in the Tax Exempt and Government Entities (TE/GE) Division and the Chief Counsel's office.[42] Lerner recognized the sensitivity of the case, stating, "[t]his is the danger zone no matter what we say."[43] In October 2010, Lerner described the pressure on the IRS when she spoke at Duke University's Sanford School of Public Policy:

> The Supreme Court dealt a huge blow [in *Citizens United*], overturning a 100-year old precedent that said basically corporations could give directly in political campaigns, and everyone is up in arms because they don't like it. The Federal Election Commission

[41] In addition to our findings, Lerner's political bias is further reinforced by findings of the House Ways and Means Committee in their April 9, 2014 referral of Lerner to Attorney General Eric Holder at the Department of Justice for willful misconduct by an IRS official and potential violation of criminal statutes. In that letter, the House Ways and Means Committee pointed to three potential violations of law:

- Lerner used her position to improperly influence agency action against only conservative organizations, denying those groups due process and equal protection rights under the law. She showed extreme bias and prejudice toward conservative groups. The letter lays out evidence on how Lerner targeted conservative organization Crossroads GPS, as well as other right-leaning groups, while turning a blind eye to liberal groups that were similarly organized, such as Priorities USA.
- Lerner impeded official investigations by providing misleading statements in response to questions from TIGTA.
- Lerner used her personal email for official business, including confidential return information. Further investigation could show that Lerner committed an unauthorized disclosure in violation of section 6103 of the Internal Revenue Code.

[42] Lerner's angst over the Supreme Court overturning the corporate ban on political contributions commenced long before the actual decision was rendered by the Court on January 21, 2010. Indeed, on November 17, 2009, Lerner wrote to Sarah Hall Ingram in anticipation of such an eventuality, stating that the Court's overturning the ban "will open up numerous pandora's boxes" for the IRS. She requested that Ingram "get a discussion going with [Steve] Miller so we at least know the perameters [sic] of the box we're in … ." Lerner also indicated that "[t]he Commissioner also needs to be aware that this is going to get noisey [sic] real fast." Email between Lois Lerner and Sarah Hall Ingram (Nov. 17-23, 2009) IRS0000853501-02.

[43] Email chain between Lois Lerner, Nicole Flax, Sarah Hall Ingram, and others (Jan. 24-25, 2010) IRS0000442122-24.

> can't do anything about it. They want the IRS to fix the problem. The IRS laws are not set up to fix the problem. … So everyone is screaming at us right now, "Fix it now before the election, can't you see how much these people are spending?" I won't know until I look at their 990s next year whether they have done more than their primary activity as a political or not. So I can't do anything right now.[44]

Near the end of 2012, Lerner and other employees in the EO division began considering whether it was possible to quantify the effect that *Citizens United* had on political campaign intervention by tax-exempt organizations. In December 2012, TE/GE Division employee Cristopher Giosa sent Lerner his preliminary analysis on sources of data that might be available. [45] Giosa suggested that EO consider enlisting the IRS's Office of Compliance Analytics to help with this project.[46]

By April 2013, EO and the Office of Compliance Analytics had prepared a detailed presentation on political spending by 501(c)(4) organizations.[47] As background information for the report, the authors noted:

> Since Citizens United (2010) removed the limits on political spending by corporations and unions, concern has arisen in the public sphere and on Capitol Hill about the potential misuse of 501(c)(4)s for political campaign activity due to their tax exempt status and the anonymity they can provide to donors.[48]

The authors then provided a "problem statement," which stated that "[t]he public purpose of 501(c)(4)s may be diluted by political campaign activities as an unintended consequence of Citizens United."[49]

In May 2013, EO and the Office of Compliance Analytics revised the presentation in advance of a May 7 briefing for then-Acting Commissioner Miller.[50] The revised presentation, which was sent to Miller's office, made the following findings:

- The number of 501(c)(4)s reporting political campaign activities almost doubled from tax year 2008 through tax year 2010; and

[44] SFC Transcription of Video Available on Youtube.com, Lois Lerner Discusses Political Pressure on IRS in 2010 (Oct. 19, 2010) <https://www.youtube.com/watch?v=EH1ZRyq-1iM>.
[45] Email from Christopher Giosa to Lois Lerner, Joseph Grant and others (Dec. 6, 2012) IRS0000185323-27.
[46] *Id*.
[47] Email from Justin Abold to Lois Lerner, Holly Paz and others (Apr. 12, 2013) IRS0000195666-90.
[48] *Id*.
[49] *Id.*
[50] Miller's calendar shows that he organized a meeting to discuss "EO Data Matters" with Nikole Flax, Dean Silverman, Eric Schweikert, and Joseph Grant (May 7, 2013) IRS0000456399.

- The amount of political campaign activities for large filers (defined as organizations with total revenue of more than $10 million) almost tripled from tax year 2008 through tax year 2010.[51]

The report identified two events that occurred contemporaneously with the drastic rise in the number of 501(c)(4) organizations that reported political campaign activities: the *Citizens United* decision and Congress's consideration of the Affordable Care Act.[52] Although the report did not conclude that these events caused a rise in political spending, by singling them out, it is clear that the IRS viewed them as significant, relevant factors.

It is unclear if IRS management considered OCA's report when it proposed regulations that would provide guidance on political activities to 501(c)(4) organizations on November 29, 2013. Regardless, the regulations would have had the effect of restraining political speech by 501(c)(4) organizations, but not by other types of tax-exempt organizations. The IRS received more than 150,000 comments on the proposed regulations from people and organizations across all parts of the political spectrum, which were overwhelmingly opposed to the regulations. In the face of this opposition, on May 22, 2014, the IRS stated it planned to re-propose the regulations after a thorough review of the submitted comments.[53]

Although the IRS was unsuccessful in implementing these regulations, the IRS's aim was clearly aligned with Lerner's belief that the IRS should take measures within its power as the executive branch to restrain spending on political speech, thereby circumventing the effect of the judicial branch's *Citizens United* decision.

2. LERNER EXERTED A "SURPRISING" LEVEL OF AUTONOMY OVER THE TEA PARTY APPLICATIONS

The unusual manner in which incoming Tea Party applications were handled suggests that Lerner did not want other IRS officials to influence the review process. In spite of Lerner's concern about political spending, she did not inform her managers that the IRS had received a large number of applications from Tea Party organizations, some of which engaged in political discourse, or that EO was struggling to process these applications. Lerner's failure to elevate these issues is discussed in greater detail in Section III(F)(2) of the Bipartisan Investigative Report.

Lerner recognized that one of her key duties as EO Director was to keep upper-level management informed. As she explained to one of her subordinates:

[51] Email chain between Justin Lowe, Justin Abold and others (May 6, 2013) IRS0000494805-29.
[52] *Id.*
[53] IRS, Update on the Proposed New Regulation on 501(c)(4) Organizations (May 22, 2014).

> [W]e ensure that all of our [senior] managers are aware of all highly visible hot button issues. Our job is to report up to our bosses on anything that might end up on the front page of the NY Times.[54]

Yet, there was little accountability for executives like Lerner within the TE/GE Division management chain. From late 2010 through May 2013, Lerner reported to Joseph Grant, who was Acting Division Commissioner of TE/GE. Grant told Committee staff that he had "relatively minimal interaction" with Lerner.[55] Grant believed that Lerner "was enjoying being in charge of EO … that was something that she ran with," but Lerner's managerial style required Grant to "make more effort" to stay aware of what was happening in EO.[56] Lerner's previous immediate supervisor, Sarah Hall Ingram, described a similar relationship with Lerner and noted that their main face-to-face interaction was at quarterly meetings.[57] Thus, the onus was on Lerner to keep her immediate managers informed of information that Lerner deemed important.

Lerner appeared to have had more frequent contact with Steve Miller than Grant or Ingram, despite the fact that Miller was two or three levels above Lerner. Like Lerner, Miller's background at the IRS was in the EO Division, where he served as Director while Lerner served below as Director of Rulings and Agreements in the early 2000s. Miller continued to be in Lerner's management chain when he was promoted to Division Commissioner for TE/GE, then to Deputy Commissioner for Services & Enforcement, and ultimately, to Acting Commissioner of the IRS. Throughout their time together at the IRS, Lerner used Miller as a sounding board on tax-exempt issues and Miller appears to have given Lerner broad authority and autonomy within EO. In his interview with Committee staff, Miller stated, "Lois and I have a good relationship."[58]

On the whole, Miller felt that Lerner "was pretty good about elevating things" that required his attention.[59] This made Lerner's decision not to tell him about the Tea Party applications particularly vexing for Miller, who stated, "you know, she was pretty good about [elevating issues], so this was a bit of a surprise."[60] In fact, the first time that Miller had any indication that something was amiss was in early 2012, when the IRS started receiving questions from the media and Congress about burdensome requests made of Tea Party and other political advocacy applicants. By that point, Lerner had been overseeing the processing of applications from Tea Party organizations for almost two years.

Miller was not the only senior executive who Lerner kept in the dark. As described more fully in Section III(F)(2) of the Bipartisan Investigative Report, Lerner also failed to inform Division

[54] Email chain between Lois Lerner, Nanette Downing and others (May 10-11, 2011) IRS0000014917-20.
[55] SFC Interview of Joseph Grant (Sep. 20, 2013) p. 63.
[56] *Id.* p. 64.
[57] SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 18.
[58] SFC Interview of Steve Miller (Dec. 12, 2012) p. 242.
[59] *Id.*
[60] *Id*.

Commissioner for TE/GE Sarah Hall Ingram, Acting Division Commissioner for TE/GE Joseph Grant, Assistant Deputy Commissioner for Services & Enforcement Nikole Flax, and IRS Commissioner Douglas Shulman about the Tea Party applications. Several of those managers also seemed surprised that Lerner failed to brief them before the problems became public. Grant, her direct supervisor from the end of 2010 through 2013, was particularly frustrated:

> In retrospect, of course I wish that [I had become aware of Tea Party backlogs before April or May of 2012]. I would have liked to have known about that and have been informed about the challenges and backlogs that [EO] faced.[61]

Lerner's decision not to brief upper-level management about the Tea Party applications was a break from the norm. Her omission suggests that there were reasons she did not want them to be aware of her handling of these applications and did not want others to become involved – such as those discussed in the sections immediately below.

3. LERNER CREATED ROADBLOCKS FOR TEA PARTY APPLICATIONS THAT APPLIED FOR TAX-EXEMPT STATUS

In the absence of input from upper IRS management, Lerner exerted control over the Tea Party applications starting at the time when she first became aware that Tea Party organizations had applied for tax-exempt status in 2010. On May 13, 2010, EO Technical Acting Manager Steven Grodnitzky alerted Lerner to a number of open Sensitive Case Reports, including a new one that had been prepared for the Tea Party applications. Lerner responded by asking about the Tea Party applications, and specifically, the basis of their exemption requests. Lerner instructed Grodnitzky that "[a]ll cases on your list should not go out without a heads up to me please."[62] Through the remainder of 2010, Lerner received at least four updates about the status of Tea Party applications, which noted the growing number of applications and the IRS's failure to resolve any of them.[63]

Lerner grew more concerned about the Tea Party applications in early 2011. On February 1, 2011, Michael Seto, the Acting Manager of EO Technical, sent an updated summary of SCRs to Lerner. She responded, "Tea Party Matter very dangerous – This could be the vehicle to go to court on the issue of whether *Citizen's United* overturning the ban on corporate spending applies to tax exempt rules."[64] Based on these concerns, Lerner decided that the Office of Chief Counsel and Judy Kindell needed to be involved with these applications and that they should not be

[61] SFC Interview of Joseph Grant (Sep. 20, 2013) p. 50.
[62] Email chain between Lois Lerner, Rob Choi, Steve Grodnitzky, and others (May13-16, 2010) IRS0000167872-73.
[63] Email from Steven Grodnitzky to Lois Lerner and Robert Choi (May 27, 2010) IRS0000141812-14; Email from Theodore Lieber to Lois Lerner and others (July 30, 2010) IRS0000807076-807115 (email attachments containing taxpayer information omitted by Committee staff); Email from Steven Grodnitzky to Lois Lerner and Robert Choi (Sep. 30, 2010) IRS0000156433-36; Email from Holly Paz to Lois Lerner and Robert Choi (Nov. 3, 2010) IRS0000156478-81.
[64] Email chain between Holly Paz, Lois Lerner, and Michael Seto (Feb. 1-2, 2011) IRS0000159431-33.

handled by Cincinnati but instead by employees in Washington, D.C.[65] Lerner must have anticipated that these directives would inevitably delay the processing of Tea Party applications:

- Kindell had "a general reputation of being slow in all work." Further, "[s]he had a reputation of having difficulty with deadlines and taking a lengthy period of time on cases."[66] In an email to her manager Ingram, Lerner described Kindell as follows: "[s]he's not real useable (sic) in terms of making things happen."[67]
- Similarly, the Office of Chief Counsel could take "3 months, 6 months, a year" to provide feedback to EO and generally "can take a great deal of time" to respond to EO requests for help.[68]
- Finally, as noted by Paz and others, the EO office in Washington, D.C. had far fewer employees than Cincinnati who could evaluate and develop applications for tax-exempt status. Reviewing all of the Tea Party applications, which by that point exceeded 100, in Washington, D.C. would certainly result in delays.

Lerner convened a meeting in July 2011 with Paz, Thomas, and others specifically to discuss the growing backlog of Tea Party applications. Thomas summarized the outcome of the meeting in a message to her employees in Cincinnati:

> Lois expressed concern with the "label" we assigned to these cases [on the BOLO]. Her concern was centered around the fact that these type things can get us in trouble down the road when outsiders request information and accuse us of "picking on" certain types of organizations … . Lois did want everyone to know that we are handling the cases as we should, i.e., the Screening Group starts seeing a pattern of cases and is elevating the issue.[69]

In other words, Lerner was concerned about the perception that the IRS might be "picking on" Tea Party and conservative organizations, but she was not concerned about how the applications were actually being handled. Rather than expediting the applications – some of which had now been pending for nearly a year and a half – Lerner added more layers of review and raised hurdles for applicants to clear during the July 2011 meeting:

- EO Technical would develop and draft a guide sheet for EO Determinations to use when reviewing 501(c)(3) and 501(c)(4) "advocacy organization" applications to assist in spotting issues associated with these types of cases.
- EO Determinations would send 15-20 developed cases to EO Technical for review.

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[65] *Id.*
[66] SFC Interview of Holly Paz (July 26, 2013) pp. 128, 166.
[67] Email chain between Lois Lerner and Sarah Hall Ingram (April 29, 2010) IRS0000858652-53.
[68] SFC Interview of Steven Grodnitzky (Sep. 25, 2013) p. 145.
[69] Email chain between Cindy Thomas, Steven Bowling, John Shafer, and others (July 5, 2011) IRS0000620735-40.

- The IRS would require 501(c)(3) and 501(c)(4) "advocacy organizations" to make certain representations regarding compliance with the guide sheet and certain issues (i.e. they won't politically intervene) in order to pin them down in the future if they engage in prohibited activities.
- EO Determinations would also look to see if these organizations have registered with the Federal Election Commission and if so, they would ask additional questions.[70]

These and other measures implemented under Lerner's watch ensured that the Tea Party and other conservative organizations were subjected to multiple levels of review, as explained more fully in Section VI of the Bipartisan Investigative Report. Lerner continued to receive updates, including a November 2011 message from Thomas advising that the backlog of political advocacy applications had grown to more than 161 and that some of them had been in process since 2009.[71] In spite of these warning signs, Lerner did nothing to expedite these applications until the problems started becoming public in early 2012.

Due to the circuitous process implemented by Lerner, only one conservative political advocacy organization was granted tax-exempt status between February 2009 and May 2012. Lerner's bias against these applicants unquestionably led to these delays, and is particularly evident when compared to the IRS's treatment of other applications, discussed immediately below.

4. THE IRS SOMETIMES RESPONDED TO POLITICAL INQUIRIES BY QUICKLY DECIDING CERTAIN APPLICATIONS, BUT NOT WHEN THE INQUIRIES WERE ABOUT TEA PARTY ORGANIZATIONS

Although applications from the Tea Party and conservative organizations languished at the IRS, this was not the case for all groups that applied. In cases where the IRS wanted to act quickly, it did – particularly for other high-profile applications that attracted political attention.

One example is an application for 501(c)(3) tax-exempt status filed by Applicant X.[72] On February 21, 2012, a Democratic U.S. Senator's office sent a letter to Commissioner Shulman requesting that the IRS perform an expedited review of the application.[73] The letter noted that "[Applicant X] fits the profile of a 'new markets' district, with its low income and high unemployment profile … [and] will acquire, finance, construct, rehabilitate and lease … a …

[70] Memorandum from Hilary Goehausen to Michael Seto, Notes from Meeting on c3/c4 "advocacy organization" applications with Lois on July 5 (July 6, 2011) IRS0000487709.
[71] Email chain between Cindy Thomas, Lois Lerner and others (Nov. 3, 2011) IRS0000162845-46 (email attachment containing taxpayer information omitted by Committee staff).
[72] The Majority staff has assigned a pseudonym to this taxpayer to protect its identity. Documents referring to this taxpayer have also been redacted by the Majority staff to remove identifying information about the taxpayer and the U.S. Senator who was involved with this application.
[73] Email chain between Senator's staff, Floyd Williams, Doug Shulman and others (Feb. 21 - Mar. 2, 2012) IRS0000411951-52 (email attachments containing taxpayer information omitted by Committee staff).

building for use as a municipal office facility with street level retail."[74] Applicant X had applied for tax-exempt status in October 2011 and had twice requested expedited review, and twice the IRS denied the request.

Commissioner Shulman was scheduled to talk with the Senator on March 5, 2012.[75] Shulman was advised to tell the Senator that he doesn't get involved in individual cases but that he will convey to EO why the Senator thought the case should be expedited.[76] The next day, Flax asked Lerner for an update on the status of Applicant X. Lerner responded:

> The latest is that they will get approved today. Cindy [Thomas] took another look and they are comfortable with this one. I've asked Holly [Paz] to tell Cindy [Thomas] to let us know once it has actually been approved and closed. There is no "but" here. [I]t will be approved today.[77]

Thomas further noted that the case had been approved based on information already in the IRS's possession. The case had been "sitting in [EO's] full development unassigned inventory" until the IRS received the Senator's inquiry.[78] Applicant X's application was approved on March 6, 2012.

A second example occurred in late April 2013 when Lerner instructed Thomas to keep an eye out for an incoming application from Applicant Y and to send it to Washington, D.C. so that it could be expedited for review by Lerner's senior advisors.[79]

Thomas noted that under normal IRS procedures, Applicant Y did not fall into a category that would receive expedited processing; nonetheless, at Lerner's direction, Thomas forwarded the case to Washington, D.C. for expedited processing when it arrived in late April.[80] Within a few days, the IRS had reviewed the application, sent a development letter with questions, and reviewed the organization's responses. The IRS reviewers noted a problem that "would prevent us from being able to recognize them as a charitable (c)(3) organization."[81] In the meantime, Acting Commissioner Miller and Treasury Department Chief of Staff Mark Patterson had spoken

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[74] *Id.*
[75] Shulman told Committee staff that he had no recollection of whether the conversation actually occurred. SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 116-117.
[76] Email chain between Floyd Williams, Doug Shulman and others (Feb. 21 - Mar. 2, 2012) IRS0000411951-52 (email attachments containing taxpayer information omitted by Committee staff).
[77] Email chain between Lois Lerner, Nikole Flax and others (Mar. 6, 2013) IRS0000429946-47.
[78] *Id*.
[79] Email chain between Lois Lerner, Holly Paz and others (Apr. 10-19, 2013) IRS0000012957-60. The Majority staff has assigned a pseudonym to this taxpayer to protect its identity. Documents referring to this taxpayer have also been redacted by the Majority staff to remove identifying information about the taxpayer and the U.S. Senator who was involved with this application.
[80] *Id.*; SFC Interview of Cindy Thomas (July 25, 2013) p. 39. Thomas and other IRS employees noted that the IRS had also expedited past applications received from applicants under similar circumstances.
[81] Email from Lois Lerner to Nancy Marks (May 6, 2013) IRS0000013050-51.

with the staff of the Democratic mayor of the city where Applicant Y was based, and the IRS received a separate inquiry from a Democratic U.S. Senator.[82]

Thereafter, Lerner, Nancy Marks, and other senior EO staff spoke with the organization about how they could remedy the problems that would preclude the IRS from granting tax-exempt status.[83] For example, On May 3, 2013, Lerner notified Nikole Flax that she had personally informed a representative of the applicant that "our goal was to assist them in understanding what troubles us about the application" and "to suggest ways they might modify it ... ."[84] Miller also personally met with the organization's leader.[85] On May 14, 2013, the IRS granted Applicant Y tax-exempt 501(c)(3) status.[86]

In a third case, a Democratic U.S. Senator's office inquired about the status of an applicant for tax-exempt status. Lerner stated, "Our guys took a real close look at this and we now think it is an approval and will be able to get the letter out tomorrow."[87]

Finally, in January 2013, the IRS received an inquiry from a Democratic member of Congress about the status of an application for tax-exempt status. Thomas told Paz that "I don't know why [the application] hasn't been assigned yet" for review since it had been received by the IRS six months prior.[88] Thereafter, the case was reviewed within the next few days and Paz informed Lerner that it would be approved on merit. Lerner expressed her frustration to Paz:

> I'm guessing you know this only makes me a little bit happy. I have to talk to the Congressman about why it takes so long for case[s] to be assigned and worked. … As I told you – almost every time I ask them to go back and look at a case that has been sitting – it miraculously gets closed on merit – after it has been sitting for months and months awaiting full development.[89]

Yet Lerner's observation – that the IRS usually resolved applications within days of receiving a Congressional inquiry – didn't always prove true. Republican members of Congress who inquired about Tea Party groups were met with a very different response from Lerner and her subordinates.

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[82] Email chain between Mark Patterson and Steven Miller (May 4, 2013) IRSC032185; Email chain between Andy Megosh, Lois Lerner and others (Apr. 23, 2013 - May 7, 2013) IRS0000207919-20; and SFC Interview of Mark Patterson (Apr. 7, 2014) pp. 59-61.
[83] SFC Interview of Steven Miller (Dec. 12, 2013) p. 229.
[84] Email from Lois Lerner to Nikole Flax and Joseph Grant (May 3, 2013) IRS0000662208
[85] SFC Interview of Steven Miller (Dec. 12, 2013) p. 229.
[86] Letter from IRS to Applicant Y (May 14, 2013).
[87] Email chain between Lois Lerner, Andy Megosh and others (Dec. 20-21, 2012) IRS0000185655-56.
[88] Email chain between Lois Lerner, Holly Paz, Cindy Thomas, and others (Jan. 30 - Feb. 8, 2013) IRS0000194742-45.
[89] *Id*.

In November 2011, Thomas told Lerner that she had spoken with representatives from political advocacy organizations who were "threatening to contact their Congressional offices."[90] To "buy time" so one of the groups "didn't contact his Congressional office," Thomas informed Lerner that she ordered one of her subordinate managers to send a superfluous request for information to the group.[91] Lerner did not object to this plan.

In March 2012, Republican Representative Daniel Lungren wrote a letter to the Treasury Department about an application for tax-exempt status submitted by the Mother Lode Tea Party, which Representative Lungren noted had already "waited 12 months[.]"[92] The request was routed to Lerner, who reviewed a draft response to Mr. Lungren in April 2012. In August 2012, Lerner told Paz:

> At this point, we aren't sending a response [to Mr. Lungren] because we know he will ask for an end date – which is why I was asking [for the] status. I think we need to get the development letter out and that may be what we say to him – application has raised questions about whether the org meets requirements and have sent them a letter trying to flesh out.[93]

Ten months after Representative Lungren's inquiry, the IRS had still not submitted a response. At that point, the employee coordinating the IRS process said, "I have had absolutely no luck in getting a response … [t]he last thing I heard was this was with Nikole Flax in Commissioner's office [sic]."[94]

In March 2011, the IRS received two Congressional inquiries about the status of Tea Party applicants, one of which was submitted by Republican Representative Wally Herger about Patriots Educating Concerned Americans Now (PECAN).[95] These Tea Party inquiries were not even elevated to Lerner's level; the IRS apparently did not respond to Representative Herger and instead, Thomas and Seto subjected the applications to additional levels of review.[96]

More than a year later, Representative Herger's request about PECAN was still outstanding when it eventually worked its way to Lerner in July 2012. By that point, the Taxpayer Advocate Service made the universal decision that the IRS would respond to all outstanding inquiries

[90] Email chain between Cindy Thomas, Lois Lerner and others (Nov. 3, 2011) IRS0000162845-46 (email attachment containing taxpayer information omitted by Committee staff).
[91] *Id*.
[92] Email chain between Linda McCarty, Jennifer Vozne and others (Feb. 13-14, 2013) IRS0000542433-38.
[93] Email chain between Lois Lerner, Holly Paz and others (Aug. 10-17, 2012) IRS0000210056-58.
[94] Email chain between Linda McCarty, Jennifer Vozne and others (Feb. 13-14, 2013) IRS0000542433-38.
[95] Email chain between Cindy Thomas, Steven Bowling and others (Mar. 29 - Apr. 13, 2011) IRS0000576953-55 (Email attachments containing taxpayer information omitted by Committee staff).
[96] *Id.*

regarding political advocacy organizations by telling the taxpayer "that they had to wait for the decisions to be made."[97] Lerner was enthusiastic about this development, telling Paz:

> Well, that's a wonderful piece of news![98]

Lerner's comment encapsulates her view on the Tea Party applications: it was fine for them to languish in the bottomless abyss of IRS administrative review, and any questions from the outside were a mere annoyance. Indeed, even after Lerner's handling of Tea Party applications became public in May 2013, she failed to show any remorse for the harm she had caused, or even to grasp the significance of her role. In June 2014, she told a friend:

> How I got involved in this is simply because I was the person who announced that the IRS had used organization names (both conservative and liberal) to select applications for additional review. The conservative Republicans were sure they had a Watergate on their hands and went into overdrive to prove it. $50 Million later and hundreds of documents and interviews and they still don't have any evidence of their theory … .[99]

She also told that same friend:

> The Tea Party has decided this is a wonderful fundraising event for them so they keep trying to keep it alive. … [N]othing corroborating their version of the story has come out … .[100]

Lerner's comments do not accurately reflect the reality facing hundreds of conservative organizations that applied for tax-exempt status. Indeed, as of April 15, 2015, the IRS still had not rendered a determination on the application filed by PECAN, despite direct intervention by Representative Herger years before.[101] The difficulty that groups like PECAN faced is particularly stark when compared to the IRS's treatment of certain groups that received attention from Democratic politicians, and should not be trivialized.

5. LOIS LERNER'S MANAGEMENT OF THE EO EXAMINATIONS UNIT REVEALS HER POLITICAL BIAS AGAINST CONSERVATIVE ORGANIZATIONS

The influence of Lerner's personal political views on her official duties is particularly evident in her management of the IRS division that reviewed allegations of improper political campaign

[97] Email chain between Lois Lerner, Holly Paz and others (July 27 - Aug. 13, 2012) IRS0000221356-59.
[98] *Id*.
[99] Email chain between Lois Lerner and Mark Tornwall (June 26, 2014) 00011-14.
[100] Email chain between Lois Lerner and Mark Tornwall (July 3 - Sep. 4, 2013) 00025-30.
[101] Based on information provided by IRS to Senate Finance Committee (April 15, 2015).

intervention by tax-exempt organizations. Indeed, Lerner showed great zeal for using examinations as a weapon to intimidate tax-exempt organizations:

> Just as they got Al Capone on tax evasion instead of drugs, prostitution and murder, we need to do the same! […]
>
> By the way, even if we couldn't "get" any of them because of hazards with valuation or comp, that wouldn't stop me from putting something out that says we looked at these and it appears … .[102]

As a result of Lerner's heavy-handed management of the EO Examinations unit, numerous conservative organizations were subject to unwarranted IRS scrutiny. The effect of Lerner's bias was compounded by her distrust in the employees who were supposed to make audit decisions and the failure of those employees to report her interference to TIGTA.

a. Lois Lerner Closely Managed the Committee That Was Created to Evaluate Referrals of Alleged Improper Political Campaign Intervention

The Examinations unit, within the EO Division, monitors whether organizations that have been approved for tax-exempt status are operating in accordance with federal tax law.[103] At all times relevant to the Committee's investigation, Nanette Downing was the Director of EO Examinations and reported directly to Lois Lerner.[104]

Unlike most IRS divisions, which are administered at the IRS headquarters in Washington, D.C., EO Examinations has its head office in Dallas, Texas. IRS officials explained that EO Examinations was placed outside of Washington to ensure that the tax enforcement decisions for exempt organizations were not improperly influenced by other divisions of the IRS in Washington.[105]

Those measures did not stop Lerner from closely managing EO Examinations or, in some cases, directing EO Examinations to commence examinations of particular entities. Lerner repeatedly expressed her concern about Downing's management and questioned the competence of EO Examinations staff.[106] Lerner's distrust of EO Examinations employees and management

[102] Email chain between Lois Lerner, Nanette Downing, and Jason Kall (Nov. 14-15, 2012).
[103] IRS, Charity and Nonprofit Audits: Exempt Organizations Examinations.
[104] SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 6, 9, 15.
[105] *Id.* p. 53; SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 71.
[106] *See, e.g.*, Email chain between Lois Lerner, Nanette Downing, and others (Dec. 12-18, 2012) IRS0000185603-13. In that exchange, Lerner stated that EO Examinations personnel "have very little ability to apply any judgment" and asked Downing, "Who, in Exam, is responsible for oversight of the projects? More and more I'm feeling like it's me, and that doesn't work."

resulted in her keeping tight reigns on the operation,[107] thereby circumventing measures designed to handle allegations of improper political campaign intervention.

As described more fully in Section IX(A) of the Bipartisan Investigative Report, one attempt to insulate the IRS from political influence was to create the Political Action Review Committee (PARC). The PARC was a panel of career Federal employees who reviewed allegations of improper political campaign intervention and made the final decision on whether to open an examination of the subject organization.

