Orrin Hatch

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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 WYDEN

PREPARED BY DEMOCRATIC STAFF

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I. EXECUTIVE SUMMARY

The Committee has conducted significant investigations into the activities of nonprofits in recent years. The Finance Committee Democratic staff investigated Jack Abramoff's use of nonprofits such as Americans for Tax Reform and Citizens Against Government Waste to lobby Congress, summarized in a 2006 Finance Committee staff report.[1] Senator Grassley, when he was chairman or ranking member of the Committee, closely scrutinized the nonprofit sector, investigating religious organizations and nonprofit hospitals, among others. Together, Chairman Grassley and Senator Baucus investigated the Nature Conservancy, a 501(c)(3), in 2005.[2]

On May 10, 2013, the Director of IRS Exempt Organizations Lois Lerner disclosed that IRS employees selected tax exempt applications for further review with "names like Tea Party and Patriots and they selected cases simply because the applications had those names in the title." Lerner described this process of selecting cases for review because of a "particular name" as "wrong, insensitive, and inappropriate."[3]

In addition, Lerner described how the IRS improperly handled the tax-exempt applications that were set aside for further review, subjecting them to delays and overly broad and unnecessary requests for information.[4]

According to Lerner, IRS employees' inappropriate scrutiny of applications was not "because of any political bias." Rather, the employees were trying to streamline and centralize cases but "they didn't have the appropriate level of sensitivity about how this might appear to others and it was just wrong."[5]

On May 14, 2013, the Treasury Inspector General for Tax Administration (TIGTA) released a report finding that the IRS "used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based on their names or policy positions instead of indications of potential political campaign intervention."[6]

At the time of the disclosures from the IRS and TIGTA, there was speculation and concern expressed that singling out conservative organizations by name may have been a consequence of political bias or motivation on the part of IRS employees, possibly at the direction of political appointees at the IRS, Treasury Department or the White House.

The Committee began an in-depth bipartisan investigation to determine the facts surrounding the controversy due to the serious nature of allegations that political considerations may have driven

[1] Senate Finance Committee, Minority Staff Report: Investigation of Jack Abramoff's Use of Tax-Exempt Organizations (Oct. 2007).
[2] Washington Post, Senators Question Conservancy's Practices (June 8, 2005).
[3] American Bar Association, Transcript of The Exempt Organization Tax Review (May 10, 2013) ABA Tax Section's Exempt Organizations Committee Meeting, Vol. 72, No. 2 pp. 126-127.
[4] *Id*.
[5] *Id*.
[6] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013-10-053, (May 14, 2013).

the IRS's heightened scrutiny of conservative leaning organizations applying for tax-exempt status.

On May 20, 2013, the Committee requested that IRS answer questions and turn over internal documents relating to the targeting controversy.[7]

Key Democratic Staff Findings:

- Actions by IRS personnel were not politically motivated.
- Political appointees did not influence the enhanced scrutiny of 501(c)(3) and 501(c)(4) applications presenting political advocacy issues.
- Under federal tax law the IRS's scrutiny of tax-exempt applications showing political activity was completely justified.
- The process of examining applications was plagued by inefficiency, bad judgment, bad management, and unwarranted delay.

Staff investigators received over 1.5 million pages of documents and conducted 32 interviews with IRS employees.

The bipartisan narrative describes key events in the years 2010, 2011, and 2012 during which Tea Party and conservative-leaning applications were set aside for special analysis. A smaller number of politically left-leaning applications were also subject to special scrutiny during that time.

There are currently 1.5 million nonprofits in the U.S and 70,000 nonprofit applications per year are received by the IRS. Nonprofit organizations spent hundreds of millions of dollars to influence the 2010 and 2012 election cycles. A 501(c)(3) organization must be organized for religious, charitable, or educational purposes, and these organizations cannot participate or intervene in any political campaign activity.[8] A 501(c)(4) organization must be organized for the primary activity of promoting "general welfare of the people of the community" and may engage in political campaign activity only if the organization is determined not to be "primarily engaged" in campaign activity.[9]

Because federal law does not allow unlimited political activity by 501(c)(4) nonprofits, it was necessary for the IRS to scrutinize the applications of organizations seeking favored tax status, including those associated with the Tea Party. There is only a right to 501(c)(4) status under federal tax law if standards for that status are met by the applicant.

Some argue that there is a Constitutional First Amendment right to free speech through anonymous donations to 501(c)(3) and 501(c)(4) organizations. Contrary to this view, IRS Chief Counsel William Wilkins explained that case law indicates "the prohibition on political activity

[7] Letter from Chairman Baucus and Ranking Member Hatch to the Acting Commissioner Steven Miller (May 20, 2013).
[8] 26 U.S.C. § 501(c)(3) (2014).
[9] 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i) (1990).

by 501(c)(3)s is not a prohibition on free speech because there are other avenues for the speech to proceed that don't generate charitable deductions for the donor and that there is not a First Amendment right to a charitable deduction."[10] This same standard applies to 501(c)(4) nonprofits.

Section 501(c)(3) organizations must apply to the IRS to be recognized for tax-exempt status.[11] The tax law allows section 501(c)(4) organizations to operate as tax-exempt without applying for IRS recognition of their status, although most organizations apply for an IRS determination.[12] Once nonprofit status is granted, the IRS can investigate the political activity of nonprofits in a thorough, but evenhanded way. Nonprofit status can be terminated if it is determined that political activity is the primary activity of the nonprofit (see Section II(D) of the Bipartisan Investigative Report for discussion of the law governing 501(c)).

What is not defensible is the appearance the IRS gave of "targeting" the Tea Party, even though no evidence exists that it was based on political beliefs or orders from political appointees. And the best way to avoid that appearance would have been to process the Tea Party applications as quickly as possible using the fairest possible standards.

New IRS management has moved aggressively to address the broken system of processing 501(c)(4) applications with political advocacy issues by (1) removing key employees in the IRS who failed to properly manage the processing of these applications, (2) establishing new procedures to help process nonprofit applications quickly, and (3) processing nearly all the delayed applications.[13]

These actions will help ensure that mistakes made by the IRS in 2010, 2011 and 2012 are not repeated.

[10] SFC Interview of IRS Chief Counsel William Wilkins (Nov. 7, 2013) p. 28.
[11] 26 U.S.C. § 508(a) (2006).
[12] Notes of Steven Miller (undated) IRS0000505538-42.
[13] Based on data provided to the SFC by the IRS (April 8, 2015).

II. NO EVIDENCE OF POLITICAL MOTIVATION BY IRS EMPLOYEES

This investigation, based on staff interviews with 32 IRS employees and a review of 1.5 million IRS documents, found no evidence of political motivation driving the heightened scrutiny of Tea Party and conservative groups and the subsequent delays in processing their tax-exempt applications. Furthermore, TIGTA, whose report highlighting the inappropriate criteria used to identify tax-exempt applications for review was the impetus of this investigation, made no finding that political motivation was behind the inappropriate activity.[14]

During interviews with Committee staff, IRS employees did not cite political motivation as a factor for heightened scrutiny of Tea Party applications. Attached are questions and answers from each of the interviewees denying that politics was involved.[15]

While TIGTA should be lauded for exposing the flawed review process used by the IRS in screening tax exempt applications for political activity, the narrow scope of its report and its omission of key information contributed to a misimpression that the controversy was politically motivated.

TIGTA documents released months after the report was published show that its investigative staff, based on a review of 5,500 emails, concluded three weeks prior to the release of the audit report that there was no political motivation on the part of IRS employees. An email from Timothy Camus, the Deputy Inspector General for Investigations at TIGTA, concludes:

> Review of these emails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. <u>There was no indication that pulling these selected applications was politically motivated.</u> The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. This is a very important nuance.[16]

Despite this finding of no political motivation by IRS employees in selecting Tea Party groups for additional scrutiny, in a glaring omission, TIGTA failed to mention this investigative finding by the Deputy IG in its audit report.

TIGTA Chief Counsel Michael McCarthy also concluded that TIGTA had no evidence that IRS employees had political motivations. After McCarthy reviewed a draft of the TIGTA 501(c)(4)

[14] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (May 14, 2013) TIGTA Audit Report #2013-10-053.
[15] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).
[16] Email from TIGTA Deputy Inspector General for Investigations Timothy Camus to TIGTA staff (May 3, 2013) (emphasis added).

audit report in late February 2013, he suggested that the TIGTA auditors had overreached in writing that IRS officials "targeted" the Tea Party. He wrote:

> As an initial concern, "targeted" has a connotation of improper motivation that does not seem to be supported by the information presented in the audit report. I think "selected" or even "singled out" would be more accurate.[17]

The same counsel commented on the criteria used in the BOLO list (discussed in the following section "The BOLO List").