The decisions of the PARC were supposed to be final. Downing explained that attempting to override the PARC would have serious consequences:

> Q. And can any one person override a PARC decision?
>
> A. No. No.
>
> Q. So once the PARC makes a decision one way or the other, no one can come in and say
>
> A. No. And I would expect – I don't think you were in here when I talked about this. **I would expect if anybody tried to do that, they would turn that in to TIGTA [for investigation]. We are not allowed to do that.**[108]

Even with these supposed safeguards, Lerner kept close tabs on the PARC. Shortly after it was created in 2012, Lerner cast doubt on the PARC's first set of decisions in a message to Downing:

> Do you have any sense why of the 88 referrals reviewed by the PARC they only recommended 33 for Exam? Considering the allegations, that surprises me. Were any others selected for compliance checks or anything?[109]

Downing assured Lerner that a "post review" of the PARC's decisions "will be done."[110] Lerner indicated that she wanted to further review the PARC's work:

> I looked at the names of the orgs selected [for examination] and only one is one that had been in the news. I would like to see the list of the ones not selected [for examination].[111]

Concluding the conversation, Lerner noted that she does not "plan to talk about this with Steve [Miller]," because Miller "needs to be outside case selection" since he had been elevated to Acting IRS Commissioner.[112] Lerner apparently saw no problem with her own involvement in

[107] The assertion that Lerner maintained tight control of EO operations is further borne out by Lerner's own admission that she is the "queen of control." Email from Lois Lerner to Sarah Hall Ingram (Oct. 25, 2010) IRS0000770062.
[108] SFC Interview of Nanette Downing (Dec. 6, 2013) p. 36 (emphasis added).
[109] Email chain between Lois Lerner and Nanette Downing (Oct. 31 - Nov. 1, 2012) IRS0000184801.
[110] *Id*.
[111] *Id*.
[112] *Id*.

the process. Neither did Downing, as she did not refer Lerner to TIGTA following this email exchange. Downing's permissive management enabled Lerner to inject her personal political bias into the review process of allegations related to political campaign intervention.

b. Lois Lerner Intervened in Audit Decisions Involving Political Organizations

Apart from the PARC, Lerner was active the process of referring taxpayers for audits. As Downing explained:

> Q. Would Ms. Lerner ever contact you about specific taxpayers?
>
> A. Yes. Often, she would have requests for – I mean, we get that kind of stuff all the time: congressional requests, media requests. And she would need to know the status of something and whether or not we got it. But then, also, if she got referrals, she would send referrals to us.[113]

Indeed, documents reviewed by the Majority Staff of the Committee show that Lerner often relayed referrals to EO Examinations – particularly when the allegations related to conservative organizations – and in one case, she may have acted to prevent an audit of a Democratic organization.

i. Conservative Organizations Profiled by *ProPublica*

A prime example of Lerner's influence within the IRS to open audits occurred in January 2013. *ProPublica* published an article about "dark money" groups that named five conservative organizations: Americans for Responsible Leadership; Freedom Path; Rightchange.com; America is Not Stupid; and A Better America.[114] Lerner sent this article to Paz, David Fish and Light and requested to meet to discuss the "status of these applications."[115] While we do not know what Lerner told Paz, Fish and Light at that meeting, analysis performed by the House Ways and Means Committee found:

> [F]our of the five groups were subject to extra-scrutiny; two of the groups were placed in the IRS' surveillance program, called a "Review of Operations," and two were selected to be put before the [PARC], which determines whether a group will be audited. Ultimately three of the groups were selected for audit.[116]

Lerner's interest in these conservative organizations and their resulting treatment by the IRS suggests that her left-leaning political views may have influenced official IRS actions.

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[113] SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 17-18.
[114] *ProPublica*, Controversial Dark Money Group Among Five That Told IRS They Would Stay Out of Politics, Then Didn't (Jan. 2, 2013).
[115] Email chain between Lois Lerner, Nikole Flax and others (Jan. 2, 2013) IRS0000122510.
[116] House Ways and Means Committee, Letter from Chairman Camp to Attorney General Eric Holder (Apr. 9, 2014) p.7 (internal citations omitted).

ii. Teen Pregnancy Organization Affiliated With Bristol Palin

Another example of Lerner's interest in conservative organizations occurred in 2011, when Lerner considered opening an audit of a group with ties to Bristol Palin. There were reports that Palin received $332,500 in compensation from the Candie's Foundation, a nonprofit organization that seeks to prevent teen pregnancy. Upon receiving an article containing this information, Lerner took the initiative to ask her senior advisors if the IRS should open an audit of the organization:

> Thoughts on the Bristol Palin issue? I'm curious that a [private foundation] can pay any amount to someone who is not a [disqualified person]? It is a [private foundation] right? Even if it were a [public charity] – would that be private benefit – what are the consequences? I'm asking because I don't know whether to send to Exam as a referral.[117]

Lerner's willingness to act on this particular news article – among many that reached her inbox each day – shows that she was paying close attention to conservative politicians and organizations. In its review of nearly 1,500,000 pages of documents provided by the IRS, Majority staff did not find any instances where Lerner referred a progressive organization for audit based on a news article.

iii. Crossroads GPS

One conservative group that particularly interested Lerner was Crossroads GPS, which was founded by Karl Rove and applied for 501(c)(4) tax-exempt status in 2010. Lerner's handling of this application, in particular, shows her bias against conservative organizations that sought tax-exempt status – and her close connections to outside liberal advocacy groups. Of particular note, the Majority staff's review of IRS documents did not reveal any interactions between Lerner and representatives from outside conservative groups similar to her interactions with liberal groups described below.

In October 2010, Lerner received complaints about Crossroads GPS's alleged political activities from the Ways and Means Oversight Subcommittee Minority staff, as well as two outside liberal advocacy groups, Democracy 21 and the Campaign Legal Center.[118] After learning that Crossroads GPS had filed an application for tax-exempt status, Lerner suggested that the application should be reviewed in Washington, D.C. instead of Cincinnati, where the application would normally be reviewed.[119] A month later, on her own initiative, Lerner followed up to ensure that the October letter from Democracy 21 and the Campaign Legal Center had been sent

[117] Email chain between Lois Lerner, David Fish, Judith Kindell, and others (April 8, 2011) IRS0000847941-46.
[118] Email chain between Lois Lerner, David Fish, Sarah Hall Ingram, Joseph Grant, and others (Oct. 6, 2010) IRS0000453771-72; Email chain between Lois Lerner, Nan Downing and others (Oct. 5 - Nov. 4, 2010) IRS0000459877-95.
[119] Email chain between Lois Lerner, David Fish, Sarah Hall Ingram, Joseph Grant, and others (Oct. 6, 2010) IRS0000453771-72.

to EO Examinations as a referral, so that they could decide whether to open an audit based on the allegations in the letter.[120]

The following May, Downing updated Lerner about two referrals that EO Examinations had received about Crossroads GPS.[121] Paz noted that the Crossroads GPS application for tax-exempt status had "just arrived [in Washington, D.C.] from Cincy."[122] Lerner then set up a meeting with her senior EO managers, Holly Paz, Michael Seto, Judy Kindell, and David Fish, to discuss "several moving pieces" involving Crossroads GPS, which included "[r]eferrals in Dallas [and] applications in Cincy."[123] Lerner also told Downing that she wanted to talk with her about Crossroads GPS.[124] A few days after that meeting, the application for Crossroads GPS was delivered to Paz.[125]

Democracy 21 and the Campaign Legal Center subsequently submitted two additional complaints about Crossroads GPS to the IRS in July and September 2011.[126] Lerner directed David Fish to send the second letter to EO Examinations as a referral.[127]

In May 2012, Democracy 21 and the Campaign Legal Center wrote again to the IRS, this time requesting that it deny Crossroads GPS's request for tax-exempt status.[128] After receiving this letter, Lerner requested a status update on Crossroads GPS's application. Sharon Light told Lerner that the case has been reviewed by two reviewers and that one has recommended general development while the other has recommended limited development. Lerner responded by telling Light that "full development may be the best course … ."[129] Lerner further stated to Light that "I will leave it in your capable hands. Having said that – as they say they have been filing 990s, you should be looking at those as well."[130] This message illustrates Lerner's management style: on the surface, she left matters in her employees' "capable hands," but she nudged them in whatever direction she desired – even senior employees like Light.

A few weeks later, on June 20, 2012, Lerner forwarded an article critical about Crossroads GPS to Downing and asked for an update about "referrals on this and what happened[.]"[131] In response, Downing explained that out of the 16 referrals, 10 were closed after the Political Activities Compliance Initiative committee decided not to pursue them, three others were closed

[120] Email chain between Lois Lerner, Joseph Urban and others (Oct. 5 - Nov. 4, 2010) IRS0000459877-95.
[121] Email chain between Lois Lerner, Nan Downing, Holly Paz and others (May 26-27, 2011) IRS0000196483-84.
[122] *Id*.
[123] Email chain between Lois Lerner, Nan Downing and others (May 26-27, 2011) IRS0000196485.
[124] *Id*.
[125] Email chain between Cindy Thomas, Holly Paz and others (June 1-10, 2011) IRS0000066837-40.
[126] Petition for Rulemaking on Campaign Activities by Section 501(c)(4) Organizations (July 27, 2011) IRS0000436241-60; Email chain between Lois Lerner, Nikole Flax and others (Sep. 28, 2011) IRS0000511970-93.
[127] Email chain between Lois Lerner, David Fish and others (Sep. 28-30, 2011) IRS0000511994-2018.
[128] Email chain between Lois Lerner, Sharon Light and others (May 25, 2012) IRS0000199184-86.
[129] *Id*.
[130] *Id*.
[131] Email chain between Lois Lerner, Nan Downing, and others (June 4-20, 2012).

by EO Classification, and the remaining three would be sent to the Review of Operations as part of the dual track program.[132]

On January 4, 2013 at 11:00 AM, Lerner met with Democracy 21 and the Campaign Legal Center to discuss the groups' proposed regulatory changes that would curtail political activities of 501(c)(4) organizations.[133] Victoria Judson, Associate Chief Counsel for TE/GE, and Ruth Madrigal, from the Treasury Department's Office of Tax Policy, were also at the meeting.[134] Shortly after the meeting, Lerner asked her technical advisor Thomas Miller if EO Examinations had opened an audit of Crossroads GPS.[135] Miller informed Lerner that EO Examinations had twice considered allegations against Crossroads GPS, and had decided both times not to start an audit.[136] After learning this information, Lerner questioned EO Examinations' handling of the allegations in an email to Downing:

> To get ready for the [January 4, 2013] meeting [with Democracy 21 and the Campaign Legal Center], I asked for every document they had sent in over the last several years because I knew they had sent in several referrals. **I reviewed the information last night and thought the allegations in the documents were really damning, so wondered why we hadn't done something with the org.** The first complaint came in 2010 and there were additional ones in 2011 and 2012.
>
> *** * ***
>
> I don't know where we go with this – as I've told you before – I don't think your guys get it and the way they look at these cases is going to bite us some day. The organization at issue is Crossroads GPS, which is on the top of the list of c4 spenders in the last two elections. It is in the news regularly as an organization that is not really a c4, rather it is only doing political activity – taking in money from large contributors who wish to remain anonymous and funneling it into tight electoral races. **Yet – twice we rejected the referrals for somewhat dubious reasons and never followed up once the 990s were filed**.[137]

Lerner further told Downing that while the organization had recently been referred to EO Examinations again, "this is an org that was a prime candidate for exam when the referrals and 990s first came in."[138] Lerner also stated, "I'm not confident [EO Examinations employees] will be able to handle the exam without constant hand holding – the issues here are going to be

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[132] *Id*. See Section IX(A) of the Bipartisan Investigative Report for additional discussion of the Review of Operations, as well as other EO Examinations procedures.
[133] Email chain between Lois Lerner, Ruth Madrigal, Victoria Judson, and others (Dec. 14-19, 2012) IRS0000446771-75.
[134] Email chain between Lois Lerner, Victoria Judson, Ruth Madrigal, and others (Dec. 14, 2012) IRS0000446755-56.
[135] Email chain between Thomas Miller, Lois Lerner and Nanette Downing (Jan. 4-7, 2013) IRS0000122549-51.
[136] *Id.*
[137] *Id*. (emphasis added).
[138] *Id*.

whether the expenditures they call general advocacy are political intervention."[139] Lerner closed by instructing Downing:

> Please keep me apprised of the org's status in the [Review of Operations] and the outcome of the referral committee. You should know that we are working on a denial of the application, which may solve the problem because we probably will say it isn't exempt. **Please make sure all moves regarding the org are coordinated up here before we do anything**.[140]

At 3:30 that afternoon, Lerner called a meeting with Paz and others to discuss the Crossroads GPS application for tax-exempt status. Paz noted that she "suspect[ed] this will be the first of many discussions" about Crossroads.[141] EO Determinations agent Joseph Herr, who has been working on the Crossroads GPS application for exemption since January 30, 2012, was also invited to the 3:30 meeting. Herr noted in the case log for the Crossroads GPS application that he participated on a conference call with EO Technical on January 4, 2013, "[o]n how best to proceed with case."[142] On January 7, 2013, Herr noted, "Based on conference begin reviewing case information, tax law and draft/template advocacy denial letter, all to think about how to compose the denial letter."[143] These entries reflect the first time in the log that Herr noted the possibility of denying Crossroads GPS's application since he was assigned the case in January 2012, which suggests that he received the direction to deny the case from Lerner during the conference call that afternoon.[144]

On January 7, 2013, Downing provided a summary to Lerner of the referrals made about Crossroads GPS and the decisions of the PARC not to open audits.[145] Lerner told Downing that the reasons given by the PARC are "most disturbing." Lerner further told Downing:

> As I said, we are working on the denial for the 1024, **so I need to think about whether to open an exam. I think yes, but let me cogitate a bit on it**.[146]

If anything is "disturbing" about the IRS's handling of Crossroads GPS, it is Lerner's excessive involvement in all stages of the application and examination process. Lerner's actions went beyond mere concern that the IRS would reach the correct decisions on the application and referrals. Through her heavy-handed management, she ensured that the application received particular attention in Washington, D.C. and that the allegations of improper activity were

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[139] *Id*.
[140] *Id*. (emphasis added).
[141] Email from Holly Paz to Nancy Marks (Jan. 4, 2013) IRS0000475846.
[142] EP/EO Case Chronology Record for Crossroads Grassroots Policy Strategies (undated) IRS0000071224-26.
[143] *Id*.
[144] In fact, the IRS prepared a draft denial in April 2013. *See* Email chain between Sharon Light, Holly Paz, Joseph Herr and others (April 8 - May 30, 2013) IRS0000529074-75 (attachment containing taxpayer information omitted by Committee staff). As of April 2015 – 54 months after Crossroads GPS submitted its application for tax-exempt status – the IRS had still not rendered a final decision.
[145] Email chain between Thomas Miller, Lois Lerner and Nanette Downing (Jan. 4-7, 2013) IRS0000122549-51.
[146] *Id*. (emphasis added).

considered time and time again – culminating in her discussion with Downing about whether they should open an examination in January 2013 after her subordinates had repeatedly declined to do so.

iv. Stupak for Congress, Inc.

In at least one instance, Lerner and other senior IRS officials may have acted to stop a planned audit of a Democratic organization.

An organization affiliated with Democratic Congressman Bart Stupak was selected for examination in April 2010 by the National Research Program (NRP). TE/GE Division staff identified the organization as an "extremely sensitive" case, characterizing Stupak as an "anti-abortion Democrat" who was a "lightning rod for the Republicans and anti-abortion crowd" and whose "office was picketed by the Tea Party folks."[147] The proposed audit was elevated to Nan Downing, who then asked Lerner if the IRS should continue with the planned audit. Lerner, in turn, asked Ingram if the audit should continue. Ingram suggested that Lerner should see if the NRP would "toss them out" of the planned audit because the organization would cease to exist after Stupak left office in January 2011. Lerner indicated that she would follow up with the NRP as Ingram suggested.[148]

It is unclear if Lerner and Ingram were able to stop the audit. But regardless, their actions show a willingness to manipulate the audit process when political issues were at stake.

c. Nan Downing Allowed Lois Lerner to Make Audit Decisions and Did Not Refer Her to TIGTA

As noted throughout the discussion above, Downing allowed – and in some cases enabled – Lerner and other senior IRS officials to become directly involved in selecting organizations for examination. Although many of these discussions appear to be prohibited by IRS policy, their extended discussion about referrals for Crossroads GPS, described immediately above, is most troubling. Although Lerner did not overtly direct Downing to open an audit, Lerner's emails reveal her belief that the IRS should audit Crossroads GPS. Lerner's repeated involvement with this conservative taxpayer showed her persistence in making sure an audit was, in fact, opened – and further evidence her bias against organizations on the right side of the political spectrum.

Downing told Committee staff that interfering with the career Federal employees in EO Examinations charged with deciding whether to open audits had serious repercussions:

> You know, as a revenue agent and, you know, even as an IRS employee, you know, my folks are taught from the very beginning about, you know, several things. One is, you

[147] Email chain between Lois Lerner, Sarah Hall Ingram, Nan Downing, and others (Apr. 19-20, 2010) IRS0000713405-09.
[148] *Id.*

know, no one will tell us who to do an audit on. If they did, you'd turn that in to TIGTA [for investigation].[149]

Downing stated that this rule would also apply to Lerner in the event that she tried to direct an audit.[150] Yet Downing did not refer Lerner to TIGTA.[151] Downing told Committee staff that a referral was not necessary because she did not consider Lerner's emails of January 4, 2013 and January 7, 2013 to be directing an audit:

Q. Is this Lois Lerner telling you or suggesting that Exams open up an audit?

A. No. That's not the way I took it. The way I took it is she worried – we were not lawyers, as I said. We were accountants. And whether or not we were correctly – if we knew what we were doing.

* * *

Q. Well, her statement that "twice we rejected the referrals for somewhat dubious reasons," doesn't that suggest the negative

A. That

Q. that the correct decision was not projected?

A. That is not the way I took it. And maybe it was because of my relationship of her. I did not take it that she was telling me what to do.[152]

Downing told Committee staff that she construed Lerner's message as a general comment about the referral process, and that it did not relate to Crossroads GPS specifically:

Q. How did you take the statement, "Please make sure all moves regarding the organization are coordinated up here before we do anything"?

* * *

A. Okay. So this was – okay. So this one – and I think she mentions somewhere in here that there's an application pending. And in our dual track process – so, to me, it wasn't Crossroads GPS, it was any of them, that the team, as we built the dual track process, they are to be cognizant if Rulings and Agreement[s] has an application. So we're going to go on and start an exam, but we just want to make sure, what if, right before we get ready to start exams, they issue a denial? And I don't even know what their process is, but what if they deny it? So it's coordinating, making sure that piece is in my process.

[149] SFC Interview of Nanette Downing (Dec. 6, 2013) p. 18.
[150] *Id*. p. 19.
[151] *Id*. p. 76.
[152] *Id*.

Q. I mean, because there's nothing in this email chain relating to general process, and it's all

A. No.

Q. with respect to one taxpaying group.

A. But I took it

Q. So that just doesn't follow from the

A. Yeah. But that's how I took it because it's – it's because of an application pending.

* * *

Q. So if you took that statement to be a general statement about the process, why was your response totally with respect to one group?

A. Well, she was originally asking about

Q. Well, in the statement she's asking about one group.

A. She was asking about that referral, so I responded to that. You know, you had to know Lois. You had to know the emails you got. I responded with the facts, and the rest of it I just made sure that we had this built in to the process.

* * *

Q. So when she says, "Please make sure all moves regarding the org are coordinated up here before we do anything"

A. What I did was what my staffing says: Do we have a process in place that we know which ones have applications pending? They said yes.

Q. But did you feel that you had to apprise her of all moves regarding the org

A. No.

Q. with her?

A. No. What I took from that was, in that process, if any of them, GPS, Crossroads GPS, anything else, had an application pending, we built in to the process that if it was decided for the exam, they had a contact to reach out with [Rulings and Agreements] to see what the status was.

* * *

Q. And then her statement, "I need to think about whether to open an exam. I think yes, but let me cogitate on it a bit," that did not, to you, sound like it was her decision whether or not to open up an exam on

A. No. No. I didn't take it that way. I took it about, what is the process, and when we have any organization that has a potential application, and where is that application and whether, you know – and, again, how close is the decision on that application.[153]

In spite of Downing's imaginative interpretation, Lerner was clearly referring to Crossroads GPS in her messages of January 4, 2013 and January 7, 2013. These exchanges should have been referred to TIGTA as they amounted to an overt attempt by Lerner to open an audit on a specific taxpayer. But even taking Downing's testimony at face value, which we do not, her complacent attitude allowed Lerner to exert improper influence on the examination process.

D. Conclusions Regarding Lerner's Role and Culpability

There can be little doubt that Lois Lerner's personal political views directed the course of IRS interactions with a large number of tax-exempt organizations. The IRS's treatment of these organizations was almost universally consistent with Lerner's personal political views – this is, supporting Democratic candidates and opposing conservative tax-exempt organizations that engaged in political speech. Conservative organizations that sought to participate in the nation's political discourse, such as the Tea Party, drew the strongest ire from Lerner. Her influence led not only to indefinite delays in the processing of these groups' applications for tax-exempt status, but also to audits. During that same time, the IRS generally responded quickly and favorably to nonprofit organizations that were affiliated with progressive causes or politicians.

We conclude that Lerner was responsible for harm caused to conservative taxpayers during her tenure at the IRS. But we must hold IRS and Treasury management equally responsible for their failure to exert any meaningful oversight of Lerner's EO Division. A biased employee, such as Lerner, should not have been allowed to remain in senior positions for more than 10 years, and should never have been given free reign over such a vast and influential part of the IRS. To avoid exposing taxpayers to the risk of biased treatment in the future, the IRS and Treasury must keep a closer watch of their employees and ferret out politically-biased behavior.

[153] *Id.* pp. 76-85 (portions omitted).

III. SENIOR IRS OFFICIALS CONTINUOUSLY MISLED CONGRESS ABOUT THE IRS'S HANDLING OF APPLICATIONS SUBMITTED BY TEA PARTY ORGANIZATIONS

Senior IRS officials including Doug Shulman, Steve Miller, and Lois Lerner consistently misled Congress about the IRS's targeting of Tea Party and other political advocacy groups that were seeking tax exempt status. These misrepresentations covered up IRS wrongdoing, allowed the IRS to escape accountability for its abusive treatment of Tea Party organizations until the release of the TIGTA report in May 2013, and materially impeded Congress in the performance of its Constitutional oversight responsibilities.

A. DOUG SHULMAN MISLED CONGRESS REGARDING THE TARGETING OF TEA PARTY GROUPS

On March 22, 2012, then-Commissioner Doug Shulman testified before the House Ways and Means Subcommittee on Oversight.[154] Prior to appearing before that Subcommittee, Shulman had become aware from press stories, as well as from letters he received from Members of Congress, of allegations that Tea Party groups that had filed applications for tax-exempt status were receiving intrusive development letters from the IRS that sought unusual information such as the names of their donors.[155] Shulman was also aware from these sources that there existed a backlog of applications for tax-exempt status and that many of these Tea Party groups had been waiting a substantial period of time for a decision from the IRS.[156] Coverage of these issues in the media had been so pervasive that Shulman anticipated that he might be asked questions during the hearing regarding processing delays and intrusive development letters.[157] During the course of the hearing, the following colloquy occurred between Representative Boustany and Commissioner Shulman.

> **Mr. Boustany**: ... It has come to my attention, I've gotten a number of letters, we've seen some recent press allegations that the IRS is targeting certain Tea Party groups ... Can you elaborate on what's going on with that? Can you give us assurances that the IRS is not targeting particular groups based on political leanings?
>
> **Mr. Shulman**: Thanks for bringing this up. I think there's been a lot of press about this and a lot of moving information, so I appreciate the opportunity to clarify. **First, let me start by saying, yes, I can give you assurances.**
>
> * * *

[154] Hearing before the Subcommittee on Oversight of the House Committee on Ways and Means, "Internal Revenue Service Operations and the 2012 Tax Filing Season" (Mar. 22, 2012).
[155] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 58-65.
[156] *Id*. pp. 39-40.
[157] *Id*. pp. 70-71.

There is absolutely no targeting. This is the kind of back-and-forth that happens when people apply for 501(c)(4) status.[158]

Shulman's response failed to acknowledge several facts of which he was aware at the time of his testimony. For example, he knew that the IRS had issued intrusive development letters to these groups, in many cases seeking the names of donors, yet he chose to depict these interactions as "the kind of back-and-forth that happens" when the IRS processes an application for tax-exemption.[159] Moreover, he was aware of the fact that these groups were experiencing substantial processing delays.[160] The intrusive questions and delays were facts that clearly suggested that these groups were being treated differently by the IRS, possibly as a result of their political views. In light of Shulman's knowledge at the time of his testimony, it is difficult to reconcile his emphatic assurance that the IRS was not improperly processing applications from conservative organizations. Indeed, characterizing these circumstances as part of the "back and forth that happens when people apply for 501(c)(4) status" was nothing short of misleading and had the effect of throwing Congress and the public off the scent of IRS wrongdoing.

In early May 2012, just five or six weeks after Shulman's appearance before the House Ways and Means Subcommittee on Oversight, Shulman was informed by Steve Miller of the existence of the BOLO list and that it contained an entry for the Tea Party.[161] Later that month, Inspector General George apprised Shulman that TIGTA was pursuing an investigation into the use by the IRS of inappropriate criteria in the processing of applications for tax exempt status.[162] Thus, by late May 2012, Shulman was not only aware that the IRS had been improperly focusing on Tea Party groups as a result of their political views, but also knew that the Inspector General was launching an investigation into the matter. In spite of this knowledge, Shulman elected to remain silent and make no effort whatsoever to correct his recent inaccurate testimony before the Subcommittee regarding the absence of targeting. His failures allowed the IRS to actively conceal its mistreatment of Tea Party and other political advocacy groups for more than a year until the issuance of the TIGTA report in May 2013, and thwarted the Subcommittee in the performance of its oversight responsibilities.

B. STEVE MILLER WITHHELD INFORMATION ABOUT POLITICAL TARGETING FROM THE CONGRESS

During 2012, Steve Miller, while Deputy Commissioner for Services and Enforcement, was afforded a number of opportunities to apprise Congress about the use of inappropriate criteria to target Tea Party and other political advocacy organizations, but instead, elected at each instance not to do so.

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[158] Hearing before the Subcommittee on Oversight of the House Committee on Ways and Means, "Internal Revenue Service Operations and the 2012 Tax Filing Season" (Mar. 22, 2012) pp. 93-94 (emphasis added).
[159] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 31-37.
[160] *Id*. pp. 34-35.
[161] *Id*. pp. 40-52.
[162] *Id*. pp. 76-77.

1. MILLER'S RESPONSE TO SENATOR HATCH'S MARCH 14, 2012 LETTER WAS MISLEADING

By letter dated March 14, 2012, Senator Orrin Hatch together with 11 other Republican Members of the U.S. Senate penned a letter to Commissioner Shulman regarding their concern over intrusive IRS inquiries to Tea Party and other conservative organizations that were seeking tax exemption under section 501(c)(4).[163] The letter stated that the Senators were concerned in ensuring that "tax compliance efforts are pursued in a fair, even handed and transparent manner – without regard to politics of any kind."[164] The letter sought information about how and why the IRS sought particular types of information from applicants and stated that the questions were born of "concerns about selective enforcement and the duty to treat similarly situated taxpayers" in the same fashion.[165]

Miller responded by letter dated April 26, 2012.[166] At the time of Miller's response, he was aware of a number of disturbing facts regarding how the IRS was processing applications for tax-exempt status received from Tea Party and other political advocacy groups. For example, he knew in February 2012 that many of the applications for tax exemption from Tea Party and other political advocacy groups that were awaiting decision in the Determinations Unit were very old.[167] He was also aware of the press stories focusing on the IRS's use of highly intrusive questions, including questions about the identity of applicant organizations' donors.[168] Miller himself told Senate Finance Committee investigators that he believed the questions constituted "overreaching" by the IRS.[169] Further, he knew in late March of 2012 that TIGTA was going to conduct an audit into how the IRS processed applications for tax exemption under sections 501(c)(4), (5) and (6).[170] In addition, at the time of his response to Senator Hatch, Miller had grown alarmed about the press stories and Congressional inquiries reporting lengthy processing delays experienced by Tea Party groups and of the use of intrusive development questions.[171] Miller testified that in March 2012, his concerns over these reports caused him to send Nan Marks, a trusted senior advisor, to visit the Determinations Unit in Cincinnati to investigate how the cases were being processed and to report back to him.[172]

In spite of these facts, Miller's response to Senator Hatch of April 26, 2012 actually *defended and justified* the IRS's demands from applicant organizations for information such as: the names of the organizations' donors; copies of social media posts, speeches, and panel presentations; the names and qualifications of speakers and participants at events; and written materials distributed by these organizations at public gatherings. In his April 26, 2012 response, Miller explained

[163] Letter from Senator Orrin Hatch to Commissioner Douglas Shulman (Mar. 14, 2012) IRS0000509339-42.
[164] *Id*.
[165] *Id*.
[166] Letter from Steven T. Miller to Senator Orrin Hatch (Apr. 26, 2012) TIGTA Bates No. 006998-7007.
[167] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 102-103.
[168] *Id*. pp. 159-160.
[169] *Id*. p. 159.
[170] *Id*. pp. 146-147. Email from Richard Daly to Steve Miller and others (Mar. 29, 2012) IRS0000411131-32.
[171] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 123-130.
[172] *Id*. p. 129.

these highly unusual and intrusive requests – which he subsequently characterized during his interview with Senate Finance Committee staff as "overreaching" – in the following manner:

> The revenue agent uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination of the organization's exempt status. The revenue agent prepares individualized questions and requests for documents based on the facts and circumstances set forth in the particular application."[173]

At best, Miller's written response to the Senators was disingenuous, and at worst, it was plainly false and likely calculated to forestall further Congressional inquiry into the matter of how the IRS was processing applications for tax exemption from Tea Party and other political advocacy groups.

2. MILLER BECAME AWARE OF IMPORTANT INFORMATION REGARDING TARGETING WITHIN A WEEK OF ISSUING HIS RESPONSE TO SENATOR HATCH'S MARCH 14, 2012 LETTER, BUT FAILED TO BRING THAT INFORMATION TO THE ATTENTION OF CONGRESS

During the first week of May 2012 – a scant week after issuing his response to Senator Hatch's letter – Miller was briefed by Nan Marks on her findings regarding how applications were being processed.[174] He then learned first-hand that the reports of a backlog and the long delays that applicant organizations were experiencing, in some cases for better than two years, were accurate.[175] He also learned from Marks that the issuance of intrusive development questions by Determinations Unit staff resulted from a failure to properly train that staff and to provide it with adequate technical support.[176] Most importantly, Marks apprised Miller of the existence of the BOLO list; that "Tea Party" was on the list; and that applications for tax exemption had been selected for full development based on the presence of terms in the applications, such as "Tea Party," "Patriots," and "9/12."[177]

Miller told Committee staff during his interview that he was "outraged" when he first learned of the existence of the BOLO list and felt that it was "stupid" and "inappropriate."[178] Miller's outrage over the existence of the BOLO list stemmed in part from his concern that such a list that focused on the names of organizations, rather than on their activities, suggested that the IRS was applying the tax laws in a partisan way, with regard to the political views of the organizations whose applications it was considering.[179]

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[173] Letter from Steven T. Miller to Senator Orrin Hatch (Apr. 26, 2012) TIGTA Bates No. 006998-7007.
[174] SFC Interview of Steven Miller (Dec. 12, 2013) p. 131.
[175] *Id*. pp. 133-135.
[176] *Id*. p. 134.
[177] *Id*. pp. 135-139.
[178] *Id*. pp. 139-141.
[179] *Id*.

Unfortunately, Miller's outrage over the use of terms like "Tea Party" to flag applications for full development did not motivate him to the point of contacting Senator Hatch, to whom he had most recently written, and to inform him of Marks's findings. This is particularly troublesome given the fact that the stated intent of Senator Hatch's letter was his concern whether the IRS was administering the tax laws in a fair and even way, "without regard to politics of any kind" – the very same concern that Miller formed when he purportedly became "outraged" over the fact that the IRS had been flagging applications for full development based on the political views of applicant organizations. Not more than a week after writing to Senator Hatch to provide answers to questions raised by their now shared concern whether the IRS was administering the tax laws fairly and without regard to the political views of tax payers, Miller was in possession of information directly germane and responsive to that concern. Rather than inform Senator Hatch of Marks's findings, Miller, once again, elected to remain silent on the matter.

Of further note, and again reflective of Miller's lack of candor with the Congress, is the fact that Marks told Miller that the intrusive development questions resulted from a failure to adequately train the EO Determinations Unit staff, as well as a failure to provide that staff with sufficient technical support.[180] Accordingly, by the week of May 3, 2012, Miller was fully aware that the intrusive development letters that had been issued by EO Determinations personnel most certainly were not the product of "sound reasoning" nor were they "based on tax law training and ... experience," as he had asserted in his response to Senator Hatch dated April 26, 2012. Miller was content to leave his inaccurate and misleading response stand without revision, yet another disingenuous act aimed at obfuscating the true state of affairs with the IRS's processing of the Tea Party and other political advocacy applications.