It was not until a Congressional hearing held three days after the TIGTA report was released, in the midst of a media frenzy that Inspector General Russell George confirmed, in response to questioning from House Ways and Means Committee Ranking Member Sander Levin, that his office did not find any evidence of political motivation on the part of IRS employees.[18]

> LEVIN: Did you find any evidence of political motivation in the selection of the tax exemption applications?
>
> GEORGE: We did not, sir.[19]

Additionally, the public did not learn about TIGTA's review of IRS staff emails and its conclusion about the nonpolitical nature of this controversy until House Oversight Committee Democrats and House Ways and Means Democrats released the internal TIGTA email describing the review in July 2013.[20] TIGTA failed to include critical information about the nonpolitical nature of the IRS mismanagement of the Tea Party applications that would have provided crucial context to a sensitive issue.

[17] Email from TIGTA Chief Counsel Michael McCarthy (Feb. 28, 2013) TIGTA008002.
[18] House Ways and Means Committee Hearing, Hearing on Internal Revenue Service Targeting of Conservative Groups (May 17, 2013).
[19] *Id*.
[20] Committee on Oversight and Government Reform, "Cummings Asks Issa to Recall IG for Testimony at Upcoming IRS Hearing," Democratic Press Release (July 12, 2013)

III. NO EVIDENCE OF PRESSURE FROM OBAMA ADMINISTRATION POLITICAL APPOINTEES TO INCREASE SCRUTINY OF POLITICALLY ACTIVE NONPROFITS

There is no evidence of Presidential appointees at the IRS, the Treasury Department or the White House pressing IRS personnel to target nonprofits engaging in political activity.

All of the IRS personnel interviewed were asked directly whether political appointees in the Obama administration had influenced the processing of the applications with political activity issues, and not one of them identified any pressure from the political ranks.[21]

In a Senate Finance Committee hearing on the TIGTA report in May of 2013, Senator Crapo questioned TIGTA IG Russell George on this issue.

> Senator Crapo: You know there has been a lot of discussion about who knew what and when they knew it. One of the big questions I have, Mr. George, is it seems that there is an argument being made that there was no political motivation in these actions. Is that a conclusion that you have reached?
>
> Mr. George: In the review that we conducted thus far, Senator that is the conclusion we have reached.
>
> Senator Crapo: And how do you reach that kind of a conclusion?
>
> Mr. George: In this instance it was as a result of the interviews that were conducted of the people who were most directly involved in the overall matter, so you take it one step by another and we directly inquired as to whether or not there was direction from people in Washington beyond those who are directly related to the Determinations Unit … they did indicate to us that they did not receive direction from people beyond the IRS.
>
> Senator Crapo: Whey you say "people beyond the IRS," that could be anyone up the chain of the IRS?
>
> Mr. George: It in theory could be, but we have no evidence thus far that it was beyond, again, the people in the Determinations Unit.[22]

The TIGTA office reiterated this point in an answer to questions posed by the Finance Committee:

> Did any official from the office of the president or the White House have any form of communication with any IRS official employed in the Tax Exempt and Government Entities Division between January 20, 2009 and the present?

[21] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).
[22] Senate Finance Committee Hearing, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) p. 19.

> List the days any communications occurred and the form it took (i.e. phone, email, in person, etc)

TIGTA responded:

> We have no knowledge of any communications between the White House and any employee in the Tax Exempt and Government Entities Division.[23]

And the question was asked again with a focus on the Treasury Department:

> Did any employee of the Treasury Department (excluding the IRS) who was appointed by the President have any form of contact with any employee of the Tax Exempt and Government Entities Division between January 1, 2010 and May 1, 2013?
>
> List the days any communications occurred and the form it took (i.e. phone, email, in person, etc.)