3. MILLER'S RESPONSE TO THE JUNE 18, 2012 LETTER FROM SENATOR HATCH REGARDING THE IRS'S ATTEMPT TO COLLECT DONOR INFORMATION FROM APPLICANTS CONTINUED MILLER'S PATTERN OF OBFUSCATION

On June 18, 2012, Senator Hatch, together with ten other Republican Senators, corresponded again with Commissioner Shulman over the IRS's treatment of Tea Party organizations.[181] This time, the focus of the Senators' attention was on the collection by the IRS of the names of the donors who made, or were expected to make, a donation to Tea Party and similar political advocacy organizations seeking tax-exempt status. As explained in the June 18, 2012 letter, by operation of law, the identity of donors of tax-exempt organizations is not information subject to disclosure by the IRS. However, information provided to the IRS by an organization in furtherance of its application can be disclosed to the public once the IRS grants tax-exempt status. Thus, by asking organizations for the names of their donors as part of the application process, the IRS was, in effect, subjecting that information to disclosure and thereby nullifying the statutory safeguards designed to protect the privacy of donor information. In light of this

[180] *Id*. p.134.
[181] Letter from Senator Orrin Hatch to Commissioner Douglas Shulman (June 18, 2012).

anomaly, Senator Hatch wrote to Commissioner Shulman, posing specific questions about the IRS's requests for donor information.

Miller responded to Senator Hatch's letter three months later on September 11, 2012.[182] This response provided Miller with an excellent opportunity to inform Congress about the BOLO list and the targeting of Tea Party and similar political advocacy organizations, facts of which Miller was now well aware. However, rather than do so, Miller chose to avoid the topic of targeting entirely, providing a very technical and carefully drawn response to the immediate questions raised, that once again justified the IRS's collection of information regarding the identity of donors. By doing so, Miller elected to stay the course of obfuscation, relying once again on the IRS nostrum that:

> Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status... . As noted above ... donor information may be needed for the IRS to make a proper determination of an organization's exempt status.[183]

Miller's letter was misleading on an even more basic level. The September 11, 2012 letter failed to note IRS management's own concerns about the attempt to collect donor information, a concern that prompted Miller to direct on March 8, 2012, *some six months earlier*, that applicant organizations that called the IRS to discuss requests for the identity of their donors were to be informed that they did not need to provide that information.[184] Miller also failed to inform Senator Hatch that at the request of Lois Lerner, the Office of the IRS Chief Counsel had provided an opinion on May 21, 2012, that the donor information submitted by organizations in response to requests received from the IRS could be destroyed.[185] Similarly, Miller's response of September 26, 2012 omitted the fact that on June 27, 2012, Holly Paz directed IRS staff to expunge donor information from files and to send affected applicants a letter advising them that the donor information would be destroyed.[186]

Miller's statements to Congress defending the requests for donor information when he was fully aware that they were inappropriate, constituted "overreaching" and in fact, had been halted by the IRS, were false and misleading.

[182] Letter from Steven Miller to Senator Orrin Hatch (Sep. 11, 2012).
[183] *Id.*
[184] Email from Nikole Flax to Lois Lerner (Mar. 8, 2012) IRS0000465957.
[185] Email chain between Margo Stevens, Lois Lerner and Kristen Witter (May 21, 2012) IRS0000177231.
[186] Email from Holly Paz to Sharon Light and Matthew Giuliano (June 25, 2012) IRS0000432414.

4. MILLER'S EXPLANATION FOR FAILING TO INFORM CONGRESS WAS A SHAM

At Miller's interview with Senate Finance Committee Staff, he was asked why, after learning from Nan Marks about the BOLO list and that applications from Tea Party groups had been flagged for full development based on the basis of their political views, he did not convey that information to Senator Hatch. Miller's response was that he did not have all the facts yet, and that TIGTA was conducting a review.

> Q. ... Why didn't you pick the phone up? Why didn't you write an email to Senator Hatch? Why didn't you ask your staff to contact the Senate Finance Committee staff and have them come over and brief them on what Ms. Marks had found? All those things were things that could have been done and should have been done, don't you think?
>
> A. No. I didn't have all the facts. TIGTA was working on the facts ... .[187]

Miller took the position that he had no duty to inform Senator Hatch after learning about the BOLO list and how it had been used because TIGTA was now investigating the matter in order to establish "all the facts." In Miller's view, the involvement of TIGTA obviated any responsibility on his part to bring the facts of which he was aware to the attention of Congress.

The flaw in Miller's rationale for failing to inform Congress is evident when viewed in the light of Miller's subsequent actions in April and May of 2013. Miller had been briefed by Inspector General George on March 27, 2013 about TIGTA findings regarding the IRS's use of inappropriate criteria in the processing of applications for tax exempt status.[188] Shortly thereafter, either in March or April, Miller was also given a discussion draft of the TIGTA report to review.[189] Even though the TIGTA review was not yet completed nor the report finalized, Miller plotted with Lois Lerner to disclose the draft findings of that report to the public at an American Bar Association (ABA) meeting on May 10, 2013, before issuance of the final report, in an effort to get out in front of the unfavorable conclusions reached by TIGTA.[190] Accordingly, while Miller asserted to the Senate Finance Committee investigators that the ongoing TIGTA investigation relieved him of any responsibility to inform Congress that applications from Tea Party and other political advocacy groups had been flagged for full development based on the political views of the groups in question, apparently, he felt no such constraint when it came to leaking the contents of TIGTA's investigation to the public in furtherance of his own interests.

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[187] SFC Interview of Steve Miller (Dec. 12, 2013) p. 168.
[188] *Id*. pp. 210-213.
[189] *Id*.
[190] *Id*. pp. 218; SFC Interview of Nikole Flax (Nov. 21, 2013) pp. 190-194.

In sum, Miller's communications with Congress about IRS targeting evidenced a pattern of half-truths, misinformation, and downright deception. Unfortunately, this conduct served Miller well throughout 2012 and early 2013, as it kept Congress and the public from confirming as true what was then widely suspected as IRS wrongdoing in the treatment of Tea Party organizations.

C. Lois Lerner Actively Covered Up the Existence of IRS Targeting in Her Communications With Congress

Much the same as her superiors Shulman and Miller, Lerner also misled Congress about the targeting of Tea Party and other political advocacy groups.

1. Lerner Misled Staff of the U.S. House of Representatives Committee on Oversight and Government Reform

In 2012, Lerner provided several briefings to staff of the U.S. House of Representatives Committee on Oversight and Government Reform (OGR) regarding the treatment of applications received from Tea Party and other political advocacy groups.[191] During the course of one such briefing on February 24, 2012, she was asked by House Committee staff if the IRS had changed the criteria for evaluating applications for tax-exempt status.[192] Lerner apparently informed House Committee staff that it had not.[193] This answer was false, as Lerner knew that the criteria had changed in 2010 with the issuance of the BOLO list that identified the Tea Party as an emerging issue.[194] She was aware that screeners had used the names of conservative organizations like "Tea Party," "Patriots," or "9/12" as the criteria to select applications for full development.[195] She also knew that for other organizations whose names did not include these terms, screeners had used the conservative policies advocated by these organizations (e.g., balancing the budget, limiting government, reducing taxes, etc.) as the criteria for selecting their applications.[196] Moreover, Lerner herself had ostensibly changed the criteria in July 2011 when she directed Cindy Thomas to remove the "Tea Party" entry from the BOLO list and replace it with the more generic reference "advocacy orgs."[197]

Subsequently, on April 4, 2012, Lerner provided another briefing to House Committee staff regarding highly intrusive development questions that the IRS had sent to Tea Party and other political advocacy organizations, seeking unusual information that included, among other things,

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[191] U.S. House of Representatives Committee on Oversight and Government Reform, The Internal Revenue Service's Targeting of Conservative Tax-Exempt Applicants: Report of Findings for the 113th Congress (Dec. 23, 2014).
[192] *Id*. p. 55.
[193] *Id*.
[194] Email from Justin Lowe to Holly Paz and others (June 27, 2011) IRS0000431165-66.
[195] *Id*.
[196] *Id*.
[197] Email chain between Cindy Thomas, Ronald Bell, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735-40.

the names of the donors of the applicant organizations.[198] Lerner falsely characterized these requests for information as not being out of the ordinary.[199] As explained more fully below, Lerner herself had reservations about the information requests months earlier, information requests that TIGTA subsequently determined were irrelevant, burdensome and caused delays in the processing of applications.[200]

Indeed, on May 4, 2012, Lerner provided a 45 page written response to a letter dated March 27, 2012 from then Chairman Issa requesting additional information regarding the intrusive development questions, such as the names of donors, a list of issues important to the organization, and details about events held by the organization.[201] Lerner explained the circumstances under which the IRS would request each piece of information identified in the March 27, 2012 letter and repeated the IRS "go-to-line" that:

> The revenue agent working a case uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination of the organization's tax exempt status. Follow-up information requested would be based on the facts and circumstances set forth in the particular application.[202]

Unfortunately, Lerner failed to convey in her response to Chairman Issa some very important additional information on the matter of the development questions. For example, Lerner failed to state that on February 29, 2012, she had grown concerned about the highly burdensome development questions (possibly as a result of the bad press and Congressional inquiries the IRS was receiving as a consequence of their use) and apprised Holly Paz to direct EO determinations to stop using the questions, as follows:

> Have we given Cincy new guidance on how they might reduce the burden in the information requests and make it clearer that recipients can ask for extensions? I don't want anymore [sic] letters going out on advocacy cases until the letters have been adjusted. **Also, I have been telling folks that not all the letters are the same because it depends on the facts. What I've seen so far though is identical letters – can you clarify for me please. Thanks** [203]

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[198] U.S. House of Representatives Committee on Oversight and Government Reform, The Internal Revenue Service's Targeting of Conservative Tax-Exempt Applicants: Report of Findings for the 113th Congress (Dec. 23, 2014) p. 55.
[199] *Id*.
[200] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review, Audit Report 2013-10-053 (May 14, 2013).
[201] Letter from Lois Lerner to Chairman Darrell Issa (May 4, 2012) TIGTA Bates No. 007008-007052.
[202] *Id*.
[203] Email chain between Lois Lerner, Holly Paz, David Fish, and Cindy Thomas (Feb. 24-29, 2012) IRS0000209976-77 (emphasis added).

Moreover, on April 24, Holly Paz asked Judith Kindell to review development letters and to "create a list of what you consider to be the 5-10 most troubling questions … ."[204] Kindell complied and prepared a list that she sent to Paz on April 25, 2012.[205] Among the seven types of development questions that Kindell identified as "troubling" were questions asking organizations to identify their donors, describe the issues important to them, and provide details regarding events held by them.[206] These were the *very same questions* that Lerner depicted in her May 4, 2012 letter as authorized under law and appropriate and necessary for the IRS to ask in order to properly evaluate applications.[207]

Accordingly, Lerner's May 4, 2012 response to then-Chairman Issa created the false impression that the questions were entirely proper and regular, when in fact, Lerner had recognized months earlier that they were burdensome and possibly not tailored to the facts of each application, and had therefore directed that EO Determinations agents stop using them. Moreover, among the questions that Lerner justified as appropriate were questions that her own Senior Technical Advisor, Judith Kindell, had flagged as "troubling" just a week earlier. Indeed, EO not only viewed these questions as "troublesome," but also concluded that they were "unnecessary."[208] Contrary to Lerner's misleading statements, the questions then, were not based on "sound reasoning," "tax law training and ... experience" nor were they "based on the facts and circumstances set forth in the particular application."

2. LERNER'S TESTIMONY BEFORE THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON OVERSIGHT WAS FALSE AND MISLEADING

Sometime in April 2013, Steve Miller and Lerner agreed that she would make a public statement regarding the results of the TIGTA review in advance of the release of the TIGTA report.[209] Lerner ultimately chose the May 10, 2013 ABA Tax Section's Exempt Organizations Committee Meeting as the venue for her public announcement.[210] In order to make the plan work, Lerner needed to be certain that she would be asked a question that would afford her the opportunity to preview TIGTA's conclusions.[211] Accordingly, she contacted Celia Roady, an acquaintance and Washington D.C. tax attorney who would be attending the ABA meeting.[212] Lerner arranged to have Roady ask her a "planted" question during the question and answer portion of the ABA meeting.[213] The relevant portions of Lerner's statements at the meeting are as follows:

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[204] Email from Holly Paz to Judith Kindell (Apr. 24, 2012) IRS0000512491.
[205] Email from Judith Kindell to Holly Paz and Sharon Light (Apr. 25, 2012) IRS0000013868.
[206] *Id*.
[207] Letter from Lois Lerner to Chairman Darrell Issa (May 4, 2012) TIGTA Bates No. 007008-007052.
[208] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review, Audit Report 2013-10-053 (May 14, 2013).
[209] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 218-221.
[210] Email from Lois Lerner to Steven Miller (May 8, 2013) IRS0000209214.
[211] Email from Lois Lerner to Nikole Flax (May 9, 2013) IRS0000209300.
[212] *U.S. News and World Report*, Exclusive: Woman Who Asked IRS's Lois Lerner Scandal-Breaking Question Details Plant (May 17, 2013).
[213] *Id*.

> **Ms. Roady**: Lois, a few months ago there was some concern about IRS review of 501(c)(4) organizations, 501(c)(4) applications by Tea Party organizations. And I'm just wondering if you can provide any update on any of that.
>
> **Ms. Lerner**: …So our line folks in Cincinnati that handle the applications did what we call centralization of these cases. They centralized work on these in one particular group … .
>
> However, in this case the way they did the centralization was not so fine. Instead of referring to the cases as advocacy cases, they actually used case names on this list. They used names like Tea Party, or Patriots. They selected cases simply because the application had those names in the title.
>
> That was wrong, that was absolutely incorrect, it was insensitive, and it was inappropriate. That's not how we go about selecting cases for further review. We select them for further review because they need further review, not because they have a particular name.
>
> The other thing that happened was they also, in some cases, cases sat around for a while. They also sent some letters out that were far too broad; they were asking questions of these organizations that weren't really necessary in the type of application.
>
> In some cases you probably read that they asked for contributor names. That's not appropriate, it's not usual ... .[214]

Lerner's admission that "line folks" at the IRS had targeted Tea Party groups seeking tax-exempt status for "further review," subjected them to delays as well as to unnecessary and burdensome development questions, and her tepid apology for those actions, came as a shocking revelation. For over a year, Lerner, Shulman and Miller had steadfastly denied any wrongdoing by the IRS in the treatment of Tea Party groups. Indeed, just two days before her admission and apology, Lerner appeared before the Subcommittee on Oversight of the House Committee on Ways and Means.[215] Lerner was asked by Representative Joseph Crowley about the status of the IRS's own investigation into 501(c)(4) groups. The exchange between Representative Crowley and Lerner was as follows:

> **Mr. Crowley**: And finally, in the summer of 2012 it was reported that the IRS was going to undertake a similar investigation into the one taken here on colleges and universities

[214] American Bar Association, Transcript of The Exempt Organization Tax Review (May 10, 2013) ABA Tax Section's Exempt Organizations Committee Meeting, Vol. 72, No. 2 pp. 126-127.
[215] Hearing Before the Subcommittee on Oversight of the House Committee on Ways and Means, "Hearing on the Internal Revenue Service's Colleges and Universities Compliance Project" (May 8, 2013).

> 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.[216]

Lerner's referral to an obscure IRS questionnaire in response to Representative Crowley's point-blank question regarding the status of the IRS investigation into "political not-for-profits" was pure deception. On May 8, 2013, the date of her appearance before the Subcommittee on Oversight, Lerner was aware of a number of incriminating facts. She knew at least as early as July 2011 that organizations seeking tax-exempt status that had the names "Tea Party," "Patriots" and "9/12" had been singled out on the BOLO List and subjected to additional scrutiny.[217] Also, nearly a year before her exchange with Representative Crowley, Lerner became aware that TIGTA would conduct a review of how the IRS processed applications for tax exempt status under section 501(c)(4) that involved political advocacy issues.[218] Lerner knew that the outcome of that review would be condemnatory. She told Sarah Hall Ingram, Holly Paz and others on June 22, 2012 that:

> It is what it is. Although the original story isn't as pretty as we'd like, once we learned this were (sic) off track, we have done what we can to change the process, better educate staff and move the cases. So, we will get dinged, but we took steps

[216] Id.
[217] Email chain between Cindy Thomas to Ronald Bell, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735.
[218] Email chain from Lois Lerner to Richard Daly, Sarah Hall Ingram, Holly Paz and others (June 22-25, 2012). IRS00000000475251-52

> before the "dinging" to make things better and have written procedures. So, it is what it is.[219]

By March 21, 2013, Lerner had read TIGTA's Pre-Discussion Draft Report and thus was aware of the full extent of the "dinging" that she was about to receive from TIGTA.[220] She knew from reading that draft that TIGTA's findings would not be limited just to finding fault with the IRS's use of names like "Tea Party," "9/12" and "Patriots" to identify applications for further review, but would also ascribe blame to her organization for causing long delays in the processing of applications and for using unnecessary and burdensome development questions, including questions seeking the identity of donors and the amounts of their contributions. Yet when asked by Representative Crowley about the status of the investigation, Lerner could offer only a dissembling reference to an IRS questionnaire.

Lerner's failure to truthfully respond to Representative Crowley's question during the House Subcommittee on Oversight hearing was yet one more act of deception and obfuscation in a series of such acts intended to either cover up the IRS's targeting of Tea Party groups, or mitigate the consequences of that targeting.

In sum, Shulman, Miller, and Lerner engaged in an active pattern of deception in their oral and written communications with Congress regarding the IRS's treatment of Tea Party and other conservative groups seeking tax-exempt status. That pattern of deception is evident not only in what these individuals told Congress about the treatment of Tea Party groups, but also in what they failed to tell Congress. It is also apparent in the way that Miller and Lerner conspired to disclose the existence of the targeting through the use of a planted question at an ABA meeting, so as to diminish the repercussions resulting from TIGTA's soon-to-be released findings. The duplicity in their communications with Congress allowed the IRS to keep the legislative branch at arm's length in 2012 and 2013 while they took whatever steps they felt were necessary to address the targeting. Lerner's email quoted immediately above clearly shows the plan – when the targeting was discovered and ultimately disclosed by TIGTA, the IRS would claim that it had long ago corrected the problem and had taken the steps necessary to "make things better."[221] By actively concealing IRS wrongdoing in an effort to avoid Congressional scrutiny and interference, Shulman, Miller, and Lerner also undermined Congress's exercise of its Constitutional authority to oversee the activities of the IRS.

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[219] *Id*.
[220] Email chain between Lois Lerner, Troy Patterson, Holly Paz and others (Mar. 21, 2013). IRS0000053201.
[221] Email chain from Lois Lerner to Richard Daly, Sarah Hall Ingram, Holly Paz and others (June 22-25, 2012). IRS00000000475251-52.

IV. THE OBAMA ADMINISTRATION SIGNALED THE IRS AND OTHER AGENCIES TO TARGET CONSERVATIVE TAX-EXEMPT ORGANIZATIONS

Political pressure from the White House following the Supreme Court's Citizens United decision unduly influenced the IRS and other government agencies, most notably the Department of Justice and the Federal Election Commission, to scrutinize political spending by 501(c) organizations. These agencies coordinated with each other on initiatives targeting conservative tax-exempt organizations.

The Democratic Party has consistently called for increased controls on political spending. In fact, this issue has been included in their national platforms since 2000:

> 2000: "We must restore American's faith in their own democracy by providing real and comprehensive campaign finance reform, creating fairer and more open elections, and breaking the link between special interests and political influence. The Republicans will have none of this. Instead of limiting the influence of the powerful on our politics, they want to raise contribution limits so even more special interest money can flow into campaigns." [222]
>
> 2004: "To guarantee the integrity of our elections and to increase voter confidence, we will seek action to ensure that voting systems are accessible, independently auditable, accurate, and secure. We will support the full funding of programs to realize this goal. Finally, it is the priority of the Democratic Party to fulfill the promise of election reform."[223]
>
> 2008: "We support campaign finance reform to reduce the influence of moneyed special interests, including public financing of campaigns combined with free television and radio time. We will have the wisdom to put the public interest above special interests."[224]
>
> 2012: "Our political system is under assault by those who believe that special interests should be able to buy whatever they want in our society, including our government. Our opponents have applauded the Supreme Court's decision in *Citizens United* and welcomed the new flow of special interest money with open arms. In stark contrast, we believe we must take immediate action to curb the influence of lobbyists and special interests on our political institutions."[225]

[222] Democratic Party Platform of 2000 (Aug. 14, 2000).
[223] Democratic Party Platform of 2004 (July 26, 2004).
[224] Democratic Party Platform of 2008 (Aug. 25, 2008).
[225] Democratic National Platform of 2012 (Sep. 3, 2012).

Political pressure to curtail political speech reached a crescendo following the Supreme Court's January 21, 2010 *Citizens United* decision, which struck down parts of the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold Act).[226] That same day, President Obama sharply condemned the decision, stating:

> With its ruling today, the Supreme Court has given a green light to a new stampede of special interest money in our politics. It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.[227]

A few days later, President Obama used his State of the Union Address as an opportunity to shame the Court and call for reform:

> With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit in our elections. I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities. They should be decided by the American people. And I'd urge Democrats and Republicans to pass a bill that helps to correct some of these problems.[228]

During the next several months leading up to the 2010 mid-term election, President Obama repeatedly denounced the *Citizens United* decision and called on Congress to tighten the reins on political spending by nonprofits. The calls were echoed by others in the Obama Administration and by Democrats in Congress, who introduced the DISCLOSE Act, which would have required certain nonprofits that engage in political activity to report information about their donors.[229] When the Senate failed to pass the legislation, President Obama castigated Republican lawmakers and stated that the bill's failure was "a victory for special interests and U.S. corporations – including foreign-controlled ones – who are now allowed to spend unlimited money to fill our airwaves, mailboxes, and phone lines right up until Election Day."[230]

President Obama's statements did not go unnoticed by the IRS and other government agencies. As discussed more fully in Section IV(A) of the Bipartisan Investigative Report, employees throughout the IRS closely monitored media coverage of the issue. The Division Commissioner for TE/GE, Sarah Hall Ingram, even referenced the President's words directly in a September 2010 email to other senior managers, stating that the "'secret donor theme will continue – see Obama salvo and today's Diana Reehm [sic]."[231]

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[226] 558 U.S. 310 (2010).
[227] The White House, Statement from the President on Today's Supreme Court Decision (Jan. 21, 2010).
[228] The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).
[229] S. 3295, 111th Cong. (2010); H.R. 5175, 111th Cong. (2010).
[230] The White House, Statement by the President on the DISCLOSE Act Vote in the Senate (Sep. 23, 2010).
[231] Email chain between Sarah Hall Ingram, Lois Lerner, Joseph Grant, and others (Sep. 21, 2010) IRS0000508974-76. The Diane Rehm Show that aired on September 21, 2010 included a segment called "Campaign Spending," which featured Democratic Congressman Chris Van Hollen and Sheila Krumholz, Executive Director of the Center for Responsive Politics, among other guests. Diane Rehm's website describes the segment as "Diana and guests

As the President repeatedly called for tighter regulation of spending on political speech, the IRS began to systematically target Tea Party organizations that applied for tax-exempt status. Indeed, just a few weeks after the President's State of the Union address in 2010, the IRS made the pivotal decision to set aside all incoming Tea Party applications for special processing. In the following weeks, IRS executives who closely monitored news about the White House would set a course for these applicants that subjected them to long delays, burdensome questions, and ultimately proved fatal to some of them.

A major focus of the Committee's investigation was to determine to what extent the IRS coordinated with the Department of Justice (DOJ), the FEC, and the Treasury Department in responding to the political pressure from the White House. Our investigation revealed concerted actions by these arms of the Obama Administration which had the effect of targeting conservative tax-exempt organizations.

A. WHITE HOUSE COORDINATION WITH THE IRS

Due to the documentary limitations discussed more fully in Section II(C) of the Bipartisan Investigative Report, as well as Lois Lerner's refusal to cooperate with this investigation, the Committee was not provided with a full record of communications between the White House and IRS.[232] But we need look no further than the President's repeated public criticism of the *Citizens United* decision to determine the White House's influence on other executive agencies. Indeed, White House's continuous messaging rendered communication to individual employees unnecessary.

The Committee found evidence that several key employees within the IRS maintained regular contact with the White House. Most notably, Commissioner Shulman admitted that he had "pretty regular interactions" and "went to a whole number of meetings" with White House staff during his tenure at the IRS.[233] Indeed, the White House visitor log shows 174 visits from

explore campaign finance and the influence of secret donors." The Diane Rehm Show, Campaign Spending (Sep. 21, 2010).

[232] In June 2014, the IRS informed Congress that Lois Lerner's computer experienced a hard drive crash in May 2011, potentially resulting in emails being lost between January 2009 and May 2011, as described more fully in Section II(C) of the Bipartisan Investigative Report. In an effort to obtain lost Lerner emails, then-Chairman Wyden of the Senate Finance Committee and then-Chairman Camp of the House Ways and Means Committee sent letters to President Obama, requesting all communications between Lerner and White House employees between January 2009 and May 2011. Accordingly, the White House conducted a search for Lerner emails but did not find any direct emails between Lerner and White House employees. However, the White House did identify three emails that both Lerner and White House employees had received from a third party. On June 18, 2014, the White House responded to the Chairmen's letters and provided the Committees with these three emails, totaling 66 pages of documents. After review, the Committee determined that these emails were not relevant to the Committee's investigation: one email was spam and the other two were from an individual requesting tax assistance. *See* Letter from Chairman Dave Camp to President Barack Obama (June 16, 2014) and Letter from W. Neil Eggleston to Chairmen Camp and Wyden (June 18, 2014).

[233] SFC Interview of Douglas Shulman (Dec. 3, 2013) p. 19.

"Douglas Shulman" or "Doug Shulman" between February 2009 and December 2012.[234] Analysis by the House Ways & Means Committee staff shows that at least 17 entries on this log also appear on Shulman's calendar.[235]

When interviewed by Committee staff, Shulman indicated that his meetings with White House staff concerned implementation of the Affordable Care Act; issues related to the IRS budget; tax provisions in the American Recovery and Reinvestment Act; economic roundtables and other high-level domestic policy matters involving the IRS; and events open to the general public, such as the Easter Egg Roll.[236] However, Shulman could not recall anything about a number of his other meetings with White House employees.[237]

Shulman described four in-person meetings with President Obama:

- a press conference with the President and Treasury Secretary Geithner about offshore tax proposals on May 4, 2009;[238]
- a meeting where Shulman presented the daily economic briefing to the President about general matters of the tax gap on October 21, 2009;[239]
- a meeting with the President and other heads of agencies about how to improve the government on June 6, 2011;[240] and
- a photo-op with the President on December 14, 2012 after Shulman's term as IRS Commissioner expired.[241]

Shulman denied that the targeting of Tea Party organizations was ever discussed at any meeting with White House staff or the President.[242] Several other IRS employees met with White House staff between 2010 and 2013. Like Shulman, those employees denied that they discussed the Tea Party applications with anyone in the White House or received any directions about how the applications should be handled.

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[234] SFC Interview of Douglas Shulman (Dec. 3, 2013) Interview Exhibit 8, also available at *White House Visitor Access Records*, http://www.whitehouse.gov/briefing-room/disclosures/visitor-records. This log includes visits to all buildings in the White House complex: the White House proper, the Eisenhower Executive Office Building and the New Executive Office Building.

[235] *Id.;* SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 87-116; and selected entries from Douglas Shulman calendar, IRS0000385548-49, IRS0000385566, IRS0000385577, IRS0000385584, IRS0000385604 and IRS0000385603.

[236] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 19-22, 87-116; Hearing before the House Oversight and Government Reform Committee, "The IRS: Targeting Americans for their Political Beliefs" (May 22, 2013) p. 51 (extraneous pages omitted).

[237] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 90-91, 93-95, 97, 101, 104, 106-107.

[238] *Id.* p. 93.

[239] *Id*. p. 96.

[240] *Id.* pp. 111-12.

[241] *Id*. p. 116.

[242] Hearing before the House Oversight and Government Reform Committee, "The IRS: Targeting Americans for their Political Beliefs" (May 22, 2013).

We determined that the White House was briefed by Treasury officials before TIGTA released its report publicly. Former Treasury Chief of Staff Mark Patterson told Committee staff that he spoke with Mark Childress, who at that time was a Deputy Chief of Staff at the White House, twice in April or May 2013 about the IRS's plan to apologize in advance of the forthcoming TIGTA report.[243] Childress concurred with Patterson's view that if the IRS apologized, it should do so only once.[244] Patterson does not know if Childress spoke with anyone else at the White House about this issue.[245] Former Treasury Deputy Secretary Neal Wolin and Patterson indicated that, to their knowledge, the only meetings with the President and other White House staff about the Tea Party targeting occurred shortly after the TIGTA report was released.[246] The Committee did not interview any White House employees during the course of the investigation.

The Treasury Department and the White House also had advance notice about the IRS's loss of information potentially relevant to this investigation caused by Lois Lerner's hard drive crash. As described more fully in Section II(C) of the Bipartisan Investigative Report, the IRS first discovered a gap in Lerner's emails in early February 2014. The IRS did not inform Congress of this problem – which was material to this and several other Congressional investigations – until June 13, 2014. However, the Treasury Department learned of the problem in April 2014, when a senior IRS advisor notified an attorney in the Treasury's Office of General Counsel.[247] Treasury, in turn, informed the White House shortly thereafter.[248]

Overall, it is apparent that it was unnecessary for the President to direct any individual government employee to target the Tea Party and conservative organizations. Instead, the White House's frequent public statements condemning political spending ensured that government agencies were acutely aware of the President's wishes and they responded accordingly.

B. THE DOJ ENLISTED THE IRS'S HELP IN POTENTIAL PROSECUTION OF ORGANIZATIONS ENGAGED IN POLITICAL SPEECH

President Obama's repeated criticism of the Supreme Court's *Citizens United* decision and his frequent calls to curtail political spending quickly infiltrated the halls of the DOJ. One option that DOJ officials considered was the feasibility of prosecuting 501(c) organizations for engaging in political speech.

The Public Integrity Section (PIN) of the DOJ's Criminal Division combats corruption of public officials and prosecutes election crimes.[249] Documents produced to the Committee show that Lois Lerner was the PIN's key contact at the IRS, and in this capacity she provided DOJ with critical data and access to IRS officials as she coordinated the IRS's response to DOJ's requests for assistance. Lois Lerner and PIN employees were communicating with each other and

[243] SFC Interview of Mark Patterson (Apr. 7, 2014) pp. 33-36.
[244] *Id*.
[245] *Id*.
[246] *Id*. pp. 36-42; SFC Interview of Neal Wolin (May 1, 2014) pp. 22-25.
[247] TIGTA Memorandum of Interview or Activity, Personal Interview of Catherine Duval (July 1, 2014).
[248] Letter from Neil Eggleston to Chairman Camp and Chairman Wyden (June 18, 2014).
[249] DOJ, Public Integrity Section.

discussing campaign finance options as early as March 2009.[250] EO and DOJ staff were also discussing the Tea Party as early as July 2010 when staff discussed a campaign ad for Tea Party Congressional Candidate Rick Barber.[251] Emails produced to the committee document a clear, deliberate, and multi-year effort on the part of DOJ to scrutinize conservative tax-exempt organizations.

1. IN 2010, THE DOJ ENLISTED THE IRS TO HELP EXAMINE POLITICAL SPENDING BY TAX EXEMPT ORGANIZATIONS

On September 21, 2010, Jack Smith, PIN Chief, wrote to his subordinates Raymond Husler, PIN Principle Deputy Chief, Justin Shur, PIN Deputy Chief, and Richard Pilger, Director of the Election Crimes Branch, about a *New York Times* story on 501(c)(4)s intentionally using donations for political spending in order to skirt campaign finance law:

> This seems egregious to me – could we ever charge a 371 conspiracy to violate laws of the USA for misuse of such non profits [sic] to get around existing campaign finance laws + limits? I know 501s are legal but if they are knowingly using them beyond what they are allowed to use them for (and we could prove that factually)? [252]

Smith then recommended that PIN meet with TE/GE Division Commissioner Sarah Hall Ingram to discuss the feasibility of his idea. The following day, Pilger expressed skepticism about Smith's plan and advised him to take an alternate path forward:

> It would be good to gear up some enforcement, but very challenging as criminal work in the near term unless there is coordination with campaigns. Absent coordination, the Department's way in is probably most directly through Tax Division.[253]

Nancy Simmons, PIN Senior Counsel, agreed with Pilger's assessment, stating, "This area has been the subject of much debate and press articles over the past, but I don't see a viable way to make a prosecutable federal case here."[254] Despite the concerns raised by his staff, Smith decided to press forward with his plan and set up a meeting on September 22 with Pilger, Simmons and others to discuss these issues.[255] The following week, PIN employees Smith, Shur, Simmons, Pilger, and Husler met again to discuss a "Possible 501/Campaign Finance Investigation."[256]

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[250] Email chain between Craig Donsanto, Lois Lerner and others (Mar. 6, 2009) SFC IRS 000211
[251] Email chain between Justin Lowe, Nicole Siegel and others (June 30 - July 1, 2010) SFC IRS 000751.
[252] Email chain between Jack Smith, Richard Pilger and others (Sep. 21 - 22, 2010) SFC IRS 000004. Although not noted by name, it appears that the DOJ employees were referring to a September 21, 2010 *New York Times* article titled "Donor Names Remain Secret as Rules Shift."
[253] *Id.*
[254] *Id.*
[255] Email calendar invite from Jack Smith (Sep. 22, 2010) SFC IRS 000006. Email calendar invite from Richard Pilger to Nancy Simmons (Sep. 22, 2010) SFC IRS 000007.
[256] Email from Jack Smith to Richard Pilger and others (Sep. 30, 2010) SFC IRS 000016.

On September 29, Pilger reached out to Sarah Hall Ingram's office to set up a meeting with the IRS to discuss 501(c)(4) issues. Ingram told her staff, "we have to do this" but since she was traveling, Ingram asked Lois Lerner to organize the meeting.[257] The IRS planned to:

> [W]alk [PIN] through the basic civil law rules within our jurisdiction and find out what if anything else they are looking for. If they need more than the primer then we would need to assign carefully to preserve the civil-criminal wall. These are not tax people so [Lerner] may also take Joe Urban to do clear perimeters about tax info should they want to do any 6103 fishing (as opposed to public record 6104 info).[258]

On Monday, October 4, Lerner and Pilger spoke in preparation for Friday's meeting.[259] During the call, Lerner and Pilger discussed having the IRS provide the DOJ and the Federal Bureau of Investigation (FBI) with 501(c)(4) filing data and inviting the FBI to attend the Friday meeting.

On Friday, October 8, the IRS, DOJ and FBI held their first meeting to discuss political spending by 501(c)(4) organizations.[260] Siri Buller, an employee in EO Technical, prepared a summary about what was discussed during this meeting that included the following points:

- "[PIN] attorneys expressed concern that certain section 501(c) organizations are actually political committees 'posing' as if they are not subject to FEC law, and therefore may be subject to criminal liability. The attorneys mentioned several possible theories to bring criminal charges under FEC law," including a partnership between DOJ, FEC and IRS.
- Lerner explained the tax law surrounding 501(c)(4)s and challenges to criminally prosecuting these organizations including confusing terminology and a lack of clear definitions and rulings. [261]

In a follow-up meeting a few weeks later, Pilger asked for a contact from the IRS so that PIN could further discuss "criminal tax enforcement against tax exempt organizations" with the IRS.[262] Nancy Marks provided Pilger with the requested contact but noted the very unusual nature of DOJ's inquiry and warned that the IRS had not "seen activity that rises to the level of criminal investigation."[263] Apparently, the DOJ's overly zealous attempts to criminally prosecute tax-exempt groups were enough to make even the IRS uncomfortable.

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[257] Email chain between Richard Pilger, Cynthia Brown and Sarah Hall Ingram (Sep. 29, 2010) IRSC038433; Email chain between Sarah Hall Ingram, Richard Pilger, Lois Lerner, and others (Sep. 29, 2010) IRSC038466.
[258] Email chain between Sarah Hall Ingram, Richard Pilger, Lois Lerner and others (Sep. 29, 2010) IRSC038466.
[259] Email chain between Richard Pilger, Lois Lerner and Cynthia Brown (Sep. 29 - Oct. 2, 2010) SFC IRS 000017-18.
[260] Email calendar invite from Richard Pilger to Sarah Hall Ingram, Jack Smith and others (Oct. 8, 2010) SFC IRS 000038. Email chain between Lois Lerner, Richard Pilger, Brian Fitzpatrick, and others (Oct. 6 - 7, 2010) SFC IRS 000034-35
[261] Email from Siri Buller to Lois Lerner, Judith Kindell and others (Oct. 11, 2010) IRSC038444-46. The IRS also provided the DOJ with a series of documents regarding political activity of 501(c)(4)s. Email from Siri Buller to Joseph Urban (Oct. 7, 2010) IRSC038472-73
[262] Email chain between Joseph Urban, Nancy Marks and others (Oct. 19, 2010) IRSC038471.
[263] *Id.*

2. THE FBI WAS INVESTIGATING TAX-EXEMPT ORGANIZATIONS IN 2010

The FBI is tasked with investigating tax fraud and performing counterterrorism operations as part of its law enforcement responsibilities, and the FBI routinely coordinates work on these issues with the IRS. Cooperation between agencies is common during law enforcement actions and allows law enforcement personnel to take advantage of the expertise provided by other government agencies. This cooperation between the FBI and IRS was a common occurrence both before and during the time the IRS was inappropriately targeting conservative tax-exempt organizations, and the Committee possesses emails documenting numerous instances of cooperation that appears to be appropriate.

Nonetheless, one set of interactions between the agencies raises questions of impropriety. On October 5, Lerner informed her staff about DOJ's request for 501(c)(4) filing data:

> They [DOJ] would like to begin looking at 990s from last year for c4 orgs. They are interested in the reporting for political and lobbying activity. How quickly could I get disks to them on this? Also would 990 EZ filers have information on lobbying and political activity on the EZ?[264]

Lerner's staff immediately began working on this request, compiling a list of 501(c)(4)s that had engaged in political activity between 2007-2010.[265] Over the next couple of days Lerner and her staff worked with the DOJ to nail down details about the request as they shepherded DOJ's request through the IRS bureaucracy.[266]

On October 22, the IRS sent the requested documents, totaling 21 DVDs of information, to FBI Supervisory Special Agent Brian Fitzpatrick in Washington D.C.[267] These DVDs contained the 990s filed between 2007 and 2010 by 501(c)(4)s that had indicated they had engaged in some level of political activity. [268] On November 4, Lerner followed up with her staff to verify that the 990s had been sent to the FBI.[269]

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[264] The 990 and 990 EZ forms are the annual tax return forms filed by 501(c)(4) organizations. Email chain between Lois Lerner, Cheryl Chasin, Sherry Whitaker, and others (Oct. 5, 2010) IRS0000902548-50

[265] Cheryl Chasin evaluated if a 501(c)(4) was engaged in political activity based on the Form 990. Email chain between Lois Lerner, Cheryl Chasin, Sherry Whitaker and others (Oct. 5, 2010) IRS0000902548-50; Email chain between Lois Lerner, Judith Kindell, Sherry Whitaker and other (Oct. 5 - Nov. 7, 2010) IRS0000807007-08.

[266] The IRS provided DOJ only with publically available data and did not produce the protected Schedule B of the 990 form. Email chain between Judith Kindell and Cheryl Chasin (Oct. 5, 2010) IRS0000902536-37; Email chain between Lois Lerner, Cheryl Chasin, Sherry Whitaker, and others (Oct. 5, 2010) IRS0000902548-50; Email chain between Lois Lerner and Richard Pilger (Oct. 5-7, 2010) IRSC038475-76; Email chain between Sherry Whitaker and David Hamilton (Oct. 5, 2010) IRSC038477-78; Email chain between Sherry Whitaker and David Hamilton (Oct. 5, 2010) IRSC038479-80; Email chain between Lois Lerner, Richard Pilger, Sherry Whitaker, and others (Oct. 5-7, 2010) SFC IRS 000034-35; Email chain between Lois Lerner, Richard Pilger, and Sherry Whitaker (Oct. 5-7, 2010) SFC IRS 000036-37.

[267] Email chain between Sherry Whitaker and David Hamilton (Oct. 7-22, 2010) IRSC038436.

[268] Email chain between Lois Lerner, Judith Kindell, Sherry Whitaker and others (Oct. 5 - Nov. 7, 2010) IRS0000807007-08; Email chain between Judith Kindell and Cheryl Chasin (Oct. 5, 2010) IRS0000902536-37.

[269] Email chain between Lois Lerner, Judith Kindell, Sherry Whitaker, and others (Oct. 5 - Nov. 7, 2010) IRS0000807007-08.

The FBI's interest in this information, and the IRS's willingness to provide it, raises the question of whether the FBI was used by the administration to target political advocacy organizations.

3. THE DOJ AGAIN REACHED OUT TO THE IRS FOR ASSISTANCE IN 2013

The IRS and DOJ continued to discuss political spending by 501(c) organizations sporadically throughout 2011 and 2012.[270] Serious consideration of prosecuting 501(c) organizations reemerged just days before news of the Tea Party targeting scandal broke.

In early 2013, DOJ gave Democratic staff of the Senate Judiciary Committee's Subcommittee on Crime and Terrorism a briefing on:

> The Department of Justice's approach to and investigation or prosecution of … material false statements to the IRS regarding political activity in order to obtain and maintain 501(c)(4) status … [and] knowing and willful violations of disclosure rules.[271]

On April 9, 2013, the Senate Judiciary Committee's Subcommittee on Crime and Terrorism held a hearing entitled "Current Issues in Campaign Finance Law Enforcement." Subcommittee Chairman Sheldon Whitehouse questioned IRS and DOJ witnesses as to why they had failed to prosecute 501(c)(4) organizations that appeared to make false statements regarding their political campaign activities:

> I would urge that the Department and the Service get together and rethink whether in these two specific areas, which I think bear little resemblance to traditional tax violations and are in fact very plain-vanilla criminal cases … or whether the Department could not proceed to … put together a criminal case showing a fairly straightforward false statement or a fairly [straightforward] shell corporation disclosure violation.[272]

In an apparent response to political pressure from Democrats, Richard Pilger again reached out to Lerner for assistance in May 2013 – just two days before Lois Lerner revealed that the IRS had been targeting conservative groups. Lerner informed her colleagues of DOJ's meeting request:

> [Pilger] wanted to know who at IRS the DOJ folks could talk to about Sen. Whitehouse [sic] idea at the hearing that DOJ could piece together false statement cases about applicants who "lied" on their 1024s – saying they weren't planning on doing political activity, and then turning around and making large visible political expenditures. DOJ is

[270] In late 2011 and early 2012, the IRS, DOJ, and FEC worked on a report to The Council of Europe's Group of States against Corruption (GRECO), explaining U.S. campaign finance law to foreign tax officials. *See* Email from Jane Ley to Lois Lerner, Judith Kindell and others (Nov. 18, 2011) FECSUBP5000052-93; Email chain between John Brandolino, Nancy Simmons, Lois Lerner, Nancy Simmons, and others (Jan. 26-27, 2012) IRS0000313073-74; Email chain between Jane Ley, Lois Lerner and others (Nov. 19-21, 2011) IRS0000714413-15; Email chain between Jane Ley, Nancy Simmons, Lois Lerner and others (Nov. 19-21, 2011) IRS0000714408-09; Email chain between Lois Lerner and Richard Pilger (Jan. 26, 2011) SFC IRS 0000194-95.

[271] Email chains between DOJ staff and Democratic Staff of the Senate Judiciary Committee (Nov. 2012 - Mar. 2013).

[272] Hearing before the Subcommittee on Crime and Terrorism of the Senate Judiciary Committee, "Current Issues in Campaign Finance Law" (April 9, 2013) pp. 13-14 (extraneous pages omitted).

> feeling like it needs to respond, but want to talk to the right folks at IRS to see whether there are impediments from our side and what, if any damage this might do to IRS programs.[273]

In response to Lerner's email, Nikole Flax expressed support for DOJ's idea and asked about the potential of inviting the FEC to also attend the meeting. After some deliberation, Lerner decided to let DOJ invite the FEC, and she also recommended inviting IRS Criminal Investigations Division and their counsel to the meeting.[274] On May 10, 2013, Lerner revealed that the IRS had been targeting Tea Party organizations. Even in the midst of the fierce backlash that resulted from this revelation, she continued to assist DOJ in their efforts to target tax-exempt groups. On the evening of May 10, Lerner told Pilger that Nancy Marks would work on arranging this meeting between the IRS and the DOJ.[275] Majority staff does not know if this meeting ever occurred, as the IRS produced no further records regarding this meeting.

Throughout its dealings with DOJ, the IRS provided timely response to requests for information and assistance. Lerner was quick to respond to DOJ staff. On multiple occasions Lerner made herself available for calls, sometimes within a few minutes after receiving DOJ's request for assistance. Instead of delegating to her subordinates, Lerner personally handled these requests and she guided them through the IRS bureaucracy. These examples illustrate a multi-year coordinated effort between the IRS and the DOJ to constrain political spending by tax-exempt organizations, pursuant to the President's public statements and views.

C. THE FEC AND THE IRS WORKED TOGETHER TO TARGET CONSERVATIVE ORGANIZATIONS

In response to mounting pressure to constrain political spending in recent years, the FEC increased its scrutiny of political speech. Indeed, some of this pressure predated President Obama's administration as part of a broader Democratic push to limit the amount of money in politics, as noted above. But following the calls for reform after *Citizens United*, the FEC's scrutiny of conservative tax-exempt organizations reached new levels.

We found that the FEC worked with the IRS to investigate conservative organizations – but not any progressive organizations – with Lois Lerner's eager assistance. Lerner had previously worked at the FEC and was well known for her aggressive investigation of conservative groups, particularly those that she believed were attempting to expand the influence of money in politics.[276] Documents produced to the Committee show that the FEC also worked with the IRS on broader political spending issues, concurrent with the IRS's systematic targeting of Tea Party applications for tax-exempt status.

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[273] Email chain between Lois Lerner, Nikole Flax and others (May 8-9, 2013) IRS0000209398-400.
[274] *Id.*
[275] Email chain between Richard Pilger and Lois Lerner (May 8, 2013) SFC IRS 000201; Email chain between Richard Pilger, Lois Lerner and others (May 8-10, 2013) SFC IRS 000204.
[276] *National Review*, Lois Lerner at the FEC (May 23, 2013).

1. THE FEC USED INFORMATION PROVIDED BY THE IRS TO TARGET FOUR CONSERVATIVE ORGANIZATIONS

On November 18, 2013, then-Ranking Member Hatch sent a letter to the Chair of the FEC requesting that the FEC provide all documents reflecting communications between FEC employees William Powers and Wade Sovonick and any employee of the Treasury Department (including the IRS), from January 2006 to the present. Lisa Stevenson, Deputy General Counsel – Law, FEC, responded to Senator Hatch's letter via email on November 26, 2013.[277] Ms. Stevenson noted that she had attached a complete set of responsive documents the FEC was producing in response to Senator Hatch's letter. The Committee also made a similar request to the IRS for communications its employees had with the FEC. On September 11, 2013, the IRS informed Senator Hatch that it had produced all relevant documents.[278] Review by the Majority staff confirmed that many of the same documents were produced by both agencies and that there were no substantive differences or omissions.

As a whole, the documents show that Lerner was the FEC's key contact at the IRS. In this capacity she and the IRS helped the FEC with enforcement actions against four conservative tax-exempt organizations.[279]

The first communication regarding these conservative groups occurred in July 2008, when FEC Enforcement Division attorney Wade Sovonick contacted Lerner to discuss a 501(c)(4) organization that he believed "recently filed [for tax-exempt status] with the IRS."[280] Shortly thereafter, Sovonick and another Enforcement attorney, William Powers, spoke with Lerner and revealed that their inquiry related to the tax-exempt status of the American Future Fund.[281] At the time of this conversation, the FEC was considering a complaint filed against the American Future Fund by the Minnesota Democratic Farmer Labor Party alleging violations of the Federal Election Campaign Act related to television advertisements.[282] According to materials cited in the complaint, the American Future Fund describes itself as a "mechanism to promote conservative, free market ideas, and to communicate them to the public."[283] It appears that Lerner provided only limited information to the FEC attorneys during the July 2008 conversation. She explained that section 6103 of the Internal Revenue Code prevented her from sharing further information about an application for tax-exempt status while the application is still pending before the IRS.[284]

On September 30, 2008, Powers and other FEC attorneys recommended that the FEC Commissioners find that the American Future Fund violated three provisions of the Federal

[277] Email from Lisa Stevenson to SFC Staff (Nov. 26, 2013).
[278] Letter from Leonard Oursler to Senator Orrin Hatch (Sep. 11, 2013).
[279] Email chain between Lois Lerner, William Powers, Wayne Sovonick and others (Feb. 3, 2009) FECOGC000005-06.
[280] Email chain between Wayne Sovonick and Lois Lerner (July 9, 2008) FECOGC000001-02.
[281] FEC, Report of Telecon (July 10, 2008) FECOGC000003-04.
[282] FEC, First General Counsel's Report (Sep. 30, 2008).
[283] *Id*.
[284] FEC, Report of Telecon (July 10, 2008) FECOGC000003-04.

Election Campaign Act.[285] The recommendation memorandum did not directly reference the conversation with Lerner, but instead stated, "The IRS has not yet issued a determination letter regarding [American Future Fund's] application for exempt status. Based on the information from the response and the IRS website … it is likely that the [American Future Fund's] application is still under review."[286]

Just two weeks after President Obama was sworn in, Powers contacted Lerner for an update on the American Future Fund and for information about three additional conservative organizations: the American Issues Project, Citizens for the Republic, and Avenger, Inc.[287] As Powers noted in his message, American Issues Project was the successor of the other two subjects of his inquiry – Citizens for the Republic and Avenger.

At the time of Powers's request, the FEC was considering two complaints filed against American Issues Project: one by Obama for America, and another by Democracy 21 – a liberal group that Lerner also directly corresponded with regarding complaints against conservative groups lodged with the IRS, as discussed above in Section II(C)(5).[288] American Issues Project described its mission as "[t]o advocate for and promote the core conservative principles of our founding fathers and Ronald Reagan."[289] FEC records show that at the time of Powers's inquiry, the FEC was trying to determine the amount of political spending by the American Issues Project. The FEC had scant information – it was only aware of the organization's spending on one advertisement – and could not determine the overall percentage of political spending because the organization had not "filed anything [with] the IRS yet."[290] FEC records also show that the FEC was apparently seeking the IRS's opinion about whether political spending constituted the organization's primary activity. Indeed, this appears to be the purpose of Powers's message to Lerner – "to see if an IRS determination has been made re exemption."[291]

Before Lerner responded to Powers's February 2009 message, the Commissioners closed the complaint against American Future Funds on a split vote.[292] On March 3, 2009, Lerner provided the requested information about all four organizations and Powers thanked her, noting that the information "looks as if it will be very useful."[293] Lerner apologized for the response taking so long.[294] On March 31, 2009, Michael Seto provided an additional 150 pages of records about

[285] FEC, First General Counsel's Report (Sep. 30, 2008) p. 15.
[286] *Id.*
[287] Email chain between William Powers, Lois Lerner and others (Feb. 3, 2009) FECOGC000005-06.
[288] FEC, Complaint by Obama for America, MUR No. 6081 (Sep. 8, 2008); FEC, Complaint by Democracy 21, MUR No. 6094 (Oct. 10, 2008) (exhibits omitted).
[289] FEC, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Peterson (July 25, 2013) p. 10.
[290] FEC, Case Activation Meeting Notes (Jan. 21, 2009) FECOGC000195-98.
[291] *Id*.
[292] FEC, Amended Certification, MUR. 5988 (Feb. 25, 2009).
[293] Email chain between Lois Lerner, William Powers and others (Feb. 3 - Mar. 6, 2009) FECOGC000008-09.
[294] *Id.*

American Issues Project and American Future Fund to Powers, including the applications for tax-exempt status for both groups and the 2007 Form 990 for the former group.[295]

In January 2010, following the *Citizens United* ruling, President Obama began condemning the decision in his public statements including his State of the Union address. In, February 2010, just weeks after these events, Powers requested more information about American Issues Project – including the tax return for 2008, which would show financial information – while the FEC was still considering the two complaints lodged against the organization.[296] The next day, Lerner informed Powers that "we have checked our records and there are no additional filings at this time."[297] Neither the IRS nor the FEC produced any records of subsequent communications between the agencies about any of these organizations. In July 2013, the FEC Commissioners dismissed the complaints against American Issues Project, finding that the organization was not a political committee subject to FEC regulation.[298]

The IRS's attentive treatment of the FEC requests for information stands in stark contrast to the experience of conservative organizations that applied for section 501(c)(3) and 501(c)(4) status. Lerner was quick to respond to FEC attorneys; rather than having staff employees assist the FEC, Lerner shepherded their requests through the IRS herself, with the assistance of two senior managers: Michael Seto (Manager of EO Technical) and Robert Choi (Director of Rulings and Agreements). Powers noted that Seto in particular was "extremely helpful … in providing me the requested documents both promptly and professionally."[299]

2. THE FEC ENLISTED THE IRS IN OTHER EFFORTS TO RESTRICT POLITICAL SPEECH

As early as 2006, the IRS was working with the FEC on examining political spending by 501(c)(4)s.[300] On November 3, 2006, FEC Assistant General Counsel Mark Shonkwiler asked Lois Lerner for assistance:

> Which division/office of the IRS would be in the best position to receive a report from the Commission … regarding apparent violations of the law in connection with an organization which claims tax exempt status under Section 501(c)(4) status, yet appears to be focused primarily, if not exclusively, on electoral politics – and actually is registered as a state political committee?[301]

Lerner told Shonkwiler that would that she would forward the report to the IRS Classification Office, which handles referrals.[302]

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[295] FEC, Fax transmission cover sheet from Michael Seto to William Powers (Mar. 31, 2009) FECOGC000069 (subsequent pages omitted by Committee staff).
[296] Email chain between Lois Lerner, William Powers and others (Feb. 2, 2010) FECOGC000013.
[297] Email chain between Lois Lerner, William Powers and others (Feb. 3, 2010) FECOGC000014-15.
[298] FEC, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Peterson (July 25, 2013) p. 25.
[299] Email chain between Lois Lerner, William Powers and others (Apr. 3, 2009) FECOGC000012.
[300] Email between Lois Lerner and Mark Shonkwiler (Nov. 3, 2006) FECSUBP5000751.
[301] *Id*.
[302] *Id*.

In 2010, the FEC took the unusual step of requesting formal written comments from the IRS on proposed regulations for 501(c)(3)s.[303] IRS employees noted the unprecedented nature of this request, with Catherine Livingston saying "Mike [Blumenfeld] tells me he is not aware of a prior instance in which we have sent a formal written comment to the FEC on proposed regulations."[304] Nevertheless, the IRS Chief Counsel's Office worked with Lerner to draft comments on the FEC proposal, per the FEC's request.[305]

Overall, the Majority staff finds that the IRS and the FEC worked together to constrain political speech over a period of several years in direct response to the political pressure by Democrats, both in and out of the Obama administration. These efforts resulted in greater scrutiny on spending of political speech by organizations on the right side of the political spectrum.

D. TREASURY DEPARTMENT COORDINATION WITH THE IRS

Based on evidence uncovered by the Majority staff, it appears that top Treasury officials had some knowledge of the IRS's handling of Tea Party applications before TIGTA publicly released its report. Aspects of Treasury's overall role in the targeting remains unclear due to a lack of cooperation with the Committee investigation.

IRS Commissioner Shulman had regular contact with the Deputy Secretary of the Treasury and other high-level Treasury officials, but he denied that he spoke with them about the targeting of Tea Party groups.[306] Several other IRS employees met with Treasury officials between 2010 and 2013, including Acting Commissioner Miller, Chief of Staff Nikole Flax, and attorneys in the IRS Office of Chief Counsel, including Chief Counsel William Wilkins. Like Shulman, those employees denied that they discussed the Tea Party applications with anyone in the Treasury, or received any directions from Treasury about how these applications should be handled.

The Committee interviewed two former Treasury executives: former Deputy Secretary Neal Wolin and former Chief of Staff Mark Patterson. Wolin told Committee investigators that in 2012, Inspector General George told him that TIGTA had started an audit; however, Wolin claimed he only learned that Tea Party groups were targeted after Lerner apologized for that targeting in May 2013.[307] Patterson stated that he first learned that TIGTA was doing an audit in early 2013, but he did not learn about TIGTA's conclusions until a few weeks before its report came out.[308] TIGTA's records differ from Patterson's recollection: TIGTA informed the Committee that Inspector General George first briefed Patterson on September 14, 2012, and that, to the best of his recollection, George "conveyed the general sense that the IRS had selected applications from certain political groups for additional scrutiny, including using descriptors

[303] Email chain between Eugene Lynch, Michael Blumenfeld and others (Feb. 17-18, 2010) IRS0000713335.
[304] Email chain between Catherine Livingston, Nikole Flax and others (Feb. 26, 2010) IRS0000853254.
[305] Email between Lois Lerner, Michael Blumenfeld and others (July 23, 2010) IRS0000834396.
[306] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 16-19, 77.
[307] SFC Interview of Neal Wolin (May 1, 2014) pp. 25-26, 30.
[308] SFC Interview of Mark Patterson (Apr. 7, 2014) pp. 25-29.

such as 'tea party' to identify such applications."[309] Neither Wolin nor Patterson recalled discussing the Tea Party targeting with Secretary Lew until after Lerner's apology.[310] TIGTA informed the Committee that it briefed Secretary Lew about the audit on March 15, 2013.[311]

Below the Deputy Secretary's level, Treasury employees in the Office of Tax Policy discussed the political activities of tax-exempt organizations with Lerner and other IRS employees a number of times between 2010 and 2013. The primary Treasury employee who was involved in these discussions was Ruth Madrigal, an attorney in the Office of Tax Policy.[312] When forwarding an article about an appellate court's decision about political activity on 501(c)(4) organizations, Madrigal said that "I've got my radar up" about the issue and noted that "we mentioned potentially addressing them (off-plan) in 2013."[313] In spite of Madrigal's clear connection to the subject of the Committee's investigation, the Treasury Department refused repeated requests of the Committee to make her available for an interview. Thus, we could not definitively determine if Madrigal had any role in, or knowledge about, the IRS's decisions that disproportionately affected conservative organizations.

As discussed above, the Treasury Department and the White House also had advance notice about the IRS's loss of information potentially relevant to this investigation caused by Lois Lerner's hard drive crash. Indeed, in April 2014, IRS officials notified the Treasury Department that Lois Lerner emails were lost, and in turn, the Treasury Department notified the White House. In contrast, IRS only notified the Committee of the lost emails in June 2014.

In view of the limitations noted above, we are not able to determine the full scope of the Treasury Department's involvement in this matter. However, we conclude that Treasury had at least some knowledge of the IRS's targeting of conservative organizations before the matter was made public.

Overall, we conclude that the White House's drive to curtail political speech resulted in a coordinated effort across several executive agencies to increase scrutiny of conservative tax-exempt organizations. Furthermore, the IRS played a central role in the various attempts to target conservative groups engaged in political speech.

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[309] TIGTA Summary of Briefings to IRS and Treasury Leadership, Provided to SFC on May 19, 2014.
[310] SFC Interview of Neal Wolin (May 1, 2014) pp. 31-32; SFC Interview of Mark Patterson (Apr. 7, 2014) pp. 28-30.
[311] TIGTA Summary of Briefings to IRS and Treasury Leadership, Provided to SFC on May 19, 2014.
[312] *See, e.g.,* email chain between Ruth Madrigal, Judith Kindell and others (Oct. 6, 2010) IRS0000446776-77 (regarding political activities of 501(c)(4), (5) and (6) organizations); email chain between Ruth Madrigal, Lois Lerner, Victoria Judson, and others (June 14, 2012) IRS0000015400-01 (discussing the possibility of addressing 501(c)(4) regulations "off plan"); email chain between Lois Lerner, Ruth Madrigal, Victoria Judson and others (Dec. 14, 2012) IRS0000189994-95 (regarding an upcoming meeting between Democracy 21, Campaign Legal Center and the IRS to discuss petition for rulemaking on political activities of 501(c)(4) organizations).
[313] Email chain between Ruth Madrigal, Lois Lerner, Victoria Judson and others (June 14, 2012) IRS0000015400-01.

V. DISPARATE TREATMENT OF CONSERVATIVE AND PROGRESSIVE APPLICANTS FOR TAX-EXEMPT STATUS

Applications received from Tea Party organizations were not only singled out, but were processed differently than other applications, including applications submitted by left-leaning organizations. Left-leaning organizations were not subjected to the heightened scrutiny that Tea Party organizations encountered.

A. APPLICATIONS FROM THE TEA PARTY AND RELATED CONSERVATIVE GROUPS WERE SINGLED OUT FOR SPECIAL TREATMENT

While the Minority has attempted to create the impression that applications submitted by left-leaning groups were also singled out by the IRS, the facts recounted below demonstrate that applications received from Tea Party groups were not only singled out, but were processed differently than other applications.