TIGTA responded:

> We have no knowledge of any communication between Presidential appointees at the Department of Treasury and any employees in the Tax Exempt and Government Entities Division.[24]

[23] Senate Finance Committee Hearing Questions for the Record, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) p. 107.
[24] *Id*. p. 108.

IV. DELAYS IN PROCESSING OF NONPROFIT APPLICATIONS

The key failure in this matter was the delay in processing the Tea Party and other conservative leaning applications for 501(c)(4) status. The IRS took over two years to process what were essentially a handful of applications. In February of 2010 the first Tea Party applications were received by the Cincinnati office. In March 2012 TIGTA began their audit. Making a decision on one application a day during this period would have avoided most of the delay in processing the applications.

Senior leadership at the Exempt Organizations office should have stepped in much earlier in the process and demanded expedited consideration of these politically sensitive applications. They failed to take charge. The applications piled up, complaints from Congress and the applicants intensified, and a crisis developed. Eventually TIGTA stepped in to investigate.

The decision in 2010 to allow the applications to pile up while a confusing and inefficient process for analyzing them was developed over the next two year period is inexplicable and inexcusable.

The IRS prides itself on being nonpolitical. However, in this case a more politically astute leadership team would have never let this problem develop.

V. LACK OF CLARITY IN STANDARDS FOR POLITICAL ACTIVITY BY 501(C)(4) NONPROFITS

While it is not an excuse for the delays in processing, it is a fact that the rules for political activity by 501(c)(4)s are extremely hard to understand.

501(c)(4) are intended to be organized exclusively for the promotion of social welfare, however, social welfare organizations are permitted to engage in political campaign activity so long as it is not the organization's primary activity.[25]

The primary activity standard (discussed in the following section entitled "Need for Reform of the Tax Code Related to Political Activity of Nonprofits") is confusing and imprecise. While it is logical to assign a percentage to determine whether political campaign activity is an organization's primary activity, – 51%, 60%, 75% - the law and regulations do not set such a number.[26] Without a percentage standard to apply, it is extremely difficult to make judgments about an application from a 501(c)(4) nonprofit which shows an intent to engage in political activity.

Second, "political activity" is not well defined. The law provides virtually no guidance at all on what "political activity" means. This lack of clarity in the law, both on the primary activity standard and on what constitutes political activity, partially explains why IRS personnel froze at the sight of hundreds of applications exhibiting evidence of political activity.

This lack of clarity should have been well known to senior members of the Exempt Organizations team – the law and the regulatory structure had been on the books since 1959**.**

Focused and aggressive assistance to the Cincinnati office by senior management in Washington D.C. could have overcome the confusion surrounding the rules for 501(c)(4) nonprofits. Inept management plus an uncertain legal and regulatory situation led to two years of confusion and delay.

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[25] Joint Committee on Taxation, "Report to the House Committee on Ways and Means on Present Law and Suggestions for Reform Submitted to the Tax Reform Working Groups" (May 6, 2013) p. 35.

[26] The Additional Republican Views are dismissive of the difficulty in determining this standard, stating that stuff knew full well that "primarily" means 51%. While some IRS staff members admitted to using a percentage test, such a test is not supported by regulations or caselaw. The IRS points to a number of sources in this regard, see, *e.g*. Treas. Reg. § 1.501 (c)(4)-1 (a)(2) (No percentage test established), Rev. Rul. 68-45, 1968-1 C.B. 259 (Principal source of income does not determine an organization's primary activity under § 501 (c)(4); all facts and circumstances are considered). Haswell v. United States, 500 F.2d 1133, 1142, 1147 (CI. CI. 1974) ("A percentage test … is not appropriate. Such a test obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances in the context of the totality of the organization.") Contracting Plumbers v. United States, 488 F.2d 684, 686 (2d Cir. 1973) (multiple factors relevant in applying this standard, including formative history, stated purposes, and actual operations). Seasongood v. Commissioner, 227 F.2d 907, 909, 912 (6th Cir. 1955) (expenditures, employees, and organization's time and effort considered). See also, Exclusively Standard Under § 501(c)(4), prepared by IRS at 14, ("The IRS has not published a precise method of measuring exempt activities or purposes in any of its published guidance, thought three revenue rulings have state that all of the organization's activities must be considered and that there is no pure expenditure test.").