1. THE "TEST CASES" SELECTED FOR DEVELOPMENT BY EO TECHNICAL WERE APPLICATIONS FROM TEA PARTY ORGANIZATIONS

On February 25, 2010, one of the first applications for tax exemption received by the IRS from a Tea Party drew the attention of Jack Koester, a screener in EO Determinations.[314] Koester noted that the application from the Albuquerque Tea Party had the potential to be a "high-profile" case since the Tea Party was the object of "recent media attention."[315] Koester also noted that the Albuquerque Tea Party indicated in its application that it may support political candidates.[316] Thereafter, the decision was made by Holly Paz to send several Tea Party applications to EO Technical so that EO Technical could work the cases.[317] The intention was for EO Technical to develop guidance to assist EO Determinations in processing these applications.[318] Ultimately, the applications for Albuquerque Tea Party and Prescott Tea Party were sent to EO Technical and assigned to Carter Hull to be worked.[319] When the Prescott Tea Party failed to respond to a development letter, Hull closed the application for "failure to establish" and requested another Tea Party application.[320] He was subsequently assigned an application submitted by a

[314] Email chain between Holly Paz, Cindy Thomas, Jack Koester, and others (Feb. 25 - Mar. 17, 2010) IRS0000180869-73.
[315] *Id.*
[316] *Id.*
[317] *Id.*
[318] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[319] *Id.*
[320] *Id.*

conservative organization applying for 501(c)(3) status called American Junto.[321] Steve Grodnitzky, Acting EO Technical Manager at the time Hull was assigned the cases, described the test cases as follows:

> Q. ... [T]he cases that were under review in Cincinnati and the cases that were under review in EO Technical by Mr. Hull, those were – as far as you understood, what were they? Were they cases across the whole political spectrum, or were they essentially Tea Party cases?
>
> A. Well, with – I guess with respect to the organizations that – I don't want to sound – in my mind, they were Tea Party organizations. They came in, and in their name, Albuquerque Tea Party –
>
> Q. Uh – huh
>
> A. – Prescott Tea Party, those had "Tea Party" in their name.
>
> Q. Uh-huh.
>
> A. So I assumed that they were Tea Party organizations.
>
> Q. And one of them – I think, if you'll – you probably recall this. At some point in 2010, Mr. Hull – and I think you actually had indicated that Prescott was a (c)(3) and it failed to establish, right?
>
> A. That is correct.
>
> Q. And Mr. Hull requested another case, and he got another case from Cincinnati, a (c)(3) to work; is that correct?
>
> A. That is correct.
>
> Q. And actually, if you look at the sensitive case report summary charts, but – but they will indicate that that replacement case, I think was American Junto?
>
> A. American Junto or Hunto?
>
> Q. Junto or Hunto, I don't know how they pronounce it either. Was your appreciation then that American Junto was either a Tea Party org or related or affiliated with the Tea Party, or perhaps espoused the same kind of political views as a Tea Party?
>
> A. My understanding of a case that was coming up, American Hunto or Junto, that was to replace the Prescott Tea Party, was that it was connected in some way to the Tea Party. Perhaps it was – they had the same beliefs that – that the Prescott Tea Party or the Albuquerque Tea Party organizations had.[322]

[321] *Id.*
[322] SFC Interview of Steve Grodnitzky (Sep. 25, 2013) pp. 70-71.

As is evident from this exchange, the IRS's intention to scrutinize the Tea Party applications extended down to its selection of "test cases."

2. THE INITIAL PROCESS USED TO DEVELOP THE TEA PARTY APPLICATIONS WAS HIGHLY UNUSUAL

In addition to working on the "test cases," Hull was assigned to assist Elizabeth Hofacre develop the Tea Party applications then pending in EO Determinations.[323] Hull provided Hofacre with several sample development letters to use on the Tea Party applications, but then also required Hofacre to send to him each draft development letter together with a hard copy of the application for his examination.[324] Hofacre could not release the development letters without first securing Hull's approval.[325] Moreover, once applicants responded to the development letters, Hull instructed Hofacre to send the responses to him for his review.[326] Under this scheme, Hofacre was unable to act independently and exercise the normal range of discretion that an EO Determinations agent would have in determining how an application should be processed, or whether sufficient information existed upon which to base a recommendation to approve or deny the exemption request.[327] Hofacre described her experience to Committee staff as follows:

> Q. Okay. So this process that you've – that you've outlined where you would get the case and you would review the case and you would draft the letter and then you would send it to Mr. Hull, and Mr. Hull would send it back to you, and then you would release it, then you would get the response and you'd send the response to Mr. Hull …
>
> A. Yes. Exactly.
>
> Q. Is this – is this process a usual process, in your experience as an EOD agent in the – and the, I think it was almost 11 years that you'd been an EOD agent at the time that this process was put into place? Is that a usual – something that was usual in your experience?
>
> A. I had never seen that in my experience before or since then.[328]

Hofacre also told Committee staff that she had sufficient information in her possession in 2010 to recommend to her manager a decision on some of the Tea Party applications, but was prevented from doing so under the highly unusual review process imposed by Hull.

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[323] SFC Interview of Carter C. Hull (July 23, 2013) (not transcribed).
[324] Email chain between Carter C. Hull, Steve Grodnitzky, Ronald Shoemaker, and others (May 17, 2010) IRS0000631583-84.
[325] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 57-64.
[326] *Id.*
[327] *Id.*
[328] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 65.

Q. … But for the process where you had to submit the – the development letter to Mr. Hull or perhaps – get Mr. Hull's approval on what the next step was, but for that process, could you have decided some of these cases and whether they had been a denial or a grant of the exemption request?

A. Yes.

Q. Okay. And that would have been in that window of time that you were in [Group] 7822, which would have been May to October of 2010?

A. Right. There was enough information there to make a determination, whether or not positive or adverse.

Q. But you were prevented from making that?

A. I had no decision making authority.

Q. Okay. And typically you would have that authority as an [EO Determinations] agent, right?

A. Right. Like I said in my interview in May, this particular project and the procedure in this was so peculiar and so odd that I was – had no decision making authority. There was no – no freedom to do anything.[329]

The unfortunate consequence of imposing this highly rigid and unorthodox process on EO Determinations was that many Tea Party applications that could have been decided in 2010 were not. Rather, those Tea Party applications unnecessarily languished for several more years, while the IRS mismanaged its way through a series of failed initiatives designed to bring the applications to decision.

3. UNTIL JULY 2011, THE EMERGING ISSUES TAB OF THE BOLO SPREADSHEET SPECIFICALLY TARGETED THE TEA PARTY

The first iteration of the Emerging Issues tab of the Combined Issues spreadsheet dated July 27, 2010, contained an entry for Tea Party applications.[330] The entry read as follows: "These cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)."[331] While the July 27, 2010 spreadsheet was distributed only to managers, subsequently, on August 12, 2010, Elizabeth Hofacre sent the first BOLO spreadsheet to all EO Determinations employees.[332] The Emerging Issues tab of the August 12, 2010 BOLO spreadsheet contained an entry for "Tea Party" identical to the entry found on the July 27, 2010 Combined Issue Spreadsheet. The entry specifically targeting the Tea Party remained in the Emerging Issues tab of the BOLO spreadsheet until the July 2011 revision. At that time, the

[329] *Id.* pp. 63-64.
[330] Email from Elizabeth Hofacre to Steve Bowling, John Shafer, and others (July 27, 2010) IRS0000008609-24.
[331] *Id.*
[332] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 130.

entry was deleted and replaced with one for "Advocacy Orgs." which were described as "[o]rganizations involved with political, lobbying or advocacy for exemption under 501(c)(3) or 501(c)(4)."

Elizabeth Hofacre, Emerging Issues Coordinator from May 2010 to October 2010, was shown a list that Carter Hull had prepared on October 18, 2010, reflecting the status of the 40 "Tea Party" applications then pending in EO Determinations. Hofacre told Committee staff the following:

> Q. … in looking at this list, I think you indicated this before, and I don't want to belabor the point, but these essentially are Tea Party cases, 9/12 cases or conservative cases. Is that correct?
>
> A. Yes, that would be correct.
>
> Q. All right. And there's no Emerge or Acorn or liberal or progressive groups in this list that you're aware of, right?
>
> A. No, there are not.
>
> Q. Okay. And that's because the criteria that was being used focused only on Tea Party, patriots, 9/12, conservative organizations; right?
>
> A. Yes, that's correct.[333]

Ronald Bell assumed responsibility as Emerging Issues Coordinator from Hofacre in October 2010, and remained in that position for more than a year.[334] Bell was shown a copy of the BOLO spreadsheet dated November 16, 2010. The Emerging Issues tab of the spreadsheet has an entry for "Tea Party" that states that "[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)."[335] Bell explained to Committee staff that he used this BOLO entry to perform secondary screening on the applications sent to him by screeners, in order to ensure that the applications he received were, in fact, applications from Tea Party organizations. He stated to Committee staff as follows:

> Q. Okay. And then you were describing your process earlier when cases, new cases were referred to you as Tea Party coordinator. You would look at the criteria on the BOLO to see if it was actually really a case that should stay, is that correct?
>
> A. Correct.
>
> Q. So based on this criteria here [November 16, 2010 BOLO], which cases would you have kept in your group for processing?

[333] *Id.* pp. 91-92.
[334] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[335] BOLO iteration chart (Apr. 30, 2012) IRS0000352979-84.

A. Which cases would I have kept and added to the advocacy inventory?

Q. Yes.

A. Ones that talked about the Tea Party.

Q. Okay. So at the time [November 2010] this was on the BOLO, you weren't necessarily pulling any case that had political advocacy issues, it was just the ones that were related to the Tea Party?

A. That's correct.[336]

The criteria developed by the screeners to identify "Tea Party" cases clearly illustrates that the IRS was focused, at least until July 2011, exclusively on applications received from Tea Party or related groups, and not just on applications containing general advocacy issues. An application was considered to be received from a "Tea Party" if it contained the words "Tea Party," "9/12 Project," or "Patriots."[337] If those words were not present it was still considered a Tea Party application if the application indicated that the group was concerned with government debt, government spending or taxes, or that it would educate the public via advocacy or lobbying "to make America a better place to live," or that it was critical of how the country was being run.[338] When asked about these criteria and their connection to the Tea Party entry on the Emerging Issue tab, Holly Paz told Committee staff the following:

Q. Just to look at this, kind of, the connection between the criteria as you understand it and it was given to you by Mr. Shafer and this reference in the BOLO, it makes perfect sense, doesn't it, that the screeners were using the kind of criteria they were using if they were looking for cases involved with the Tea Party movement?

A. Yeah, I mean, the language on this be-on-the-lookout list uses the name "Tea Party." So the other names appear to be an extrapolation of that.[339]

Accordingly, until at least July 2011, the IRS screening criteria exclusively targeted Tea Party and related organizations.

4. UNTIL THE TEA PARTY ENTRY WAS REMOVED FROM THE EMERGING ISSUES TAB, APPLICATIONS FROM BOTH LIBERAL AND CONSERVATIVE GROUPS THAT DID NOT MEET THE TEA PARTY CRITERIA WERE SENT TO GENERAL INVENTORY, ASSIGNED, AND DECIDED

Elizabeth Hofacre explained to Committee staff that during her tenure as Emerging Issues Coordinator, applications that contained political advocacy issues but that did not meet the

[336] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[337] Email chain between John Shafer, Cindy Thomas, Steve Bowling, and others (June 1-10, 2011) IRS0000066837-40.
[338] *Id*.
[339] SFC Interview of Holly Paz (July 26, 2013) p. 84.

criteria for a Tea Party case were handled differently than applications received from Tea Parties. She recounted the following to Committee staff:

> Q. Okay. And when you began to receive the applications from the groups, the liberal groups or the progressive groups, did you also perform a secondary screening function or task on those applications?
>
> A. I didn't start receiving those applications until July [2010]. The only screening that I performed was very limited, to make sure they either met or did not meet the Tea Party criteria.
>
> Q. Okay. And what was the Tea Party criteria?
>
> A. Well, a lot of times Tea Party was in their name, 9/12 Organizations, or Patriots. Some of the activities would be kind of Tea Party-type rallies. A lot of the applicants would educate – I'm sorry, educate the public on the Constitution, the Bill of Rights, those types of activities.
>
> Q. Okay. So if a case had that – those indicators in it then, is that a case you kept, you retained and began to develop?
>
> A. That is correct.
>
> Q. So just to draw a contrast now, so in July or in the subsequent months, if you received an application from an organization that was liberal or progressive that the screeners had sent to you, you know, what did you do with that case? …
>
> A. Well, if it came from an agent and if it didn't meet the Tea Party criteria, I would send it back to that particular agent. If it came from a screener and they thought it met the Tea Party criteria, and if I determined that it did not, it went to general inventory.
>
> * * *
>
> Q. ... if they went back in general inventory ... they were in the normal pipeline to be worked and for decisions to be made on them. Is that correct?
>
> A. Yes it is.
>
> Q. Okay. So they didn't get hung up or held up in this collection of Tea Party cases?
>
> A. Correct.[340]

Therefore, until at least through Hofacre's tenure as Emerging Issues Coordinator, October 2010, and most likely until the July 2011 BOLO change in which the reference to Tea Party was deleted, applications that raised political advocacy issues but that did not met the "Tea Party" criteria were sent to general inventory, assigned and worked. In contrast, applications that did

[340] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 45-46, 48.

meet the "Tea Party" criteria were systematically collected by the IRS and subjected to a variety of delays and failed processing attempts.

5. THE IRS CONTINUED TO TARGET THE TEA PARTY AFTER THE EMERGING ISSUE TAB WAS REVISED IN JULY 2011 TO REMOVE THE ENTRY FOR THE TEA PARTY

In July 2011, at Lois Lerner's direction, Cindy Thomas revised the Emerging Issues tab to remove the reference to the Tea Party and in its place, to add an entry for "Advocacy Orgs." that were described as "organizations involved with political, lobbying or advocacy. . ."[341] Even after this change, Ronald Bell, the Emerging Issues Coordinator, continued to add Tea Party applications to his inventory of political advocacy applications if they merely contained the words "Tea Party" and otherwise exhibited no suggestion that the organization would engage in political advocacy. Bell explained this in the following exchange with Committee staff:

> Q. Okay. Do you recall seeing any groups that were affiliated with the Tea Party that didn't have political activity?
>
> A. You mean did they check the box "yes" or "no?'
>
> Q. No. In your evaluation of the application.
>
> A. We, in fact – in one exhibit, from the Exhibit 1 [Screening Workshop Notes – July 28, 2010][342], it says to err to the conservative. So, if the Tea Parties – there was a question whether they were exempt or not. So, if I didn't maybe see that, "vote for this candidate" or whatever, it still went in the inventory.
>
> Q. When you say "err to the conservative," you mean for the screeners to err to the side of giving a case full development?
>
> A. Yes.
>
> Q. Okay. So is it accurate to say that after the BOLO change of July 2011, you still continued to pull all of the Tea Party cases that you saw into the full development Tea Party group?
>
> A. Yes.[343]

As Bell confirmed, the July 2011 change to the Emerging Issue tab was no more than a triumph of form over substance. While it outwardly created the appearance that applicants were being evaluated on the content of their applications, in reality it did nothing to change the practice of systemically selecting Tea Party applications and subjecting them to heightened scrutiny and substantial processing delays based on the mere presence of the words "Tea Party" in their applications. This is further borne out by the fact that TIGTA, in its May 14, 2013 review of the

[341] Email chain between Cindy Thomas, Ronald Bell, and others (July 5, 2011) IRS0000620735.
[342] Email from Nancy Heagney to Ronald Bell and others (July 29, 2010) IRS0000006700-04.
[343] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

IRS practices related to the processing of political advocacy applications, found that 100 percent of all applications that contained the words "Tea Party," "9/12 Project," and "Patriots" were selected for full development by the IRS, and consequently experienced significant processing delays.[344]

On January 25, 2012, Cindy Thomas and Steve Bowling removed the "Advocacy Orgs." Entry from the Emerging Issues tab of the BOLO spreadsheet.[345] In their place, Thomas and Bowling inserted a new entry captioned "Current Political Issues" that Bowling described as follows: "political action type organizations involved in limiting/expanding Government, educating on the Constitution and Bill of Rights, $ocial economic reform/movement."[346] Ronald Bell explained that part of the motivation for this change was to identify the Tea Party without actually using the name "Tea Party." Bell stated the following:

> Q. Were you guys just trying to get at Tea Party with the first, you know – because the Tea Party guys say they want to limit Government and that gets at the Tea Party while it also looks balanced because you also say "expanding Government?"
>
> A. Yeah.
>
> * * *
>
> Q. And the same thing on "educating on the Constitution and Bill of Rights," that you mentioned the Tea Party and 9/12, Patriots who that caught in that filter, right?
>
> A. Yeah ...[347]

Accordingly, even after the Emerging Issues tab was revised to remove direct reference to the Tea Party, the changes made to the Emerging Issues tab in January 2012 were designed to continue to target the Tea Party without mentioning it by name.

The Tea Party applications continued to receive unwarranted scrutiny from the IRS even after the Emerging Issues tab was revised again in June 2012. The revision redefined "Current Political Issues" as "501(c)(3), 501(c)(4), 501(c)(5) and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention … ." In August 2013, Jack Koester, a screener in EO Determinations, told Committee staff he applied the revised BOLO criteria as follows:

[344] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (May 14, 2013) p. 8.
[345] SFC Interview of Cindy Thomas (July 25, 2013) p. 95.
[346] BOLO iteration chart (Apr. 30, 2012) IRS0000352979-84.
[347] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

Q. If you saw – I am asking this currently, if today if a Tea Party case, a group – a case from a Tea Party group came in to your desk, you reviewed the file and there was no evidence of political activity, would you potentially approve that case? Is that something that you would do?

A. At this point I would send it to secondary screening, political advocacy.

Q. So you would treat a Tea Party group as a political advocacy case even if there was no evidence of political activity in the application. Is that right?

A. Based on my current manager's direction, uh huh.[348]

In sum, applications for tax-exempt status submitted by Tea Party and conservative organizations were treated very differently by the IRS than applications submitted by other groups, including those on the left. Beginning in early 2010, the IRS focused singular attention on Tea Party applications and selected several exemplars from among those applications to serve as "test cases." The IRS's exclusive focus on the Tea Party extended unbroken until the July 2011 change from "Tea Party" to "Advocacy Org." in the Emerging Issues tab of the BOLO list. Thus, until July 2011, the IRS grappled with the issue of the permissible extent of political advocacy for a section 501(c)(4) organization only within the context of the Tea Party's political agenda. During that span of time, Tea Party applications were methodically and systematically culled from the application pool by IRS workers, subjected to a bizarre and dilatory development process, and eventually left to languish unattended for lengthy periods of time while the IRS bumbled its way through a variety of failed processing initiatives.

In contrast, throughout the period culminating with the July 2011 change to the Emerging Issues tab, applications received from other organizations, including those on the left that involved political advocacy issues, were assigned, worked and resolved by IRS staff, and consequently suffered no untoward delays in their resolution. Even after the July 2011 change in the Emerging Issues tab as well as the subsequent changes in January and June of 2012, applications received from every Tea Party organization as well as every organization with a name that included "9/12 Project" or "Patriots" automatically drew IRS attention and with it, the rigors of full development and its associated delays. This was true whether or not the organizations calling themselves "Tea Party," "9/12 Project" or "Patriots" indicated in their applications an intention to engage in political discourse. In this way, applications submitted by Tea Party organizations and other conservative groups were processed by the IRS in a fashion unlike any other applications.

B. THE IRS DID NOT TARGET PROGRESSIVE ORGANIZATIONS

Throughout the Committee's investigation, there have been claims by the Minority and by others that the IRS targeted progressive groups in the same manner as the Tea Party. This is simply not accurate.

[348] SFC Interview of Jack Koester (Aug. 1, 2013) pp. 39-40.

Our investigation revealed that there was no plan to systemically capture and delay left-leaning applications at the IRS, as there was for Tea Party and conservative applications. While it is true that some liberal groups got caught in the process, most of the groups that were harmed by the IRS were Tea Party and conservative groups, and those were the groups that endured the longest delays because they were the first to be set aside.

In the Additional Democratic Staff Views, there are various claims in support of the flawed assertion that the IRS "targeted" left-leaning groups, too. Each is discussed below in turn.[349]

1. *DEMOCRATIC ALLEGATION:* "PROGRESSIVE" GROUPS WERE TARGETED BECAUSE THEY APPEARED ON THE BOLO SPREADSHEET

Response: The term "Progressive" was on a part of the BOLO spreadsheet that was not actively used by IRS employees who screened incoming applications, and did not result in any disparate treatment.

The Minority correctly observes that certain terms identifying left-leaning organizations appeared on the BOLO spreadsheet from August 2010 through April 2013, including the term "Progressive." Indeed, during the three years that the BOLO spreadsheet was used, there were dozens of terms that appeared on the BOLO spreadsheet in some capacity – including other terms, besides the "Tea Party" entry, that involved conservative organizations or conservative values. Merely appearing on the BOLO spreadsheet does not indicate that the IRS improperly targeted a particular organization; what matters is how IRS employees applied the BOLO criteria to process applications.

From August 2010 until May 2013, the BOLO spreadsheet was distributed to all EO Determinations employees, who used it as a reference tool when screening and reviewing applications for tax-exempt status. The BOLO spreadsheet was comprised of five "tabs":[350]

[349] Many of the same arguments raised by the Minority have already been disproven. *See* U.S. House of Representatives Committee on Oversight and Government Reform, Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Misled America about Disparate Treatment (Apr. 7, 2014).

[350] Heightened Awareness Issues (July 28, 2010) IRS0000557291-308.

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

While some terms discussed below that describe left-leaning organizations did appear on the BOLO spreadsheet, it is clear that these BOLO entries did not result in the same treatment as the "Tea Party" BOLO entry, which appeared on the Emerging Issues tab of the BOLO spreadsheet.

From 2010 through 2013, there was an entry for "Progressive" organizations on the TAG Historical tab of the BOLO spreadsheet. As Cindy Thomas explained, the entries on this part of the spreadsheet were there because "there were no current cases that they had seen, but they – we didn't want to lose track of it, and that's why it stayed on the Historical tab."[351]

It is unclear when, if ever, the "Progressive" entry was ever relevant. Indeed, no employee interviewed by Committee staff knew when, or why, the term was added to the TAG Historical

[351] SFC Interview of Cindy Thomas (July 25, 2013) p. 154.

tab. The manager of employees who screened all incoming cases, John Shafer, did not recall receiving any "progressive" applications during the last 10 years:

> Q. Now, do you recall seeing any – during the time, and I'm talking about the whole time that you were the screening manager, all the way back to 10 years, I guess, to 2003, do you recall any cases that came in that met this criteria of progressive?
>
> A. Not to my knowledge. You said this was TAG History?
>
> Q. It was – the tab in the Excel document is called TAG Historical.
>
> A. Okay.
>
> Q. So do you recall any progressive cases that were sent to Washington for processing?
>
> A. I do not.[352]

Shafer's testimony is consistent with other IRS employees who do not remember reviewing any "Progressive" applications in EO Determinations after 2006[353] or in EO Technical, in Washington, D.C., after 2007.[354]

Hofacre further explained that the TAG Historical tab of the BOLO spreadsheet was not relied on by EO Determinations employees:

> Q. Okay. Would the EO [Determinations] agents need to know this information [in the TAG Historical Tab] in order to do their job?
>
> A. Based on my opinion, no.[355]

Other employees also confirmed that they did not refer to the TAG Historical tab when reviewing incoming applications; instead, they focused on the Emerging Issues tab.[356] Thus, the entry for "Progressive" applications did not affect how the IRS screened incoming applications for tax-exempt status during the period covered by the Committee's investigation.

[352] SFC Interview of John Shafer (Sep. 17, 2013) pp. 129-130.
[353] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 140.
[354] SFC Interview of Judith Kindell (July 18, 2013) pp. 107-108.
[355] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 136.
[356] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

2. *DEMOCRATIC ALLEGATION:* GROUPS AFFILIATED WITH ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN) WERE TARGETED BECAUSE THEY APPEARED ON THE BOLO SPREADSHEET AND WERE SUBSEQUENTLY INAPPROPRIATELY SCRUTINIZED

Response: The IRS had legitimate cause to look for incoming cases from ACORN-related organizations following the dissolution of ACORN amidst widespread concern about criminal activity, and the BOLO spreadsheet was not used inappropriately to screen these groups.

From August 2010 until the beginning of January 2012, the BOLO spreadsheet contained an entry for "ACORN Successors." This entry appeared on the Watch List tab of the BOLO, which was used to mark issues that had not yet come before the IRS, but would require special handling if and when they arose.[357] The ACORN entry would only be placed on this part of the BOLO spreadsheet if the IRS was not actively receiving applications that met this criteria.

In fact, the IRS had good reason to look for incoming applications from ACORN-related groups. As the Minority acknowledges, ACORN purportedly disbanded in 2010 after accusations of fraud, embezzlement and mismanagement – all issues that would directly affect an organization's ability to maintain or attain tax-exempt status. In July 2009, the Ranking Member of the House OGR Committee issued a report entitled "Is ACORN Intentionally Structured as a Criminal Enterprise?"[358] This report, which was provided to the IRS,[359] raised many allegations regarding the operation of ACORN and its affiliates. Included among those allegations were the following: ACORN failed to report an embezzlement of nearly $1 million, covered up the crime for more than 8 years, and used charitable contributions to recover the losses due to the embezzlement; it comingled accounts of its federally funded affiliates with its politically active affiliates and then used those funds to engage in partisan political activities; it conducted voter registration drives that routinely produced fraudulent registrations; and ACORN illegally plundered employee benefits and relieved corporate debts through prohibited loans.[360]

In February 2010, Minority staff of the House OGR Committee issued a second report on ACORN entitled "Follow the Money: ACORN, SEIU and their Political Allies."[361] Included in this report were a number of new findings that shed light on ACORN's operations including the following: there was no distinction between ACORN and its affiliates making it impossible to

[357] Heightened Awareness Issues (July 28, 2010) IRS0000557291-308.
[358] U.S. House of Representatives Committee on Oversight and Government Reform, "Is ACORN Intentionally Structured As a Criminal Enterprise?" (July 23, 2009).
[359] Email from Nancy Todd to Sarah Hall Ingram, Joseph Grant, Lois Lerner, and others (July 8, 2010) IRS0000713482.
[360] U.S. House of Representatives Committee on Oversight and Government Reform, "Is ACORN Intentionally Structured As a Criminal Enterprise?" (July 23, 2009).
[361] U.S. House of Representatives Committee on Oversight and Government Reform, "Follow the Money: ACORN, SEIU and Their Political Allies" (Feb. 18, 2010) IRS0000791014-81.

consider them as separate organizations; ACORN and its affiliates used coercion and threats of litigation to extract concessions, loans and funds from sources; and ACORN controlled the Service Employees International Union (SEIU), received money from it and used its employees to advance ACORN's organizing and partisan political goals. Lois Lerner, Robert Choi, Holly Paz and others received a copy of this report on February 19, 2010.[362]

These accusations, together with those from other Congressional sources, were serious enough to prompt the IRS to establish its own research team in November 2009 to look into ACORN's activities.[363] The IRS research team completed its review in April 2010, finding evidence that: ACORN had covered up an embezzlement committed by a board member; ACORN employees worked for multiple affiliates and staff and members served on the Board of Directors, thereby creating potential conflicts of interest; affiliates improperly transferred money among themselves; ACORN and its affiliates failed to properly document financial transactions; and ACORN may have improperly used donations as well as employee pension and health care benefit funds. The research team concluded that these findings, together with ACORN's apparent loose governance and a lack of respect for the corporate structure, warranted that the IRS take a closer look into the financial practices of ACORN and its affiliates.[364]

Around that same time, OGR Minority staff issued a third report on ACORN entitled "ACORN Political Machine Tries to Reinvent Itself."[365] The report outlined how stories in the press that ACORN was disbanding were greatly exaggerated. In fact, many of the ACORN affiliates were simply changing their names so as to remove any reference to ACORN, or re-incorporating as new entities under new names, but maintaining the same boards, staff and Employer Identification Numbers as former ACORN affiliates. The report indicated that this "rebranding" activity was being orchestrated by the parent ACORN organization and its national senior leadership.[366] This report was provided to the IRS on June 3, 2010.[367]

Even before OGR Minority staff provided a copy of its report to the IRS in June 2010, several news stories and other reports began to surface about ACORN's attempts to rebrand itself.[368] These news stories most likely contributed to the IRS's awareness that some local ACORN groups were attempting to reorganize and regain tax-exempt status under other names that did not reference ACORN. These groups often had close ties to former or current ACORN

[362] Email from Joseph Urban to Lois Lerner, Robert Choi, Holly Paz, Nanette Downing and others (Feb. 19, 2010) IRS0000791013.
[363] IRS, Memorandum on Investigative Research Findings (June 21, 2010) IRS0000713488.
[364] IRS, ACORN Research Activities Summary Report (April 28, 2010) IRS0000713483-87.
[365] U.S. House of Representatives, Committee on Oversight and Government Reform, Staff Report, "ACORN Political Machine Tries to Reinvent Itself" (June 3, 2010) IRS0000742758-65.
[366] Id.
[367] Letter from Ranking Member Darrell Issa to IRS Commissioner Douglas Shulman (June 3, 2010) IRS0000742756-57.
[368] Fox News, ACORN Branches Rebrand After Video Scandal (Mar. 15, 2010); *The American Spectator*, ACORN Housing Boom (Mar. 2, 2010).

organizations. Steven Grodnitzky found that in the case of one applicant, the Ballot Initiative Group of Missouri, "ACORN is a member of the organization, contributes money, appoints a member of the board, and the principal was a high ranking official with ACORN in the Midwest."[369]

Indeed, the BOLO spreadsheet entry for "ACORN Successors" indicates that the IRS was concerned with precisely those types of issues:

> Local chapters of the former ACORN organization have reformed under new names and are requesting exemption under section 501(c)(3). Succession indicators include ACORN and Communities for Change in the name and/or throughout the application.[370]

Thus, the issue with ACORN applications wasn't necessarily the existence or amount of political activity, but rather whether these applicants were affiliated with a former non-profit organization that was found to have engaged in criminal wrongdoing.

IRS employees interviewed by Committee staff recalled seeing a few incoming applications from ACORN-related groups. As Hofacre explained, those applications were processed using normal IRS procedures and were not subject to the specialized process or scrutiny that the Tea Party cases received:

> Q. And were the ACORN type cases treated the same as the Tea Party cases? In other words, did they go to a group and then
>
> A. Based on my recollection, no.
>
> Q. Did they go into general inventory or they go to the TAG – I guess they went to the TAG Group, right?
>
> A. Based on my recollection, no, they were just in general inventory. I mean, some may have made it to that, but based on my job as a reviewer right now, a lot of times they are just sent to whoever gets them.
>
> Q. Okay. And regarding the development of those cases, if you know this, and I don't know if you are competent to say if you know, in those particular ACORN cases, were development letters created?
>
> A. Yes, they were.
>
> Q. Do you know if they were sent to EO Technical for a review out of the same coordinated effort that was engaged in with the Tea Party cases?

[369] Email chain between Steven Grodnitzky, Brenda Melahn and others (June 8, 2010) IRS0000054956.
[370] BOLO Spreadsheet (Feb. 2, 2011). Other versions of the BOLO spreadsheet had slightly different entries for ACORN Successors, but conveyed the same information.

A. Based on – I only reviewed a couple of them. And there was no processing like that.[371]

Although some ACORN-related organizations did receive heightened scrutiny from the IRS, they were not targeted for their political beliefs and their treatment was in no way comparable to Tea Party and conservative organizations.

3. *DEMOCRATIC ALLEGATION:* THE IRS TARGETED GROUPS AFFILIATED WITH "OCCUPY WALL STREET," THROUGH A STANDALONE BOLO ENTRY AND ALSO BY EXPANDING THE BOLO ENTRY FOR POLITICAL ADVOCACY GROUPS TO CAPTURE OCCUPY GROUPS THAT MIGHT SUBMIT APPLICATIONS

Response: Although these changes to the BOLO were misguided, they alerted the IRS to only two applications submitted by organizations affiliated with the "Occupy" movement. Those applications were promptly sent to the "bucketing" process for evaluation and there are no indications that the affected groups suffered harm.

The January 25, 2012 BOLO spreadsheet included two entries related to the Occupy Wall Street movement. The first reference to Occupy organizations appeared in the entry for "current political issues" on the Emerging Issues tab of the BOLO spreadsheet:

> **Issue**: Current Political Issues
>
> **Issue Description**: Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, $ocial economic reform/movement. **Note: typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above.**
>
> **Disposition of Emerging Issue**: Forward to Group 7822. Stephen Seok is the coordinator.[372]

As explained more fully in Section VI(B)(5) of the Bipartisan Investigative Report, this change occurred after Paz, Thomas, and other managers expressed concern that the previous BOLO entry was overly broad. In response to this concern, Steve Bowling originally suggested modifying the BOLO to once again reference "Tea Party" organizations; but his manager Thomas informed him that Lerner had discontinued this practice. To capture the same organizations without using the words "Tea Party," Bowling drafted new criteria that described

[371] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 146-147.
[372] BOLO Iteration Chart (Apr. 30, 2012) IRS0000352979-84 (emphasis in original).

views of the Tea Party organizations: limiting the government, and educating on the constitution and bill of rights.[373]

A secondary aim of Bowling was also to capture any applications that might be submitted by groups affiliated with Occupy Wall Street. To achieve this goal, he inserted the phrase "$ocial economic reform/movement," which was "code" for the Occupy organizations.[374] Bowling believed that this phrase would also apply to other groups besides Occupy that may present themselves in the future and would advocate for similar positions.[375]

Bowling also created a separate BOLO entry, titled "'Occupy' Organizations," that applied more narrowly to organizations affiliated with the Occupy Wall Street movement. Like the "ACORN Successors" entry, the "'Occupy' Organizations" entry appeared on the Watch List tab of the BOLO spreadsheet, which indicates that the IRS had not yet received any applications meeting this criteria. The "'Occupy' Organizations" entry appeared only on the January 2012 version of the BOLO spreadsheet.

It is without doubt that Bowling's revisions to the BOLO spreadsheet were misguided. Indeed, as noted in Section VII(B) of the Bipartisan Investigative Report, Bowling had already committed several substantial errors that resulted in applications from Tea Party and conservative organizations being neglected for more than a year. As noted in Section VII(F) of the Bipartisan Investigative Report, Bowling also mismanaged the Advocacy Team in early 2012, thereby allowing it to issue burdensome and improper development letters that predictably resulted in an uproar in the media and in Congress.

Unlike some previous changes to the BOLO spreadsheet, the changes made by Bowling in January 2012 were not approved by Paz, Lerner, or any upper-level EO managers. When Paz and Lerner became aware of the changes in May 2012, they quickly ordered that the BOLO criteria be changed and removed all references to "Occupy," including the "code" reference, and instead use neutral language that would apply to all political advocacy organizations.[376]

The Minority correctly states that in May 2012, the IRS received two applications from organizations that the IRS deemed to be part of the Occupy movement (although neither group had the word "Occupy" in its name).[377] EO Determinations employees decided that these applications met the criteria for the "'Occupy' Organizations" Watch List BOLO entry, and sent them directly to the bucketing process, where they were evaluated along with applications from

[373] *Id.*
[374] Email chain between Ronald Bell and Steve Bowling (Jan. 25, 2012) IRS0000013187.
[375] *Id.*
[376] Email chain between Holly Paz, Cindy Thomas and others (June 1, 2012) IRS0000013434-35.
[377] Email chain between Tyler Chumney, Stephen Seok and others (May 24-27, 2012) IRS0000013234-48.

other political advocacy groups.[378] The Minority does not allege that the two "Occupy" groups were harmed by the IRS.

Meanwhile, Majority staff analysis reveals that during that six-month period when the references to "Occupy" appeared on the BOLO, IRS employees used the same BOLO criteria to "centralize" 46 applications from Tea Party or conservative groups. A number of those 46 applications were still pending resolution as of September 2014, more than two years later.

4. *DEMOCRATIC ALLEGATION:* IN 2008, AN EO DETERMINATIONS MANAGER INSTRUCTED EMPLOYEES TO BE ON THE LOOKOUT FOR APPLICANTS WITH THE WORD "EMERGE" IN THEIR NAMES. IT TOOK 3 YEARS FOR THE IRS TO COME TO A CONCLUSION ON SOME OF THE EMERGE CASES

Response: The IRS approved a number of Emerge applications before realizing that these organizations, which were state chapters of the same organization, were recruiting and training Democratic Party candidates. The IRS subsequently determined that these activities conferred a private benefit on the Democratic Party and, thus, were not permissible activities for a 501(c)(4) organization. When the IRS learned about these activities, it decided to revoke tax-exempt status from the organizations that had been approved and deny tax-exempt status for pending applications. The IRS's ultimate disposition was delayed by several factors, including ongoing litigation.

In support of this claim, the Minority cites an email conversation dated September 8, 2008, which discusses several applications submitted by Emerge affiliates.[379] In the initial email, an employee noted that a total of eight Emerge organizations, each representing a different state, had filed applications and that the IRS could therefore expect more applications from affiliates in other states. The employee then noted that "[t]he purpose of the organizations appear [sic] to be similar – train 'Democratic' party candidates in areas such as campaigning, fundraising, public speaking, press relations, and leadership skills." Continuing, the employee noted that "[b]ecause of the partisan nature of the cases" further guidance is pending. In the meantime, the employee recommended that all incoming applications from Emerge affiliates be handled in accordance with section 7.20.5 of the Internal Revenue Manual (IRM).

The referenced IRM section specifies certain types of cases that should be sent to the Quality Assurance division for further review, including:

[378] *Id.* Emails from Tyler Chumney and Peggy Combs indicate that the applications will be sent to the "bickerers." Subsequent email conversation between Chumney and Combs (not included with this report) indicates that the word "bucketers" had been automatically changed by the email program to "bickerers."
[379] Email chain between Donna Abner, Sharon Camarillo, Joseph Herr and others (Sep. 8-24, 2008) IRS0000011492-94.

> Applications that present sensitive political issues, including the following types of activities:
>
> - Voter registration
> - Inaugural and convention host committees
> - Post-election transition teams (to assist the elected official prior to officially assuming the elected position)
> - Voter guides
> - Voter polling
> - Voter education
> - Other activities that may appear to support or oppose candidates for public office.[380]

Based on information about previous Emerge organizations cited in the September 8, 2008 email, the IRS's decision to invoke this provision in the IRM seems reasonable. It was made based on actual knowledge of the organization's activities, which had been self-reported to the IRS and suggested the possibility of private benefit. This lies in stark contrast to the IRS's decision to set aside Tea Party applications in early 2010, which was based on very little information about the actual or planned activities of the organizations.

Finally, the Minority notes that some of the Emerge applicants waited three years to get a final determination (although others were approved very quickly by the initial screeners). As explained by several IRS employees, the issue presented by Emerge organizations was not the presence or amount of political campaign intervention, but rather the inurement of private benefit – which is a distinct legal issue.[381] As the Minority notes, the IRS was also waiting for the courts to resolve a "similar issue" that was being litigated.[382] This required the IRS to coordinate the review of Emerge applications with the Chief Counsel Office, as Judith Kindell explained:

> I believe [EO] coordinated [the Emerge applications] with Counsel and that we ultimately denied the cases, that there had been some that had been approved so we had centralized the ones that we were aware of and worked them together. We developed them. They were fairly similar so that once we had developed them we were able to apply it across the board because they basically had, they were basically doing the same thing.
>
> … We were aware of some that had been approved prior to us noticing the issue, and there was at least one that even after we had noticed the issue and told Cincinnati that we

[380] IRM § 7.20.5 (Aug. 14, 2007).
[381] SFC Interview of Judith Kindell (July 18, 2013) pp. 111-113.
[382] Email chain between Deborah Kant, Cindy Westcott and others (Oct. 10-16, 2008) IRS0000012304.

> needed to bring them all in and work them together there was at least one that was approved on screening at the same time that we were developing the denials.[383]

The Emerge applications were all eventually denied when the IRS concluded that the organizations "were providing private benefit to the Democratic party."[384] The disposition of these applications supports the IRS's measured approach in developing the applications and waiting until the legal issues had been resolved before taking the consequential action of denying tax-exempt status. Clearly, the type of activities performed by the Emerge organizations was very different from those of most Tea Party groups, which were concerned chiefly with issue advocacy – an activity that is permissible under tax law for 501(c)(4) organizations.

5. *DEMOCRATIC ALLEGATION*: TIGTA'S AUDIT, WHICH CULMINATED IN ITS REPORT DATED MAY 14, 2013, ESTABLISHED THAT IRS EMPLOYEES DID NOT ALLOW THEIR OWN POLITICAL BELIEFS TO INFLUENCE THE MANNER IN WHICH THEY PROCESSED TEA PARTY APPLICATIONS

Response: Minority staff has sought to advance the proposition that TIGTA made a finding, based on its audit work, that the actions of IRS employees were not politically motivated. Contrary to the assertions of the Minority staff, TIGTA made no "findings" regarding the absence of political motivation, but rather merely concluded, based on statements collected from IRS employees including Lois Lerner, that there was no evidence that political motivation influenced official action. With regard to the issue of the existence of political influences within the IRS, TIGTA arrived at its conclusion without the benefit of a record as substantial as the record developed by Majority staff investigators. In contrast to the self-serving statements relied upon by TIGTA, Majority staff investigators uncovered a compelling trail of evidence that demonstrates that Lois Lerner's political views affected not only the performance of her duties, but also shaped the way the IRS treated conservative tax-exempt organizations.

Shortly after the release of TIGTA's May 14, 2013 audit report, the Senate Finance Committee convened a hearing to further probe into the IRS's use of inappropriate criteria to process applications for tax-exempt status. During the course of that hearing, the following exchange occurred between Senator Crapo and Inspector General George.[385]

> Mr. Crapo: You know, there's been a lot of discussion about who knew what and when they knew it. And, one of the big questions I have – this is probably for you, Mr. George – is it seems that there is an argument being made that there was no political motivation in these actions.
>
> Is that a conclusion that you have reached?

[383] SFC Interview of Judith Kindell (July 18, 2013) pp. 111-112.
[384] *Id.*
[385] While Minority staff quoted a portion of this exchange in the Additional Democratic Views, it omitted the most significant part of Inspector General George's testimony, the portion emphasized in bolded text here.

Mr. George: In the review that we conducted thus far, Senator, that is the conclusion that we have reached.

Mr. Crapo: And how do you reach that kind of conclusion?

Mr. George: In this instance, it was as a result of the interviews that were conducted of the people who were most directly involved in the overall matter.

And so you take it one step by another and we directly inquired as to whether or not there was direction from people in Washington beyond those who were directly related to the determinations unit. And their indications to us – now I have to note that this was not done under oath, this was again an audit and not an investigation – but they did indicate to us they did not receive direction from people beyond the IRS.

Mr. Crapo: When you say people beyond the IRS, that could be anyone up the chain of the IRS?

Mr. George: In theory it could be, but we have no evidence thus far that it was beyond the people in the determinations unit.

Mr. Crapo: **So, in other words, you have simply the statement of those engaging in the conduct saying they were not politically motivated?**

Mr. George: **That is correct, sir.**

Mr. Crapo: **And based on that, and statements not under oath, you reached the conclusion that there was no political motivation? Now, have you reached the conclusion that there was none or that you haven't found it?**

Mr. George: **It's the latter, that we have not found any, sir.**[386]

At a later point in the hearing, Inspector General George had a further opportunity to clarify that TIGTA made no findings regarding the absence of political motivation. The following colloquy between Senator Portman and Inspector General George reinforces this very significant point.

Mr. Portman: So, on page seven of your report, you stated that Mr. Miller and subordinate employees, quote "stated that the inappropriate criteria was not influenced by any individual or organization outside of the IRS." That's on page seven of your report. And that's been used by the administration to say that there was no – no influence.

Let me be clear. Is that a finding of your report? Or is that simply a restatement of what IRS employees told you?

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

Mr. George: **It is a restatement of the information that we received from IRS employees, Senator.**[387]

Accordingly, TIGTA made no *findings* regarding the absence of political influence in the processing of applications for tax-exempt status. Rather, it simply concluded that no evidence of such influence existed in the self-serving statements that it collected from the very employees responsible for the processing of those applications.

Regarding the existence of Lois Lerner's political bias, and how that bias affected the performance of official duties, it is important to point out that TIGTA's audit work, which took nearly a year to complete, involved a review of a fairly confined number of emails (5,500) from within the IRS. It is without doubt that TIGTA should be commended on the quality and completeness of its audit into the IRS's processing of applications for tax-exempt status. However, in contrast, and building on the excellent work TIGTA had already performed, Majority staff spent more than two years conducting its own investigation into the matter, including examining the issue of possible political motivation by IRS employees. During the course of that investigation, Majority staff reviewed a substantially larger universe of documents (1,500,000 pages) from numerous sources including some outside of the IRS, documents that TIGTA auditors never saw. Unlike TIGTA, Majority staff interviewed former IRS officials who had occupied high-level IRS management positions including a former IRS Commissioner, as well as officials from the Treasury Department. Based upon disturbing information uncovered during the course of its more exhaustive investigation, Majority staff devoted particular emphasis to establishing the actions and the motivations of Lois Lerner, significantly eclipsing any similar effort by TIGTA. As a consequence, the Majority staff was able to uncover substantial evidence that Lerner's political biases influenced the manner in which the EO Division interacted with tax-exempt organizations, evidence that TIGTA did not find.

[387] *Id*. (emphasis added).

VI. TEA PARTY ORGANIZATIONS WERE HARMED BY IRS TARGETING

The Tea Party groups that were scrutinized by the IRS were generally small and were harmed significantly more than progressive organizations. The committee highlights four examples of groups that were harmed by the IRS targeting.

A. THE TEA PARTY AND RELATED CONSERVATIVE GROUPS WHOSE APPLICATIONS WERE CENTRALIZED AND DELAYED WERE GENERALLY SMALL ORGANIZATIONS

Starting in 2009, Tea Party groups began to organize in virtually all parts of the country.[388] The Tea Party movement is a grassroots movement of both local and national groups.[389] There is no central organization that controls the various Tea Parties.[390] While each Tea Party organization exercises autonomy in deciding the subjects that it will advance, most Tea Party organizations share certain core beliefs, such as the elimination of excessive taxes, ending the national debt, reducing the size of government, and terminating deficit spending.[391]

As part of its investigation, Majority Committee staff spoke to a number of individuals who organized various Tea Parties that applied for tax exemption and whose applications were delayed by the IRS. All of these individuals shared the same abiding sense of purpose: that the United States needs to be placed on a course to ensure a fiscally responsible government that taxes with restraint and spends within its means.

The political left has sought to depict all Tea Party groups as well-funded organizations patronized by wealthy, anonymous donors.[392] In actuality, a vast majority of Tea Parties and related conservative organizations that sought tax-exempt status from the IRS during the period 2010 to 2013 were small operations. Majority staff reviewed a random sample of 40 applications submitted for exemption under 501(c)(4) by organizations with "Tea Party," "9/12," or "Patriots" in their names. Our review of these 40 sample organizations revealed very limited funding:[393]

[388] Tea Party Platform, Tea Party Movement.
[389] *Id.*
[390] *Id.*
[391] *Id.*
[392] Sourcewatch.org, Tea Party.
[393] Based on information contained in applications and other documents provided by IRS.

SFC Majority Staff Sample of 40 Randomly Selected Tea Party Organizations that Filed for Tax-Exempt Status Between 2010 and 2013:

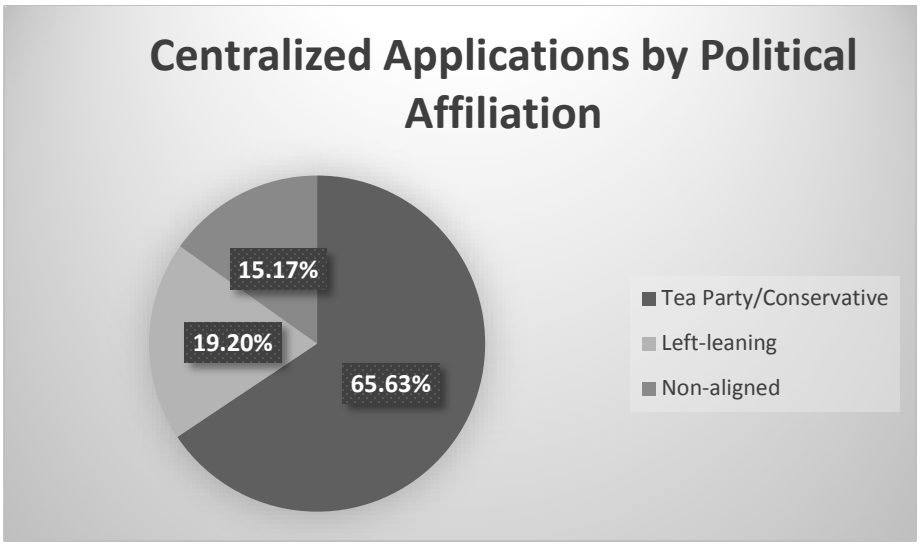
Average annual revenue:	$21,329
Median annual revenue:	$9,755

Indeed, one organization's annual revenue was a mere $1,500. This data confirms that Tea Party and related conservative groups that applied to the IRS between 2010 and 2013 for tax-exempt status were predominantly low budget operations, created by people with a deep sense of conviction that government growth, spending, and taxation need to be checked in order to make, and keep, America strong.

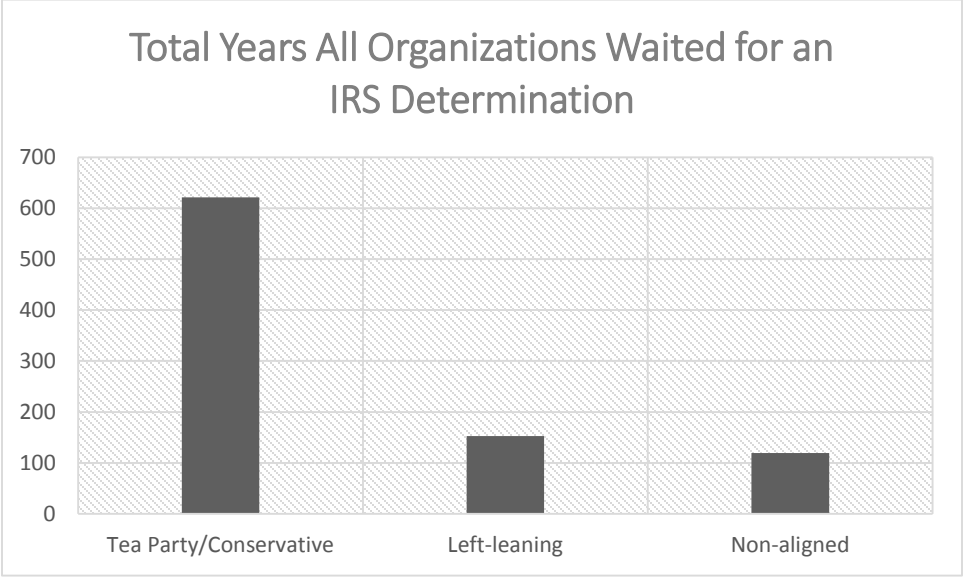
B. TEA PARTY ORGANIZATIONS SUFFERED FAR GREATER HARM THAN PROGRESSIVE APPLICANTS

The Minority has asserted that left-leaning political advocacy groups that applied for exemption under 501(c)(4) experienced delays at the hands of the IRS just as the Tea Party and other conservative groups did. While some left-leaning groups may have encountered delays in receiving decisions on their applications for exemption, it is clear that the majority of applications that were delayed by the IRS were submitted by Tea Parties and other right-leaning groups. Based on information provided to the Committee by the IRS, 547 applications for exemption involving potential political activity were identified by the IRS during the time period 2010 through 2014.[394] The IRS "centralized" the 547 applications by sending them, at various points in time, to the Emerging Issues Group in EO Determinations for development and decision. Of those 547 applications, analysis by the Majority Staff shows that 359 were received from Tea Party or other conservative groups. This represents 65.63% of all applications presenting potential political advocacy issues. The remaining applications were almost equally divided between liberal organizations (19.20%) and non-aligned organizations that do not appear to be either right or left-leaning (15.17%).

[394] Data provided to the Committee by the IRS reflect that 25 of the 547 applications involving possible political advocacy were centralized between May 21, 2013 and April 28, 2014. Even though the Committee's investigation has principally focused on the IRS's treatment of applications centralized from January 1, 2010 to May 20, 2013, the charts and analysis in this section include the 25 applications centralized after May 20, 2013. Since these applications involved possible political advocacy issues, their treatment by the IRS was relevant to the Committee's investigation.

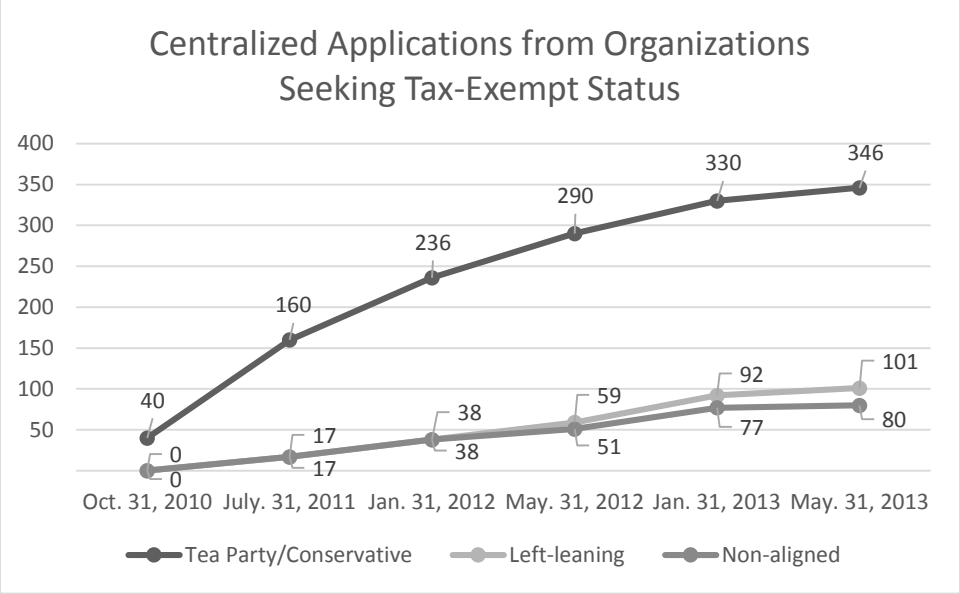


Moreover, Tea Party and other conservative groups whose applications were centralized waited longer, on average, for a decision on their applications for tax-exempt status. These groups, in total, waited 621 years for the IRS to make a decision on their applications for tax exempt status. In contrast, left leaning groups waited a combined total of 152 years and non-aligned groups waited 119 years. In addition, Tea Party and other conservative groups waited nearly 100 days longer than left-leaning and non-aligned groups to receive decisions on their applications for tax-exempt status.



Tea Party and conservative organizations were "centralized" beginning in February 2010, when Jack Koester first noticed an application from the Albuquerque Tea Party. In October 2010, some two months after issuance of the first BOLO spreadsheet containing an entry for "local organizations in the Tea Party movement," there were 40 applications involving political

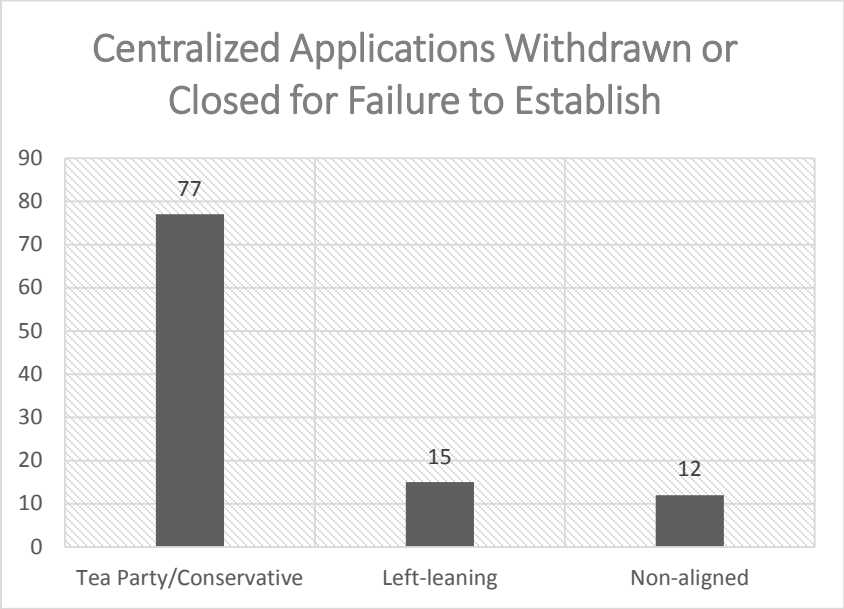
advocacy awaiting decision in EO Determinations.[395] Every one of those applications (100 percent) was from a Tea Party or a related conservative organization.[396] Left-leaning groups were not captured by the BOLO Emerging Issues criteria until later – mostly in 2012 and 2013 – and as a result, their applications were not delayed as long. By the time that the IRS began issuing decisions on political advocacy applications in June 2012, some of the Tea Party and other conservative groups had already been waiting nearly two and a half years. As shown in the succeeding chart, by January of 2012, the IRS had centralized 236 applications from Tea Party and other conservative organizations. In contrast, only 38 applications from left-leaning groups had been centralized by that time. Indeed, by January 2012, the IRS had centralized the same number of applications from non-aligned groups (38) than from left-leaning groups.



Furthermore, the lengthy application process, coupled with burdensome requests for information, caused some conservative applicants like American Junto to stop pursuing tax-exempt status. Data produced by the IRS confirms that substantially more Tea Party and conservative organizations than left-leaning groups withdrew their applications for tax-exempt status, or ceased responding to burdensome IRS requests, which resulted in the IRS closing their applications for "failure to establish." Between 2010 and 2014, 104 organizations withdrew their applications after being "centralized."[397] Majority staff analysis revealed that of the groups that withdrew or that had their applications closed for FTE, 77 were Tea Party or conservative, while only 15 were liberal or progressive. The remaining 12 had no political affiliation. Thus, for

[395] Email chain between Carter Hull to Ronald Shoemaker (Oct 18, 2010) IRS0000165172-76.
[396] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 91-92.
[397] These 101 organizations include those that formally withdrew their application by notifying the IRS as well as those that withdrew informally by failing to respond to IRS requests for information.

every liberal group whose application was either withdrawn or closed for FTE, over 5 conservative groups suffered the same fate in their quest for tax-exempt status.



All of the above data confirm that Tea Party and conservative organizations waited longer and were more severely harmed than left-leaning groups.

C. TEA PARTY GROUPS SUFFERED SUBSTANTIAL HARM AS A RESULT OF IRS DELAYS

Majority Committee staff interviewed principals from a number of Tea Party and related conservative organizations whose applications for exemption were, and in some cases continue to be, delayed. These individuals all recounted similar stories of long delays, intrusive inquiries bordering on the Orwellian, and of adverse impact on the operations of their organizations. Recounted below are several representative stories told to Majority staff by these conservative groups.

1. THE ALBUQUERQUE TEA PARTY

The Albuquerque Tea Party first filed its application for exemption under 501(c)(4) in December 2009. EO Determinations received the application on January 4, 2010.[398] In its application, the Albuquerque Tea Party indicated that it intended to: sponsor educational forums informing attendees about current political issues (40 percent of the organizations' activities); provide advocacy training to empower people to become more active in the political process (30-40 percent of its activities); hold candidate forums allowing non-partisan access to candidates for public office (20 percent of its activities); and organize event rallies that are non-partisan gatherings open to the general public for the purpose of educating and motivating (10 percent of

[398] Email chain between Hilary Goehausen, Michael Seto and others (Feb. 28, 2012) IRS0000058356-61.

its activities).[399] Question 15 of the application asks if the organization has spent, or intends to spend, funds attempting to influence the selection, nomination, election, or appointment of any person to public office or to office in a political organization. In response, the Albuquerque Tea Party stated that while no monies had yet been spent on these activities, that approximately 20 percent of its budget would be set aside for such purposes.[400]

On February 25, 2010, Jack Koester, a screener in EO Determinations, flagged this application as a possible "high-profile" case because of media attention surrounding the Tea Party.[401] Koester's managers agreed with his assessment and eventually, the application was sent to EO Technical and assigned to Carter (Chip) Hull to work as one of the two Tea Party "test cases."[402] Hull sent the organization a development letter in April 2010. Included among the questions in Hull's development letter was a query asking the Albuquerque Tea Party to describe its connection to "Marianne Chiffelle's Breakfasts," a breakfast gathering of the Bernalillo County Republican Party organized by Marianne Chiffelle, a then-83 year old great-grandmother.[403] Rick Harbaugh, the President of the Albuquerque Tea Party, told Majority staff that he found Hull's question about "Marianne Chiffelle's Breakfasts" to be peculiar, as Chiffelle simply hosted a breakfast club and offered a prayer before each breakfast. After the IRS granted a brief extension of time to respond, the Albuquerque Tea Party sent the IRS a reply in June 2010.

Thereafter, the Albuquerque Tea Party heard nothing from the IRS for nearly a year and a half, when in November 2011, it received a second development letter from Tax Law Specialist Hillary Goehausen. Goehausen's development letter asked for substantially more information than Hull's had, such as copies of every newsletter and publication of the Albuquerque Tea Party. Harbaugh stated that he considered Goehausen's development letter of November 2011 to be intrusive and burdensome. The Albuquerque Tea Party sent its response to the IRS in January 2012. Having heard nothing from the IRS for more than a year, in March 2013, the Albuquerque Tea Party retained counsel who made inquiry as to the status of its application. Goehausen replied by stating that she had prepared a recommended determination but that she could not disclose it to the Albuquerque Tea Party and that it was pending with her reviewer. Since April 2013, the Albuquerque Tea Party has not heard anything more from the IRS regarding the status of its application.[404]

Harbaugh spoke to Majority staff in February 2014. He stated that it was difficult for him to understand why his organization was still awaiting a decision on its application after 50 months,

[399] Email chain between Holly Paz, Cindy Thomas, Jack Koester, and others (Feb. 25 - Mar. 17, 2010) IRS0000180869-73.
[400] *Id.*
[401] *Id.*
[402] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[403] *Washington Examiner*, IRS Went After 89-year-old Tea Party Granny (May 20, 2013).
[404] The Albuquerque Tea Party is currently involved in litigation against the IRS. Generally, litigation does not preclude the IRS from coming to a final determination on a litigant's pending application for tax-exempt status.

while the Barack H. Obama Foundation, a charitable organization operated by President Obama's brother, received its approval to operate as a 501(c)(3) from Lois Lerner within a month after it filed its application.[405] Harbaugh indicated that the Albuquerque Tea Party had never endorsed a political candidate, but rather has expended most of its effort in advocating for small government. Harbaugh also expressed concern about whether he had become a personal target for the IRS and other government agencies as a result of his Tea Party activities, as he was audited by the IRS in 2010 and 2011 and was approached by the U.S. Census Bureau on two occasions during that time and asked to answer "supplemental questions."

Harbaugh indicated that his ordeal in attempting to secure tax-exempt status from the IRS has negatively affected the operation of the Albuquerque Tea Party. He stated that the absence of a determination letter from the IRS approving tax-exempt status affects the willingness of donors to make contributions. He expressed his belief that donors are less inclined to make donations to an entity whose tax-exempt status has not yet been confirmed by the IRS. He also indicated that the lack of a determination letter negatively impacts his ability to secure affiliations from other groups, as people are afraid that they may also be "oppressed" by the IRS if they lend their name to the Albuquerque Tea Party. Lastly, Harbaugh told Majority staff that the absence of a determination letter has caused him to operate very cautiously from a fiscal perspective, as he must keep a portion of the group's revenue on hand in the event of an adverse determination by the IRS, as such a determination would result in a retroactive tax liability. This factor has prevented the Albuquerque Tea Party from engaging in the full range of activities that it would otherwise have undertaken. As of April 2015, the Albuquerque Tea Party was still waiting for a determination from the IRS, more than five years after they applied for tax-exempt status.