VI. THERE WAS AN INCREASE IN APPLICATIONS FROM RIGHT-LEANING NONPROFITS

The IRS was scrutinizing progressive non-profits with political activity in addition to Tea Party-related applications, as described below in the section entitled "Liberal/Progressive Groups Were Scrutinized by the IRS."

However evidence suggests that applications from conservative-leaning groups substantially outnumber applications from left-leaning groups. In fact, EO staff told the Committee they were "inundated" with Tea Party application issues in 2010.[27] This trend continued at least through 2011, when Holly Paz observed "EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes, and similar matters."[28] The greater number of Tea Party applications resulted in a greater number of Tea Party applications being scrutinized. This outcome was used to establish an unproven narrative of bias against nonprofits on the conservative side of the political spectrum.

One explanation is the increase in the amount of political activity engaged in by the Tea Party and related organizations. The health care reform struggle resulted in many groups mobilizing to influence the political system in 2009 and 2010.

But this does not explain the intense interest by hundreds of groups in becoming 501(c)(4) organizations.

There is some evidence that conservative groups were competing for anonymous donations to fund their activities, donations from a number of very wealthy conservative donors. In 2010, Scott Reed, a Republican lobbyist and the Chamber of Commerce's political strategist, told the Center for Public Integrity in an interview that "501cs are the keys to the political kingdom … because they allow anonymity."[29]

A *Wall Street Journal* article published on August 28, 2013 provides some clues about why the Cincinnati office found itself in 2010 looking at dozens of right leaning organizations seeking non-profit status under the Internal Revenue Code. The political activity of the Tea Party movement, which was born in the summer of 2009 as citizens participated in town hall meetings protesting efforts by Congress to reform the health care system, helped the Republican Party take control of the House of Representatives in the 2010 elections.[30]

[27] SFC Interview of Liz Hofacre (Sept 24, 2013) pp 61-64.
[28] Email chain between Holly Paz and Janine Cook (July 18-19, 2011) IRS0000429489.
[29] Center for Public Integrity, Campaign Cash: The Independent Fundraising Gold Rush since "Citizens United" Ruling (October 4, 2010).
[30] *Wall Street Journal*, "Anger at IRS Powers Tea-Party Comeback" (Oct. 10, 2013).

The *Journal* article focuses on the Tea Party Patriots group, explaining that it applied for nonprofit status in late 2010. The *Journal* article stated that the Tea Party Patriots had a 400,000 person donor base, a $24 million a year budget and its director made $250,000 a year.[31]

The article explained: "One problem dogged the group: The Patriots didn't have tax exempt status, a disincentive to some potential donors. The group applied for such status in late 2010 but says it had heard nothing from the IRS during all of 2011."[32]

Nonprofits do not need to publically disclose who has donated funds, nor do they need to disclose how much an individual or corporation has contributed.

The *Wall Street Journal* article confirms a widely held belief that political contributions are disguised by cycling them through nonprofits. Again, no dollar amount from any individual is revealed to the public.

This same incentive for obtaining nonprofit tax status is identified in the article in a quote from Jenny Beth Martin, executive director of the Tea Party Patriots: "I kept telling everyone - including the big donors who wouldn't give to us without our nonprofit status – that the IRS appeared to be targeting tea-party groups."

The influx of 501(c)(4) applications to the IRS may have been the result of a desire to attract "big donors" who would not give to right leaning groups "without …. nonprofit status."[33]

Finally, many point to the *Citizens United* decision as the reason political spending soared during the years in question.

Acting Commissioner Steven Miller told the Finance Committee that the number of 501(c)(4) applications doubled since "*Citizens United* released this wave of cash" and "some of that cash headed towards c(4) organizations. That's proven out by FEC data and IRS data."[34]

[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] Senate Finance Committee Hearing, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) p. 23.

VII. THE "BOLO" LIST

Evidence suggests that the number of conservative-leaning tax-exempt organizations active in this time period outnumbered liberal organizations.[35] The number of 501(c)(4)s reporting political campaign activities almost doubled from tax year 2008 through 2010, and the amount of campaign activity for large filers almost tripled.[36] According to the Center for Responsive Politics, more than 80% of the political funds spent in the 2012 elections by nonprofits were sponsored by conservative 501(c)(4)s.[37] This amount of spending, along with the desire to attract large donors, partially explains why most of the nonprofit applications with political advocacy issues were from conservative-leaning organizations during 2010, 2011 and 2012. The IRS was not targeting these groups, rather it was facing the reality that more politically active conservative groups than left-leaning groups were sending in applications to the IRS Exempt Organizations office in Cincinnati.