2. AMERICAN JUNTO

In 2008, American Junto was formed by Chris Littleton, a self-described conservative, and several of his friends who had become increasingly concerned with the direction the country was taking, and with the sense that a growing number of Americans were losing faith in the political process. They wanted to do something to help others restore that lost faith. This motivated Littleton and his friends to create American Junto, an organization named after meetings that Benjamin Franklin hosted in his home to discuss issues of the day. American Junto was never intended to be an advocacy organization or to engage in political campaign intervention, and in fact, did not engage in these activities. Littleton's plan was to make American Junto a non-profit, community-centered, education organization that would provide scholarships and host educational events aimed at encouraging people to involve themselves in the political process.

In 2009, Littleton decided that American Junto would best be able to accomplish its goal of encouraging citizen participation in the political process by becoming a charitable organization

[405] *The Daily Caller*, IRS Official Lerner Speedily Approved Exemption for Obama Brother's "Charity" (June 4, 2013); Barack H. Obama Foundation, <http://www.barackhobamafoundation.org/>.

under 501(c)(3). As a 501(c)(3) organization, donations made to American Junto would be tax-deductible. Littleton, without legal assistance, prepared an application for tax-exempt status under 501(c)(3), and submitted it to the IRS in or about February 2010. Thereafter, Littleton incorporated American Junto, opened a bank account for it and began operating American Junto like a 501(c)(3) organization. American Junto sponsored a conference that dealt with liberty issues, hosted a conference on climate change, and raised hundreds of dollars for scholarships.

American Junto received a development letter from Carter Hull in July 2010. The letter inquired about American Junto's connection to the Tea Party, as well as to Ohio Liberty Council, a 501(c)(4) organization that Littleton had recently formed to take positions on political issues. Littleton felt that the questions asked by Hull were invasive and that the time and effort required to respond to the letter would be substantial. Nevertheless, he answered the development letter since he understood that American Junto's ability to raise funds through sustained donations was directly linked to its receiving approval from the IRS to operate as a 501(c)(3) organization. Sometime after responding to the development letter, one of the co-founders of American Junto called Hull to inquire as to the status of the application. The call to Hull was motivated by the need to get IRS approval so that the organization could raise in earnest the money it required to fund its planned activities. Hull responded by stating that the application was "under review."

While American Junto's application was "under review" by Hull and his IRS colleagues in Washington D.C., Littleton began to involve himself more with the activities of Ohio Liberty Council. Then, nearly 10 months after responding to Hull's first development letter, in April of 2011, he received a second development letter from Hull. The application for exemption was now 14 months old and Littleton began to lose heart that it would ever be approved. Littleton weighed the possibility of simply shutting down American Junto and moving on with Ohio Liberty Council. After consulting with his co-founders, Littleton decided to submit a response to Hull's development letter and did so in May 2011.

In November 2011, American Junto received yet a third development letter requesting more information, this one from Hillary Goehausen. This letter sounded the curtain call for American Junto. After waiting nearly 22 months and enduring several rounds of detailed and intrusive development letters, Littleton felt that no matter how he answered the development letter, American Junto would never be approved as a 501(c)(3) by the IRS. In December 2011, Goehausen called Littleton to inquire if American Junto was going to provide the information requested in the November development letter. Littleton informed Goehausen that American Junto would not respond and that the organization would be dissolved. Goehausen subsequently sent Littleton a letter advising him that the application was closed.[406]

Littleton explained to Majority staff how the IRS's handling of the American Junto application had a profoundly negative effect on American Junto's ability to operate as a 501(c)(3) entity.

[406] This is one example of an application that the IRS closed for "failure to establish."

First, the absence of an approval letter from the IRS prevented American Junto from fund raising effectively, since donations would not be tax-deductible until the IRS granted tax-exempt status. Littleton recounted how one donor offered American Junto several thousand dollars to fund an event, but withdrew the offer after learning that American Junto had not yet been approved as a tax-exempt organization. Second, Littleton indicated that the length of time that the application was pending and the string of burdensome development letters contributed to his decision to quit the process. In essence, the IRS's glacial pace in developing the application and the time consuming nature of its interactions with Littleton simply wore down his resolve to complete the application process. Third, Littleton feared that his activities with American Junto had elevated his profile with the IRS and other government agencies, a fear he believes was realized in 2010 when he was audited by the IRS. While there is no direct proof that the audit resulted from his activities with American Junto, Littleton was quick to point out that an acquaintance of his who is active with the Cincinnati Tea Party was also audited by the IRS at about the same time. Littleton's suspicions about the IRS's motivations in auditing him and his acquaintance stem from a deep-rooted lack of confidence in the impartiality of the IRS, a conviction shared by many of the groups with whom Majority staff spoke.

3. PASS THE BALANCED BUDGET AMENDMENT (PBBA)

This organization was started by Charles Warren and several of his friends who share a common belief that the government must eliminate unnecessary spending and balance the federal budget. In November 2010, PBBA filed with the IRS an application for tax-exempt status under section 501(c)(4). In its application for exemption, PBBA indicated that its activities included education, research, lobbying and media efforts aimed at securing the passage of a balanced budget amendment to the Constitution. PBBA stated to the IRS that it would use town hall meetings, social media, speeches, rallies, and printed media to promote its message. In support of the requirement for exemption that it be primarily engaged in promoting the common good of the citizenry, PBBA asserted in its application that its activities would benefit the public by resulting in a more robust economy, limiting federal spending, and reducing inflation. Notably, in response to question 15 of the application which asks if the organization will attempt to influence the selection, nomination, election, or appointment of any person to public office or office within a political organization, PBBA answered "no." Indeed from a review of PBBA's application and the supporting documents submitted to the IRS, it is clear that PBBA's purpose and activities were dedicated exclusively to stimulating the electorate into supporting the passage of a balanced budget amendment.

PBBA's application was screened in EO Determinations in January 2011. The screener noted that there was no indication of direct political activities in the application and supporting documents. However, the screener characterized PBBA as an "advocacy group" and sent its application to the advocacy inventory. While PBBA was not a Tea Party and was neither partisan in its message nor its educational activities, it did promote a common theme advanced

by Tea Parties – the elimination of the national debt and of deficit spending. Indeed, one of the screening criteria relied upon by EO Determinations to identify "Tea Party" cases was the presence of statements in the application related to "Government spending, Government debt … ."[407] If the screener applied the "Tea Party" screening criteria when reviewing the application, it is highly probable that his decision to send PBBA's application to the advocacy inventory was based on the conclusion that PBBA met the criteria for a Tea party application. In any event, the decision to send the case to the advocacy inventory proved a fateful one for PBBA, as explained below.

The application was initially assigned to an EO Determinations agent in California. She sent the first development letter to PBBA on March 31, 2011, and a second development letter on May 12, 2011. After PBBA had responded to the development letters and resolved an issue about its status as a "for-profit" corporation under state law, the EO Determinations agent was prepared to approve the application in September 2011. However, she then realized that PBBA was classified as an "advocacy group" and was therefore required to send the application to the Emerging Issues Group in Cincinnati.

The application was assigned to an EO Determinations agent in Cincinnati in February 2012. The agent sent PBBA an extremely detailed development letter containing, with subparts, 48 questions. A number of the questions asked for information that PBBA had already provided to the IRS in its responses to the prior two development letters. However, many of the questions asked for highly specific information:

- a hardcopy printout of PBBA's entire website;
- a hardcopy printout of its social media outlets;
- copies of all handouts and workshop materials for all public events conducted **or planned to be conducted** by PBBA, including:
    - the content of all speeches delivered or **planned to be delivered** at those events; and
    - the identities of the speakers and their credentials;
- copies of all communications distributed by PBBA regarding the outcome of specific legislation;
- copies of all radio, television or internet advertisements relating to lobbying activities; and
- copies of all written communications with members of legislative bodies.[408]

[407] Email chain between Holly Paz, John Shafer, Cindy Thomas and others (June 1-10, 2011) IRS0000066837-40.
[408] Letter from Joseph Herr to PBBA (Feb. 7, 2012) IRS0000048218-22 (emphasis added).

Shortly after receipt of the third development letter, PBBA secured the services of an attorney who then submitted a response to the IRS. On May 25, 2012, PBBA received a determination letter from the IRS approving its application for tax exemption under 501(c)(4).

Even so, PBBA was adversely impacted by the IRS's mishandling of its application. First, the application and supporting documents clearly demonstrated that PBBA, while undoubtedly espousing a conservative message, was not a Tea Party or an advocacy group. The decision to characterize PBBA as an advocacy group delayed the IRS's decision to approve PBBA's application for exemption. Had the application been assigned to general inventory and developed in January 2011, it is likely that it would have been approved shortly thereafter. Aside from speculation, it is clear from the case history that the EO Determinations agent in California was prepared to approve the application in September 2011. However, because PBBA had been characterized as an advocacy group, its application was sent to Cincinnati where its approval was further delayed by 8 months. In addition, PBBA was required to respond to three rounds of development questions, and in particular, extremely onerous and burdensome questions that were hardly justified in light of the information already provided to the IRS. That information bore stark witness to the fact that PBBA was not a partisan political organization engaged in campaign intervention. Finally, after receiving a third development letter in 14 months, PBBA deemed it prudent to secure legal counsel at substantial cost to it, as a hedge against the vagaries of the application process.

4. KING STREET PATRIOTS AND TRUE THE VOTE

Catherine Engelbrecht founded King Street Patriots (KSP) and True the Vote (TTV) in 2009-2010 after witnessing voter fraud and related abuses while serving as a volunteer poll watcher in a Texas election. Her experiences as a poll watcher convinced her that more needed to be done to ensure the "sanctity of the vote." Accordingly, she formed KSP as a non-partisan, non-profit organization dedicated to addressing some of the problems at the polls that she had personally experienced. KSP's activities included enlisting volunteers to work at the polls, training those workers, leading voter registration drives, and hosting events to encourage voter turnout. In May 2010, Engelbrecht filed with the IRS, on behalf of KSP, an application for tax exemption under 501(c)(4).

In September 2010, Engelbrecht submitted to the IRS an application for exemption under 501(c)(3) for TTV. Engelbrecht described TTV's activities as centering on the recruitment and training of volunteers to work inside polling places. Among other things, TTV was formed to aggressively pursue voter fraud allegations to ensure prosecutions where appropriate, to provide a support system to assist poll watchers carry out their duties, and to engage in efforts aimed at validating existing voter registration lists.

The IRS issued its first development letter to KSP in February 2012, some 21 months after KSP's application was filed. The development letter contained 95 questions and requests for

documents, including subparts. In a now all too familiar pattern, the development letter sought from KSP an enormous amount of highly detailed information of dubious probative value:

- copies of every page of KSP's webpage;
- minutes of every board meeting;
- copies of every fundraising solicitation;
- a list of all issues important to KSP and KSP's position on each issue;
- the criteria KSP used when determining whether to endorse a candidate for political office;
- copies of all training materials;
- copies of all materials distributed at educational events;
- copies of all materials distributed at candidate forums; and
- copies of all materials distributed during voter registration drives.

KSP responded to the IRS's development letter in May 2012 with a submission totaling nearly 300 pages. The IRS's next development letter was sent to KSP eight months later in October 2012. KSP responded in November 2012 with the requested information. Almost a year later, in December 2013, after waiting nearly 3 and a half years, KSP received a determination letter from the IRS approving its application for exemption under 501(c)(4).

Development and resolution of TTV's application for tax-exempt status under 501(c)(3) followed much the same course as that of KSP's. TTV received its first development letter in February 2011, five months after filing its application. The letter asked a reasonable number of questions specifically aimed at eliciting information about TTV's activities, information clearly necessary for the IRS to be able to determine if TTV's activities were consistent with tax-exempt purposes. The next development letter that TTV received, a year later in February 2012, was not so reasonable. The number of requests for information and the demands for documents actually exceeded that of the February 2012 letter sent to KSP, topping the prodigious sum of 120.[409] Moreover, many of these oppressive and burdensome requests were identical to those contained in the KSP development letter. It is indeed difficult to understand how the answers and information provided to many of these requests would possibly assist the IRS reach a conclusion on whether TTV should be granted tax-exempt status. The following examples give a flavor of the irrelevance of most of these requests:

- the percentage of people trained as election administration workers versus the percentage trained as election observers;
- the names and credentials of the election law experts used by TTV to review TTV's materials and to staff its voter integrity center;

[409] Letter from Janine Estes to True the Vote (Feb. 8, 2012) IRS0000084012-21.

- the number of individuals trained to perform voter registration integrity activities as well as the number who are currently in training;
- the number of jurisdictions in which TTV conducted voter registration integrity activity;
- the name of the owner of the intellectual property rights to the software used by TTV to review lists of registered voters; and
- the name of any person or organization that provided educational services to TTV, together with a full description of the services and the political affiliation of the person or organization.

Notwithstanding the enormity of the effort required to respond to these largely superfluous and invasive requests, TTV did, in fact, respond in March 2012. Thereafter, TTV heard nothing from the IRS as another year passed. Then in March 2013, TTV was required to respond to yet another request for information from the IRS. Ultimately, after waiting three years, and responding to at least four different requests for additional information, TTV received its determination letter from the IRS granting it status as a 501(c)(3) tax-exempt organization.

Engelbrecht explained to Majority Staff that the delays experienced by both KSP and TTV adversely impacted the operations of these organizations. She recounted that the long delays and multiple rounds of development letters caused these entities to incur substantial legal fees, as assistance of counsel was required at nearly every juncture of the application process. She also indicated that KSP and TTV suffered the "stigma" of not having approved tax-exempt status while attempting to operate as tax-exempt entities, since the lack of IRS approval created the perception to some that the organizations lacked legitimacy. She also expressed frustration over TTV's inability to apply for foundation grants while it waited the three years required by the IRS to approve the application. Engelbrecht told Majority staff of one instance in which TTV had been awarded a grant with the condition that the funds could not be expended unless TTV was approved as a 501(c)(3) organization by the end of the year. When IRS approval was not forthcoming within that time, TTV was required to return the funds. Engelbrecht also noted that since KSP and TTV were both approved tax-exempt status, donations have increased, which lead her to the reasonable conclusion that the lengthy delays that both organizations endured from 2010 to 2013 negatively affected their ability to raise funds in those years.

Perhaps the most disconcerting aspect of Engelbrecht's saga is the heightened interest that several agencies of the U.S. Government took in her personally from 2010 through 2013, as well as in the operations of KSP, TTV and in Engelbrecht Manufacturing, the business that she and her husband operate. In January 2011, the IRS audited the tax returns of her business for tax years 2008 and 2009 and then in June of 2011, audited her personal returns for those same tax years. Throughout 2011, she was contacted by the FBI six times (four phone calls and two personal visits) regarding the general activities of KSP and about a particular individual who attended a KSP function. In 2012, a new round of government inquiry into her business affairs commenced with two audits of Engelbrecht Manufacturing by the Bureau of Alcohol, Tobacco,

Firearms, and Explosives as well as an audit by the Occupational Safety and Health Administration. Engelbrecht indicated that between the years 1994, when she and her husband started their small business, and 2010, when she first filed the applications for tax exemption, the extent of her contact with the government had been limited to the filing of annual tax returns. However, this changed dramatically after she submitted applications to the IRS in 2010 seeking tax-exempt status for KSP and TTV. It is unclear whether this increased scrutiny into the business of Catherine Engelbrecht and her husband was simply serendipitous, or was the product of an orchestrated campaign by the government to harass her. It may also have resulted from the decentralized actions of like-minded bureaucrats in various agencies who were executing an unstated directive to intimidate the political opponents of the administration, or perhaps was a combination of some or all of the above. Whatever the cause, Engelbrecht believes with unshakable conviction that she has been personally targeted by the government and that the actions directed against her, as recounted above, reflect the "weaponizing of government."[410]

[410] *Townhall*, True the Vote President Catherine Engelbrecht Slams IRS Abuse, Weaponizing of Government (Feb. 7, 2014).

VII. POLITICAL INFLUENCE WITHIN THE IRS

Recent events have demonstrated that the organizational structure of the IRS is fundamentally flawed, resulting in an environment rife with political bias.

A. THE IRS'S LACK OF INDEPENDENT AGENCY STATUS FOSTERED THE EXPRESSION OF POLITICAL BIAS AND HAS IRREVOCABLY TAINTED THE AGENCY'S CREDIBILITY

One of the critical lessons learned from the Committee's investigation is the need for the IRS to be an independent agency. To fully appreciate the politicized environment of the IRS, it is necessary to understand the IRS's role as a bureau of the Treasury Department – an entity that is closely controlled by the President to implement his economic and financial initiatives.

Many errantly believe that the IRS already is an independent entity. Indeed, Jay Carney, the former White House press secretary, mistakenly called the IRS "an independent enforcement agency with only two political appointees," during a press briefing on May 10, 2013.[411] President Obama also claimed that the IRS was an "independent agency," during a May 13, 2013 press conference. Specifically, he stated, "If, in fact, IRS personnel engaged in the kind of practices that had been reported on and were intentionally targeting conservative groups, then that's outrageous and there's no place for it. And they have to be held fully accountable, because the IRS as an independent agency requires absolute integrity, and people have to have confidence that they're applying it in a non-partisan way – applying the laws in a non-partisan way." [412]

Despite these claims from the Administration and the misperception of many in the public that the IRS is indeed an independent agency, the reality is that it is most definitely not. The IRS is a bureau within the Treasury Department, which is an executive branch agency within the Federal Government.[413] According to the IRS website, the agency was "organized to carry out the **responsibilities of the Secretary of the Treasury** under section 7801 of the Internal Revenue Code."[414]

The IRS Commissioner is a political appointee nominated by the President and confirmed by the Senate. However, the IRS Commissioner does not report to the President, as the head of an independent agency would; instead, the IRS Commissioner reports to the Secretary of the Treasury via the Deputy Secretary of the Treasury.[415] This reporting line ensures that the IRS remains within Treasury's purview.

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[411] White House, Press Briefing by Press Secretary Jay Carney (May 10, 2013).
[412] White House, Remarks by President Obama and Prime Minister Cameron of the United Kingdom in Joint Press Conference (May 13, 2013).
[413] U.S. Department of Treasury, About Bureaus.
[414] IRS, The Agency, its Mission and Statutory Authority (emphasis added).
[415] U.S. Department of Treasury, About Treasury Order 101-05.

The law further states that the IRS Commissioner can be removed from the position "at the will of the President."[416] That action cannot be taken against the heads of some other "independent" agencies without a reason. For example, the Chairman of the National Labor Relations Board can "be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause."[417] Likewise, Members of the Federal Reserve Board, another independent agency, can only be removed "for cause."[418] These officials presumably have less concern that their judgment could result in removal if the Administration does not find it agreeable – unlike the IRS Commissioner, who can essentially be fired at will.

Indeed, President Obama may have indirectly exercised his authority to remove the IRS Commissioner on May 15, 2013, when he stated that he had directed Treasury Secretary Jack Lew to review TIGTA's findings. Soon after the President's directive, Lew requested and accepted the resignation of then-Acting IRS Commissioner, Steve Miller.[419] At that time, it had been reported that Miller was aware of the agency's targeting of conservative political groups and chose not to disclose it to members of Congress.[420]

One way that federal law attempts to remove partisanship from the IRS is through the use of five-year terms for its Commissioner that overlap the four-year presidential election cycles. The only other political appointee in the agency besides the Commissioner is the IRS Chief Counsel, who "provides legal guidance and interpretive advice to the IRS, Treasury and to taxpayers."[421]

Another safeguard is that the law prohibits the President, Vice President and members of their executive office staff from requesting, "directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer."[422]

The Treasury Department is supposed to keep an arms-length relationship with the IRS on matters of tax administration, enforcement and "process," which essentially means that it doesn't ask the IRS for information about taxpayers. However, on matters of tax policy and regulations, the Treasury Department works closely with the IRS. This dichotomy is a difficult one to balance and is made even more challenging because the IRS Chief Counsel is actually organizationally housed in the Treasury Department and is not a part of the IRS. Instead, the Office of Chief Counsel and the Chief Counsel reports through Treasury Department's chain of command, thereby adding an even greater appearance of politicization.

[416] 26 U.S.C. § 7803 (2008).
[417] 29 U.S.C. § 153 (1982).
[418] 12 U.S.C. § 242 (2010).
[419] White House, Statement by the President (May 15, 2013).
[420] *Washington Post*, IRS Officials in Washington Were Involved in Targeting of Conservative Groups (May 13, 2013).
[421] IRM § 1.1.5.1(5) (Oct. 28, 2008).
[422] 26 U.S.C. § 7217 (1998).

This close working relationship between IRS and the Treasury Department creates the appearance, if not the actuality, of an inherent conflict of interest that allows exactly the type of political bias that occurred when conservative groups applied for tax-exempt status between 2010 and 2013. If the IRS is to fulfill its mission to act in a fair and impartial manner while carrying out its very unique function, then it needs to be treated uniquely.

Making the IRS an independent agency, like the Social Security Administration, would minimize the political influence of the Treasury Department, while at the same time allowing the Commissioner to be an independent voice for tax administration. In order for the American public to ever have its faith in the IRS restored, it is essential that the IRS be taken out of the political realm and put squarely where it needs to be – as an independent enforcement agency that is free from all real and perceived political influence and bias.

B. Union Influence Within the IRS Has Created an Atmosphere of Political Bias

It is virtually impossible for the IRS to maintain the reality, much less the appearance, of neutrality and fairness to all taxpayers, when a substantial number of IRS employees are members of the highly partisan and left-leaning National Treasury Employees Union (NTEU). The NTEU is one of the largest and most powerful federal employee unions in the federal government. Currently the union represents about 150,000 employees in 31 government agencies, including the IRS.[423] At the IRS alone there are approximately 48,972 dues-paying union employees, representing 65.5% of the bargaining unit employees at the IRS.[424]

Politically, the NTEU is extremely active and twice endorsed Mr. Obama for President, first in 2008 and again in 2012. NTEU's current president, Colleen Kelley, was a 14-year IRS revenue agent and is now both union president and an Obama administration appointee to the Federal Salary Council, whose function is to recommend raises for IRS and other federal employees.[425] During the 2010 election cycle, when the IRS targeting of Tea Party groups began, the NTEU raised $613,633 through its political action committee (PAC), donating approximately 98% of that amount to Democrats. In 2012, $729,708 – or 94% of NTEU PAC contributions – went to anti-Tea Party Democrats.[426]

Of further note is that as of 2011, at least 201 IRS employees worked full time on union issues. For that year, 625,704 hours of official employee time within Treasury Department (including the IRS) was spent on union duties. These union activities cost taxpayers an estimated $27 million.

[423] NTEU, Who We Are.
[424] IRS Briefing for Majority staff (May 30, 2014).
[425] *Breitbart*, Obama Met with IRS Union Boss Day Before Tea Party Targeting Began (May 20, 2013).
[426] *The American Spectator*, Obama and the IRS: The Smoking Gun? (May 20, 2013).

Although IRS employees are career civil servants, many of them are political partisans. For example, in the past three election cycles, the Center for Responsive Politics's database shows about $474,000 in political donations by individuals listing "IRS" or "Internal Revenue Service" as their employer.[427] This money heavily favors Democrats: $247,000 to $145,000.[428] IRS employees also gave $67,000 to the NTEU political action committee, which in turn gave more than 96 percent of its contributions to Democrats. When NTEU political action committee contributions are added to the donations by individual IRS employees, those contributions favor Democrats 2 to 1.[429]

The IRS office in Cincinnati involved in the targeting of Tea Party applications is even more partisan than the IRS as a whole, judging by FEC filings. More than 75 percent of the campaign contributions from that office in the past three elections went to Democrats. In 2012, every donation traceable to employees at that office went to either President Obama or a particular Democratic Senator.[430]

These figures indicate that IRS employees are primarily paying for efforts to elect anti-Republican candidates, both through their union membership and by their direct contributions. Moreover, IRS employees are beholden to the NTEU, as it has negotiated favorable labor agreements with the IRS on their behalf that affect virtually every aspect of work life, such as "alternative work schedules, flexi-place, transit subsidies, performance awards and much more."[431] These labor agreements also make it more difficult for IRS management to discipline and terminate employees who are failing to perform their jobs.

In addition to the NTEU's leanings towards the Democratic Party is the fact that the Tea Party's anti-IRS views are well documented.[432] These factors together create an atmosphere that may foster an outright bias against Tea Party groups by IRS employees in the performance of their duties; or, at least one that may color their perspective to a degree that could cause them to administer the tax laws unfairly to the detriment of the Tea Party.

Under current law, most federal employees are permitted representation by a union. The major exception to this rule is Federal employees who work in national security or other agencies where the nature of their work requires them to be completely apolitical. The Federal Labor-Management Relations Statute provides that employees at the following agencies are not entitled to union representation: Government Accountability Office, Federal Bureau of Investigation, Central Intelligence Agency, National Security Agency, Tennessee Valley Authority, Federal

[427] Center for Responsive Politics, data available at http://www.opensecrets.org.
[428] *Id.*
[429] *National Review*, A Partisan Union at the IRS (May 20, 2013).
[430] *Washington Examiner*, Tim Carney: The IRS is Deeply Political and Very Democratic (May 15, 2013).
[431] NTEU, The Voice of Federal Employees.
[432] *Wall Street Journal*, Tea Party Protesters Rally Against IRS, Government (June 19, 2013).

Labor Relations Authority, Federal Service Impasses Panel, and U.S. Secret Service and U.S. Secret Service Uniformed Division.[433]

The IRS is currently not one of the exempted entities, but the issues and facts brought forth by this investigation make a compelling case of why they should be exempted. The charge of the IRS is to administer the tax law in a fair and impartial manner. It is difficult, if not impossible, for that to occur when the union presence is so pervasive. The only way to completely eliminate the appearance of any bias is to add the IRS to the list of agencies where union membership is prohibited.

C. RECENT VIOLATIONS OF THE HATCH ACT SHOW PERVASIVE POLITICAL BIAS THROUGHOUT THE IRS

The Hatch Act was enacted in 1939 following widespread allegations that Federal employees were exerting improper political influence in the course of their official duties. The Act has been amended several times since its enactment and prevents Federal employees from engaging in partisan political activity while on duty. The Office of Special Counsel (OSC) is authorized to issue advisory opinions about alleged violations of the Hatch Act throughout the Federal Government.[434]

Federal employees are routinely warned about the consequences of participating in prohibited political activity. Still, in every election cycle, there are violations of the Hatch Act. Some of these incidents occur when a reasonable person may have made a mistake in judgment. Often, though, the incidents are blatant violations, such as those described below in recent investigations into the activities of IRS employees.

In total, OSC received 38 allegations of Hatch Act violations committed by Treasury Department employees from fiscal year 2010 through fiscal year 2013.[435] Of those 38 allegations, 95% were lodged against IRS employees (the remaining 5% comprised employees from all other bureaus within the Treasury Department). In fiscal year 2013 alone – which included the months surrounding the 2012 election – there were 22 allegations of Hatch Act violations filed against IRS employees.

OSC issued a press release on April 9, 2014, announcing its investigation of several cases against IRS employees and offices suspected of illegal political activity in support of President Obama and fellow Democrats in 2012.[436] In the press release, OSC stated that it has evidence that an IRS employee used his authority and influence as a customer service representative for a political

[433] 5 U.S.C. § 7103(a)(3) (2004). In at least one case, subsequent legislation has allowed union representation at an agency exempted by the Federal Labor-Management Relations Statute. *See* 31 U.S.C. § 732(e)(2) (2008), authorizing a labor-management relations program for the Government Accountability Office.
[434] U.S. Office of Special Counsel, Request an Advisory Opinion.
[435] OSC Summary of Alleged Violations of Hatch Act, Produced to SFC Majority Staff (May 23, 2014).
[436] U.S. Office of Special Counsel, OSC Enforces Hatch Act in a Series of IRS Cases (Apr. 9, 2014).

purpose.[437] When fielding taxpayer's questions from an IRS customer service help line, the employee urged taxpayers to reelect President Obama in 2012 by repeatedly reciting a chant based on the spelling of his last name. In June 2014, OSC announced that the employee had agreed to serve a 100-day unpaid suspension and "acknowledged that he had used his authority and influence as an IRS customer service representative for a political purpose and did so while at work."[438]

In another recent IRS case, OSC found that an employee in Kentucky promoted her partisan political views to a taxpayer she was assisting during the 2012 Presidential election season.[439] The employee in question had previously been warned about violating the Hatch Act. A recorded conversation between the employee and a taxpayer revealed the employee saying that she was "for" the Democrats because "Republicans already [sic] trying to cap my pension and … they're going to take women back 40 years." The employee explained that her mother always said, "'If you vote for a Republican, the rich are going to get richer and the poor are going to get poorer.' And I went, 'You're right.' I found that out." The employee then told the taxpayer, "I'm not supposed to voice my opinion, so you didn't hear me saying that."

Following OSC's investigation, the employee entered into a settlement agreement in April 2014, agreeing to serve a 14-day suspension. In the agreement, the employee admitted to violating the Hatch Act's restrictions against engaging in political activity while on duty and using her official authority or influence to affect the result of an election.

Finally, OSC recently completed an investigation of allegations that an IRS manager in California violated the Hatch Act while on official travel to Las Vegas in November 2012. The manager allegedly canceled a meeting in Las Vegas to meet her husband at the site of a rally for President Obama's 2012 reelection campaign. OSC concluded that the manager's likely attendance of the Obama rally violated the Hatch Act's restrictions on engaging in political activity during official time. OSC referred its findings to the IRS, which is considering misconduct charges against the manager.[440]

In view of the IRS's targeting of conservative groups, the actions of these employees have re-focused attention on whether the IRS may have been used to benefit one political viewpoint or candidate over another. Incidents such as these are unfortunate, as they denigrate the public image of an agency that has been given tremendous influence over the lives of Americans and is supposed to be impartial in wielding this influence.

[437] *Id.*
[438] U.S. Office of Special Counsel, OSC Obtains Disciplinary Action in Two Hatch Act Cases (July 10, 2014).
[439] U.S. Office of Special Counsel, OSC Enforces Hatch Act in a Series of IRS Cases (Apr. 9, 2014).
[440] OSC Briefing for SFC Staff (July 9, 2015).

VIII. THE IRS HAS YET TO FULLY CORRECT ITS PROBLEMS

The IRS has failed to correct many of the fundamental problems that led to the inappropriate targeting of Tea Party groups.

Soon after being installed as Principal Deputy Commissioner, Danny Werfel recognized the importance of addressing the problems identified in TIGTA's report:

> I assure you, we're doing everything we can to re-look at this process to make sure that it moves more quickly and swiftly. It's too slow right now, I absolutely agree. But the reforms that we put in place, and I'm happy to send more time with you and your staff detailing exactly how we're looking at the reengineering these processes to make these improvements. We're going to do everything in our power to make sure that they take effect and take effect quickly.[441]

Commissioner Koskinen affirmed his commitment to fixing these problems – and to working with the Committee – during his confirmation hearing before the Committee:

> Taxpayer services need to be improved, particularly in the areas of tax-exempt organization filings and operations. There are several investigations ongoing into the delays encountered by many of those seeking to establish themselves as 501(c)(4) social welfare organizations. And I look forward to working with this committee as it concludes its investigation of that matter.[442]

Although there have been some changes at the IRS since May 2013, neither Mr. Werfel nor Mr. Koskinen has enacted the type of structural changes that are necessary to correct the serious problems identified by TIGTA and by this Committee. Moreover, the IRS unsuccessfully attempted to modify the regulations to constrain free speech of 501(c)(4) organizations, which would have institutionalized the type of targeting that TIGTA found to be problematic.

[441] Testimony of Danny Werfel, House Ways and Means Subcommittee on Oversight Holds Hearing on Oversight of the IRS Exempt Organizations Division After the Treasury Inspector General for Tax Administration's Audit (Sep. 18, 2013).
[442] Testimony of John Koskinen, Senate Finance Committee Confirmation Hearing on the Nomination of John Koskinen to be IRS Commissioner (December 10, 2013).

A. Although the IRS Has Addressed Some Problems Identified by TIGTA, There Is Much Work Left to Do

1. Initial IRS Response and Suspension of BOLO

There was a flurry of activity after the IRS targeting of conservative organizations became public in May 2013. The first glimpse inside the agency came on June 24, 2013, when the Principal Deputy Commissioner Werfel released a 30-day update. Among the key steps noted in that report were the results of the IRS's internal investigation, which found "significant management and judgment failures;" replacement of four levels in the management chain that had responsibility for the activities identified in the TIGTA report; and the suspension of use of the BOLO spreadsheet.[443] At the time of the 30-day update report, Lerner had been placed on paid administrative leave by the IRS. She eventually retired in September 2013 after an internal investigation found that she was guilty of "neglect of duties" and recommended her removal.[444] Notably, before TIGTA's report was released, Lerner had been contemplating retiring on October 1, 2013 – exactly one week after her actual retirement date.[445]

These initial actions did not immediately cease all of the practices that TIGTA found to be problematic. As discussed in Section III(G) of the Bipartisan Investigative Report, it appears that several months after TIGTA released its report, employees lacked appropriate instructions from management and possibly continued to pull out applications containing the words "Tea Party" for separate processing. Since the Committee conducted the interviews referenced in that section of the report, the IRS has issued additional guidance to employees implementing new procedures for reviewing tax-exempt applications.[446] We have no knowledge of whether the IRS's recent guidance has affected the screening procedures applied to incoming applications for tax-exempt status or whether the IRS continues to subject Tea Party applicants to improper levels of scrutiny named on their names or political affiliation.

2. The Expedited Process

In June 2013, the IRS also announced a "new voluntary process" for political advocacy organizations with applications for 501(c)(4) tax-exempt status that had been pending for more

[443] IRS, Charting a Path Forward at the IRS: Initial Assessment and Plan of Action (June 24, 2013). Appendix C is a memorandum from Karen Schiller titled Interim Guidance on the Suspension of BOLO List Usage (June 20, 2013). The memorandum instructed employees to immediately stop using the BOLO spreadsheet, including the Emerging Issues tab and the Watch List tab. However, employees were permitted to continue using other lists to identify and prevent waste, fraud and abuse.

[444] Washington Times, Lois Lerner, IRS Official in Tea Party Scandal, Forced Out for "Neglect of Duties" (Sep. 23, 2013).

[445] Email from Richard Klein to Lois Lerner (January 28, 2013) IRS0000202615 (email attachment omitted by Majority staff).

[446] IRS, Memorandum from Kenneth Corbin, Expansion of Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4) (Dec. 23, 2013); IRS, Memorandum from Stephen Martin, Streamlined Processing Guidelines for All Cases (Feb. 28, 2014).

than 120 days.[447] The IRS would grant tax-exempt status to applicants that certified that the organization "satisfies, and **will continue to satisfy**, set percentages with respect to the level of its social welfare activities and political campaign intervention activities[.]" Specifically, applicants were required to certify that during each past year that the organization has existed, during the current year, and during all future years in which the organization will rely on the IRS's determination of tax-exempt status:

- The organization has spent, or will spend, 60% or more of **both** the organization's total expenditures **and** its total time (measured by employee and volunteer hours) on activities that promote the social welfare; and
- The organization has spent, or will spend, less than 40% of **both** the organization's total expenditures **and** its total time (measured by employee and volunteer hours) on direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office.[448]

As of April 2015, the IRS reported that 145 political advocacy organizations in the "backlog" were offered expedited treatment; of those, 43 elected to participate in the expedited process and were granted tax-exempt status.[449] The low participation rate – less than a third of eligible organizations – indicates that the expedited process was a deeply flawed proposition. First and foremost, the standards were based on an arbitrary measure of organizational activity that is not found in any statute or regulation. Rather than asking applicants to certify that they will comply with the existing law, the IRS created new standards.

A second and related problem is that the invented standards are, in fact, more stringent than the existing law. The expedited option was not available to an organization that had, in the past, performed a legally-acceptable amount of political campaign intervention that exceeded 40%. Likewise, by attesting to these requirements, an organization would be forfeiting its ability to ever engage in the amount of political campaign intervention allowable under the current law, thereby restraining its speech.

Finally, the expedited process required applicants to certify that their submission was accurate under penalty of perjury. The IRS frequently requires all types of taxpayers to sign submissions under penalty of perjury. But in this area of tax law – where the IRS had difficulty applying its own statues and regulations, and then invented new standards just for this process – risking perjury seems like a risky proposition, particularly when the organization must perform a precise calculation of all past, current, and future activities.

[447] IRS, Charting a Path Forward at the IRS: Initial Assessment and Plan of Action, Appendix E (June 24, 2013).
[448] *Id*. (emphasis in original).
[449] IRS Briefing for SFC Staff (April 15, 2015).

Indeed, many organizations that were eligible for the expedited process elected to proceed with the IRS's standard process rather than submit to these onerous demands. The Majority staff spoke with attorneys who together represent a large number of Tea Party organizations, and they uniformly advised their clients not to participate in the expedited process. Some of those attorneys believed that the IRS then drew adverse inferences about their clients' level of political activities, a charge that the IRS has denied.

Despite these concerns, the IRS later broadened the expedited option to "include all applicants for 501(c)(4) status (as opposed to only those with applications pending for more than 120 days as of May 28, 2013) whose applications indicate the organization could potentially be engaged in political campaign intervention or in providing private benefit to a political party[.]"[450]

Overall, as of March 26, 2014, 117 applicants that were "centralized" by the IRS were still waiting for a final determination – more than one-fifth of the total number that were delayed. Tellingly, all of those organizations preferred to stick with the IRS's normal determination process, which by that point had resulted in delays of more than three years for some applicants. As of April 2015, 10 of those applicants were still waiting for a final determination of their tax-exemption.[451]

3. Further Updates on TIGTA Recommendations and Other Changes

Since May 2013, the IRS has continued to update the Committee about its progress in implementing TIGTA's recommendations and other changes to its review of applications for tax-exempt status. As of January 31, 2014, the IRS reported that it had implemented all of TIGTA's recommendations.[452] TIGTA concurred, writing in a March 2015 report that "[t]he IRS has taken significant actions to address the nine recommendations made in our prior audit report."[453] In that report, TIGTA made two additional recommendations: one related to employee training, and a second suggestion that if the expedited process becomes permanent, it should be available to "additional organizations with similar political campaign interventions."[454]

We note that in addition to its implementation of the recommendations outlined in TIGTA's March 2015 report, the IRS has also made a number of other changes to the EO division, which are reflected in the IRM and internal IRS operational procedures.

[450] IRS, Memorandum from Kenneth Corbin, Expansion of Optional Expedited Process for Certain Exemption Applicants Under 501(c)(4) (Dec. 23, 2013).
[451] IRS Briefing for SFC Staff (April 15, 2015).
[452] IRS, Exempt Organizations Recommended Actions Ending May 23, 2014.
[453] TIGTA, Status of Actions Taken to Improve the Processing of Tax-Exempt Applications Involving Political Campaign Intervention, TIGTA Audit Report 2015-10-025 (Mar. 27, 2015) p. 2.
[454] *Id.* pp. 11, 16.

B. ATTEMPTS BY THE IRS AND OTHERS TO SUPPRESS POLITICAL SPEECH AND DISCOURAGE AN INFORMED CITIZENRY MUST BE REJECTED

Following the release of the TIGTA report, some argued that although the IRS's actions were misguided, the larger underlying problem lies in law and regulations that are vague, outdated, and difficult to apply. Indeed, this theory is advanced in the Additional Democratic Views. We disagree. As described throughout this document, the fault in this matter lies squarely with IRS executives in Washington, D.C. who purposefully misapplied and manipulated well-established rules, thereby interfering with the work of EO field offices.

In response to these concerns, the IRS proposed regulatory changes in November 2013 that would have constrained political speech by 501(c)(4) organizations. Although the IRS later withdrew the regulations, the proposal should be recognized for what it was: an attempt to suppress dialogue that leads to informed debate. Based on these and other concerns, the proposed regulations were roundly rejected by citizens, regardless of their personal political affiliation.

Legislative proposals that would require near-universal disclosure of donors, such as those advanced by the Minority Staff, should also be rejected. These proposals show a troubling indifference to harassment of individuals that follows from the publication of donor identities – a concern that was raised by the American Civil Liberties Union (ACLU) in response to the IRS's proposed regulations on political speech. As the ACLU and others of all political affiliation have noted, there is a dark side to disclosure.

1. BACKGROUND ON 501(C)(4) EXEMPTION

Section 501(c)(4) provides a tax exemption for civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, and no part of the net earnings of which inures to the benefit of any private shareholder or individual. Treasury regulations provide that an organization is operated exclusively for the promotion of social welfare if it is engaged primarily in promoting in some way the common good and general welfare of the people of a community or bringing about civic betterments and social improvements.[455] Contributions to 501(c)(4) organizations are not tax deductible.[456]

Treasury regulations provide that the promotion of social welfare does not include "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" ("political campaign intervention").[457] However, social welfare

[455] 26 C.F.R. §§ 1.501(c)(4)-1(a)(1) and (2)(i) (1990). An organization is not operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations that are operated for profit. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii) (1990).
[456] 26 U.S.C. § 170 (2014). By contrast, contributions to 501(c)(3) organizations are deductible.
[457] 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii) (1990).

organizations are permitted to engage in political campaign intervention so long as the organization is primarily engaged in activities that promote social welfare.[458]

Under current Treasury regulations, the determination of whether an activity constitutes political campaign intervention depends on all the facts and circumstances of the particular case.[459] The rules concerning political campaign intervention apply only to activities involving candidates for elective public office; the rules do not apply to activities involving officials who are selected or appointed, such as executive branch officials and judges. Similarly, section 501(c)(4) organizations may engage in activities that educate the public on important issues. Thus, section 501(c)(4) organizations are allowed to hold candidate forums and distribute voter guides outlining candidates' positions on issues important, in the view of the organization, to the public. Section 501(c)(4) organizations also are allowed to conduct nonpartisan get-out-the-vote drives and voter registration drives.[460]

Similar rules apply for determining whether other types of section 501(c) organizations have engaged in political campaign intervention, including charities (section 501(c)(3)), labor and horticultural organizations (section 501(c)(5)), and business leagues (section 501(c)(6)). However, while section 501(c)(4), (5) and (6) organizations may engage in some political campaign intervention without jeopardizing exempt status, section 501(c)(3) organizations alone are prohibited by statute from engaging in any political campaign intervention.[461]

The lobbying and advocacy activities of a section 501(c)(4) organization generally are not limited, provided the activities are in furtherance of the organization's exempt purpose.

2. IRS'S PROPOSED REGULATORY CHANGES

On November 29, 2013, the Internal Revenue Service and the Treasury Department published proposed regulations regarding the political campaign activities of section 501(c)(4) organizations.[462] The proposed regulations, which were eventually withdrawn by the IRS in May 2014 in the face of fierce public opposition, sought to replace the present-law facts-and-circumstances test used in determining whether a section 501(c)(4) organization has engaged in

[458] Rev. Rul. 81-95, 1981-1 C.B. 332.
[459] Rev. Rul. 2007-41, 2007-25 I.R.B. 1421 (June 18, 2007) (analyzing 21 different factual scenarios involving section 501(c)(3) charitable organizations for political campaign intervention); Rev. Rul. 81-95, 1981-1 C.B. 332 (referencing section 501(c)(3) standards in determining whether activities of a section 501(c)(4) organization constitute political campaign intervention).
[460] The proposed section 501(c)(4) regulations, discussed *infra*, categorize all of these activities as political activity not consistent with the promotion of social welfare.
[461] 26 U.S.C. § 501(c)(3) (2014).
[462] Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG-134417-13, 78 Fed. Reg. 71535 (Nov. 29, 2013); incorporating Prop. Treas. Reg. §§ 1.501(c)(4)-1(a)(2)(ii), (a)(2)(iii), and (c).

political campaign intervention with an enumerated list of activities that constitute political campaign activities.[463]

The proposed regulations were intended to replace the political campaign intervention referenced in the existing section 501(c)(4) regulations (i.e., "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office") with a new defined term, "candidate-related political activity."[464] Candidate-related political activity is defined in the proposed regulations as: (1) communications that express a view on, whether for or against, the selection, nomination, election, or appointment of one or more clearly identified candidates (often referred to as express advocacy communications); (2) certain public communications (as defined) within 30 days of a primary election or 60 days of a general election that refer to one or more clearly identified candidates, or in the case of a general election one or more political parties; (3) communications the expenditures for which are reported to the FEC; (4) contributions (including gifts, grants, subscriptions, loans, advances, or deposits) of money or anything of value to or the solicitation of contributions on behalf of a candidate, a section 527 political organization, or a section 501(c) organization that engages in candidate-related political activity; (5) conduct of a voter registration drive or "get-out-the-vote" drive; (6) distribution of any material prepared by or on behalf of a candidate or by a section 527 political organization; (7) preparation or distribution of a voter guide that refers to one or more clearly identified candidates, or in the case of a general election to one or more political parties; and (8) hosting or conducting a forum for candidates within 30 days of a primary election or 60 days of a general election.[465]

For purposes of candidate-related political activity, the proposed regulations define the term "candidate" to mean "an individual who publicly offers himself, or is proposed by another, for selection, nomination, election, or appointment to any federal, state, or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not such individual is ultimately selected, nominated, elected, or appointed," including officeholders who are the subject of a recall election;[466] this includes certain judicial and executive branch appointments.

The proposed regulations would have applied only to section 501(c)(4) organizations.[467] Other section 501(c) organizations (including section 501(c)(3) charitable organizations, section 501(c)(5) labor and horticultural organizations, and section 501(c)(6) business leagues) would continue to use present-law rules concerning political campaign intervention. The regulations

[463] Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities*, REG-134417-13, 78 Fed. Reg. 71535 (Nov. 29, 2013) p. 71536.
[464] Prop. Treas. Reg. §§ 1.501(c)(4)-1(a)(2)(ii) and (iii).
[465] Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A).
[466] Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(B)(1).
[467] Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG-134417-13, 78 Fed. Reg. 71535 (Nov. 29, 2013) p. 71537.

were proposed to be effective on the date they were published in the Federal Register as final regulations.[468]

Conservative social welfare organizations – the types of organizations targeted by the IRS – weighed in strongly against the regulations. But it was not just conservative groups that submitted comments critical of the proposed regulations. Left-leaning and progressive groups also were highly critical. The ACLU, for example, submitted a comment letter arguing that the proposed regulations would "produce the same structural issues at the IRS that led to the use of inappropriate criteria in the selection of various charitable and social welfare groups for undue scrutiny." The ACLU argued that social welfare groups should be free to participate in the political process because that kind of participation "is at the heart of our representative democracy. To the extent it influences voting, it does so by promoting an informed citizenry."[469] In all, the IRS received more than 150,000 comments on the proposed regulation before the comment period closed on February 27, 2014 – by far the most comments ever submitted in response to a proposed IRS regulation.[470] On May 22, 2014, the IRS gave public notice that it view of the comments it received, it would make changes to the proposed regulation, issue a revised proposed regulation, and then hold a public hearing on that revised regulation.[471] The IRS has not indicated when the revised proposed regulation will be published.

3. LEGISLATIVE PROPOSALS

The legislative response to the proposed regulations that has garnered the most support from Republicans in the Senate is the Stop Targeting of Political Beliefs by the IRS Act of 2015 (S. 283), introduced on January 28, 2015, by Senator Jeff Flake (R-AZ). The bill would prohibit the Secretary of the Treasury from finalizing the proposed regulation, or from issuing other forms of guidance (e.g., revenue rulings, etc.) to restrict 501(c)(4) political activity. The bill also provides that the standards and definitions in effect on January 1, 2010, which are used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4), shall apply for determining the tax-exempt status of organizations under section 501(c)(4). The provisions in the bill would sunset after February 28, 2017.

[468] Prop. Treas. Reg. § 1.501(c)(4)-1(c). In the notice of proposed rulemaking, the IRS requested comments from the public on a number of issues, including: (1) whether the existing regulation that provides that an organization is operated exclusively for social welfare if it is engaged primarily in promoting in some way the common good and general welfare of the people of a community should be modified; and (2) whether the rules included in the proposed regulations should be extended to other section 501(c) organizations or to section 527 political organizations. Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG-134417-13, 78 Fed. Reg. 71535 (Nov. 29, 2013) p. 71537.
[469] Public comment letter from ACLU to IRS Commissioner John A. Koskinen (Feb. 4, 2014).
[470] Prepared Remarks of Commissioner of Internal Revenue Service John Koskinen Before the National Press Club, (Apr. 2, 2014).
[471] IRS, IRS Update on the Proposed New Regulation on 501(c)(4) Organizations (May 22, 2014).

The legislative solution suggested by former Chairman Wyden was the enactment of a bill he introduced on April 23, 2013, co-sponsored by Senator Lisa Murkowski (R-AK), the Follow the Money Act of 2013 (S. 791). The bill required comprehensive disclosure of independent federal election-related activity – both the money coming in and the money going out. Independent federal election-related activity involved an expenditure made by any person for the purpose of influencing the selection, nomination or election of any individual to any federal office which was made by a person or entity independent of the candidate and which was not coordinated with the candidate. The full universe of independent political spenders was covered by this regime. This included independent spending by individuals, unincorporated organizations, partnerships, Limited Liability Companies, corporations, trade associations, labor unions, SuperPACs, Indian tribes, 501(c) organizations of all types and 527 groups.

Not later than January 1, 2015, the bill required the FEC to make available a real-time contribution disclosure system to its regulated community. Once this system was implemented, the regulated community would be required to report contributions, including covered contributions to certain politically active 501(c)(4) organizations, not more than 10 days after receipt and, in some cases, just 48 hours after receipt. The FEC would immediately disclose this information to the general public upon receipt.

The bill did not address the question of how much 501(c)(4) organizations can spend on political activity, but in many cases it would have required disclosure of 501(c)(4) donor information currently protected as confidential by the Internal Revenue Code. Thus, donor anonymity would be a thing of the past for many 501(c) organizations.

What supporters of donor disclosure fail to fully appreciate are the important Constitutional values that would be impaired by their proposals. Just as we should not allow the government to pull back the curtain of privacy that surrounds the voting booth, we also should not allow government to use donor identification information to suppress free speech or impair the right to anonymous political association, including when those rights are expressed in the form of financial support for the causes of one's choice. This country has a long history of reprisals and harassment that follow government disclosure of the identity of donors to controversial groups. As the ACLU observed in its letter commenting on the proposed 501(c)(4) regulations: "It is well and long established that forced donor disclosure for any controversial group – even partisan groups – is unconstitutional."[472]

The ACLU was not making a frivolous argument. It was referring to U.S. Supreme Court cases such as *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), which recognized a Constitutional right to distribute anonymous campaign literature; *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982), which required exemption from donor disclosure for controversial groups subject to reprisal or harassment, and *National Association for the*

[472] Public comment letter from ACLU to IRS Commissioner John A. Koskinen (Feb. 4, 2014).

Advancement of Colored People v. Alabama, 357 U.S. 449 (1958), which prohibited the State of Alabama from requiring donor disclosure as a condition for in-state operation. As the ACLU pointed out, the *NAACP* Court expressly recognized that imposing taxes upon an activity as well as directly prohibiting an activity pose equally severe First Amendment concerns.

The pattern is well known. First, a governmental entity compels or permits the disclosure of donor identities. Next, private actors, armed with information regarding donor identities, embark on a campaign of reprisals and harassment. This is precisely the scenario that concerned the Supreme Court in the *NAACP* case: citizens that associate with particular groups, having had their identities disclosed, will be subjected to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility."[473] Nor should we forget that many of the taxpayer privacy protections in the Internal Revenue Code were added in response to the common practice of both Democrat and Republican Administrations in the 1970s and earlier of using the Internal Revenue Service and the government's taxing power to harass and intimidate political opponents.[474]

Contrary to the suggestion in the Additional Democratic Views, the Committee's Republican Members do not assert a Constitutional right to a charitable tax deduction or insist on a tax break when exercising one's free speech rights. As previously noted, contributions to 501(c)(4) organizations are not tax deductible. But the identity of the 501(c)(4) donors is protected. As set forth above, anonymity in one's political associations is an American value worth preserving and, as even progressive groups like the ACLU have observed, has Constitutional implications.

4. VIEW OF THE MAJORITY COMMITTEE MEMBERS ON LEGISLATIVE AND REGULATORY PROPOSALS

In the view of the Committee's Republican Members, it would have been a grave mistake for the Treasury Department to finalize the proposed 501(c)(4) regulations and thereby institutionalize the very type of IRS targeting of grassroots organizations that came to light in 2013. On April 2, 2014, Commissioner Koskinen said, "It's going to take us a while to sort through all [of the] comments [received by the IRS], hold a public hearing, possibly re-propose a draft regulation and get more public comments."[475] Subsequently, the IRS announced that it will publish a

[473] 357 U.S. 449 (1958) at 462. For a recent example of the economic reprisals that can accompany the disclosure of a political donor's identity, see the following post on The Mozilla Blog, dated April 5, 2014 (emphasis added): "On April 3, 2014 Brendan Eich voluntarily stepped down as CEO of Mozilla. It has been well documented that Brendan's **past political donations led to boycotts, protests, and intense public scrutiny.** Upon his resignation, Brendan stated: 'Our mission is bigger than any one of us, and under the present circumstances, I cannot be an effective leader.' **The intense pressure from the press and social media made it difficult for Brendan to do his job as CEO and effectively run Mozilla."**

[474] For a recent example of the harassment political donors can experience from agencies of the U.S. Government, including the Internal Revenue Service, when their identities are disclosed, see *Wall Street Journal*, Obama's Enemies List – Part II, (July 19, 2012).

[475] Prepared Remarks of Commissioner of Internal Revenue Service John Koskinen Before the National Press Club, (Apr. 2, 2014).

revised proposed regulation in the future.[476] We encourage the IRS to carefully review all existing and future comments and heed the warnings of people from all sides of the political spectrum. The IRS should refrain from issuing another fatally flawed proposed regulation.

Similarly, it would be a mistake for Congress to enact legislation that requires or allows the government to compel the disclosure of the identities of donors to 501(c)(4) organizations, or otherwise impose new limits on their operations or tax status. The Minority relies heavily on the notion that there was confusion at the IRS regarding the definition of "political activity" and imprecision in the term "primarily" to advance the argument that legislative changes to section 501(c)(4) are necessary. But the facts don't bear out the need for, much less the wisdom of, new legislation. First, testimony received by the Committee's investigators reveals that the EO tax law specialists in Cincinnati knew full well that "primarily" means 51%.[477] Second, the distinction between social welfare activity and political activity has a 55 year administrative track record of interpretation by the IRS. For example, nonpartisan activities like voter education, voter registration and get-out-the-vote drives have long been acceptable activities for 501(c)(4) organizations. It is the 2014 proposed regulation that has sown confusion in this area, not the well-worn 1959 regulation.

[476] IRS, Update on the Proposed New Regulations on 501(c)(4) Organizations (May 22, 2014).
[477] SFC Interview of Elizabeth Hofacre (Sep. 23, 2013) pp. 22-24.

IX. CONCLUSION AND RECOMMENDATIONS

The Committee's investigation uncovered serious organizational problems throughout the IRS, which are detailed both in the Bipartisan Investigative Report and in these Additional Republican Views. The IRS has received recommendations from TIGTA and from others, such as the National Taxpayer Advocate, and has been receptive to implementing at least some of them. Those measures are a step in the right direction, but they are not sufficient to correct the underlying problems uncovered by our investigation. We believe that any attempt to address those problems, if it is to be successful, must immunize the IRS from the whims of the party that controls the Executive Branch, whether that party is the Democratic or the Republican Party. Achieving this goal will not only require legislative changes, but also constant vigilance by both Congress and the public to ensure that the IRS stays true to its mission and administers the tax laws fairly and without regard to politics of any kind.

A chief finding of the Majority staff is that the organizational structure of the IRS enabled the political bias of individual employees like Lois Lerner to flourish. Indeed, at least partly because of this bias, the IRS uniformly targeted applications from Tea Party and other conservative groups for extra scrutiny, which resulted in their experiencing lengthy delays and in many cases, multiple rounds of burdensome development questions. Unlike other organizations seeking tax-exempt status including those on the left side of the political spectrum, applications received from Tea Party and other conservative groups were identified, collected and then subjected to full development based on the political philosophy of the groups, rather than on their planned activities. Accordingly, these Tea party and other conservative groups were, in fact, "targeted" by the IRS based on their political views. We found no evidence that the IRS scrutinized left-leaning organizations in the same manner, or for the same politically motivated reasons, as it targeted Tea Party and other conservative organizations.

Lois Lerner's personal political biases directly affected how the IRS processed applications received from Tea Party and other conservative organizations. Lerner managed a process that caused applications received from these organizations to undergo multiple levels of review by different components within the IRS, virtually guaranteeing that these applications would languish through the political campaign cycles of 2010 and 2012. Lerner showed complete disinterest in the plight of these organizations as they sought tax-exempt status, even in the face of growing Congressional interest in claims that they were being treated unfairly by the IRS because of their political views.

In 2012 Congressional interest finally prompted management above Lerner to intercede and take remedial measures to reduce the backlog of applications that she had allowed to grow. By that time, irreparable damage had been done to many of these Tea Party organizations. Most were small, grass-roots entities, unable to withstand the withering barrage of intrusive IRS development questions punctuated by year-long stretches of silence from the IRS. As a

consequence, many of these Tea Party organizations simply withdrew from the application process. Without IRS approval of their tax-exempt status, those that stayed the course found it difficult to raise funds to carry out their stated purposes, which generally included engagement in the political process. Many were forced to secure legal help in fending off the IRS at considerable expense to their fledging budgets, and with a corresponding adverse impact on their ability to exercise political speech.

Majority staff also found that top IRS officials, including Doug Shulman, Steve Miller and Lois Lerner, continuously misled Congress throughout 2012 and 2013 regarding the IRS's mistreatment of Tea Party and other conservative groups. They also actively concealed from Congress the existence of the IRS's political targeting of the Tea Party and other conservative groups with names that included "9/12 Project" or "Patriots," thereby allowing the IRS to escape scrutiny for that conduct until Lois Lerner made her fateful admission regarding political targeting at an ABA Conference meeting, just days before TIGTA released its report in which it concluded that the IRS had used "inappropriate criteria" when processing applications for tax exemption. The lack of candor by these three individuals in their communications with Congress not only concealed IRS wrongdoing, but it also undermined the exercise of congressional oversight into the IRS's treatment of Tea Party and other conservative groups.

Unfortunately, the lack of candor by senior IRS officials in their dealings with Congress did not end with the release of the TIGTA report in May 2013. The IRS was derelict in its duty to preserve backup tapes containing Lois Lerner's email and made subsequent false statements to Congress in June 2014 denying the existence of those backup tapes. Furthermore, IRS officials misrepresented to Committee staff in March 2014 that the documents that had been provided to the Committee by that date completed its production of documents. In truth, some senior IRS officials knew at that time that many of Lerner's emails from 2010 and 2011, a period critical to the ongoing Congressional investigations, were missing. In April 2014, the IRS concluded that the missing Lerner emails were not recoverable, and so notified the Treasury Department of their loss. Unfortunately, the IRS failed to also notify the Congressional committees conducting investigations of the IRS of their loss, choosing instead to conceal that fact, ostensibly in the hope that the loss might never be discovered by Congress. Only when this Committee demanded a written statement from the IRS Commissioner attesting to the completeness of the IRS's document productions did the IRS reluctantly reveal the loss of Lerner's emails. This pattern of shoddy conduct by IRS officials in their dealings with Congress is deeply disappointing and confirms that a "culture of concealment" remains at the agency.

In addition, Majority staff concluded that the Obama Administration's efforts to limit spending on political speech directly or indirectly influenced the treatment of conservative organizations by Executive Branch agencies. The IRS served as the lynchpin for Administration activities against conservative organizations. Not only did it engage in political targeting of Tea Party and other conservative groups, but it also actively assisted both the DOJ and the FEC in the pursuit of

various initiatives aimed at chilling the political speech rights of conservative organizations. Indeed, the IRS provided advice to the DOJ on various proposals to criminally punish organizations that engaged in political activity in excess of that stated in their applications for tax-exempt status, and offered FEC information regarding specific conservative organizations under investigation by the FEC for airing political advertisements.

Even if the IRS is able to root out all of the specific causes of problems noted in this report, only the most significant of which are mentioned above, it will still operate in a politicized environment by virtue of its position as a bureau within the Treasury Department, where the omnipresent IRS union wields considerable influence.

To enable the IRS to meet its mission of administering the tax code "with integrity and fairness for all," the following changes are needed:

1. The IRS must be removed from the authority of the Treasury Department and established as an independent stand-alone agency.
2. The Federal Service Labor-Management Relations Statute must be amended to designate the IRS as an agency that is exempt from labor organization and collective bargaining requirements.
3. Congress should amend section 7428 of the Internal Revenue Code to enable applicants for tax-exempt status under 501(c)(4), (5), and (6) to seek a declaratory judgment if the IRS has not rendered a decision on whether or not it will approve an application within 270 days. Doing so would afford these organizations the same remedy currently available only to 501(c)(3) organizations, thereby advancing parity among nonprofits.
4. A key finding of this report is that many small organizations with limited resources were overwhelmed by unduly burdensome IRS demands. We recommend that the IRS establish a streamlined application process for small organizations applying for tax exemption under 501(c)(3) and 501(c)(4) that enables them to avoid unnecessary administrative burdens, provided that appropriate conditions are satisfied.[478]
5. Any further attempt by the IRS to promulgate regulations revising the standard for determining whether section 501(c)(4) organizations have engaged in political campaign intervention must not chill the free exercise of political speech by those organizations, nor disproportionately affect organizations on either side of the political spectrum.

While Majority staff is confident in the soundness of the findings expressed herein, there is no doubt that its investigation into the IRS's treatment of political advocacy organizations seeking tax-exempt status was hampered, if not harmed, by the IRS's failure to preserve electronic records belonging to Lois Lerner, the central figure in this sordid story of how Tea Party and

[478] We note that the IRS's expedited process for applicants is currently limited to organizations that engage in political advocacy. As discussed in these Additional Republican Views, we do not believe that this process is an effective way to handle these applications, nor do we endorse extending that process to all applicants for tax-exempt status.

other conservative groups were targeted by the IRS because of their political views. Extraordinary efforts were made by TIGTA to locate and restore some of Lerner's lost email, and indeed, those efforts yielded positive results, with the recovery of over 1,300 emails not previously produced by the IRS. Moreover, Majority staff secured from sources, including the Treasury Department and the White House, copies of emails between their employees and Lerner in an effort to bridge the gap in the missing emails. Together with the nearly 1,500,000 pages of documents produced by the IRS, these documents reveal a disturbing pattern of mismanagement and politically motivated misconduct by IRS employees at all levels within the agency.