A great deal of attention has been focused on the "Be On The Lookout" (BOLO) list which designated the Tea Party as a term for IRS employees to watch for when reviewing applications for nonprofit status.

There is no question that the use of the BOLO and the terms used therein presents a very unattractive picture of an IRS focus on Tea Party groups seeking nonprofit status. Even Lois Lerner believed it was wrong to place the term "Tea Party" on the BOLO list.[38] Placing names of right-leaning groups on the BOLO list was inappropriate.

While not endorsed by the Democratic staff, another point of view on how the IRS operated should be noted. The charge is that Cincinnati "targeted" the Tea Party because of its political affiliation. But once the IRS had selected the two Tea Party applications for review in the Washington D.C. office it can be argued that it was logical to develop a method of collecting all the Tea Party applications that continued to surface in Cincinnati. The BOLO list can be seen as an efficient procedure to use to make sure personnel in Cincinnati identified the right applications to set aside while Washington D.C. determined the best way to deal with these applications. Applications by left-leaning groups were also collected in this manner.

The IRS receives 70,000 applications a year for nonprofit status. With so many applications to process the placement of terms on a BOLO list was one way to gather all of the relevant applications in one place while the experts in Washington D.C. delivered to Cincinnati a plan for approving or disapproving the applications.

Supporting this perspective, TIGTA's Chief Counsel expressed concern about TIGTA describing the BOLO list terms – Tea Party, 9/12 and Patriots – as "inappropriate" because it did help IRS screeners centralize political cases. He wrote in an email:

[35] The IRS receives 70,000 applications for nonprofit status each year. The Committee did not have the resources necessary to determine the total number of conservative and liberal organizations applying during this time period.
[36] Email chain between Justin Lowe, Justin Abold, and others (May 6, 2013) IRS0000494805-29.
[37] USA Today, Dark Money of Non-profit Political Groups Targeted (June 11, 2013).
[38] Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735.

> Also, it is not clear why exactly we find the criteria used were "inappropriate."
>
> It is because specific names associated with political activity shouldn't be used as criteria? That would seem to make it difficult for the IRS to identify potential political applications for referral to the specialized unit. If this is the rationale, the information in footnote 11, that the use of organization names occurs in non-political cases as well, seems like it needs more attention, since it suggests both that the IRS was not politically motivated in this case, and that our recommendations might need to be broader.
>
> Or are we saying it was inappropriate because the use of names was one-sided, i.e. name criteria included only certain types of groups seen as conservative, and names of other political groups with different policies should have also been included? If that is the rationale, do we have evidence that similarly situated groups from the left side of the political spectrum should have been included by name in the criteria, but were not? The later sections of the report seem to suggest this, but it is not clear.[39]

The TIGTA Chief Counsel makes two critical points:

> (1) Using names in the BOLO list simply helped the IRS "identify potential political applications for referral to a specialized unit." The names were not placed on the BOLO list because of political bias.
> (2) Use of names in the BOLO list identifying left-leaning groups (as reviewed in following section) is evidence that the IRS was evenhanded in its administrative processing of 501(c)(4) applications.

[39] Email from TIGTA Chief Counsel Michael McCarthy (Feb 28, 2013) TIGTA008002.

VIII. LIBERAL AND PROGRESSIVE GROUPS WERE SCRUTINIZED BY THE IRS

The IRS's treatment of liberal, Democratic, and progressive organizations applying for tax-exempt status was similar to its treatment of Tea Party applicants. Although TIGTA intentionally limited the scope of its report to "narrowly focus on Tea Party organizations" at the request of the Chairman of the House Committee on Oversight and Government Reform,[40] many of TIGTA's findings with respect to the IRS's treatment of Tea Party groups also apply to the IRS's treatment of left-leaning organizations before and concurrent with the IRS's screening of Tea Party groups.

A. IRS DETERMINATIONS SCREENED LEFT-LEANING GROUPS FOR REVIEW

TIGTA characterized the IRS Determinations Unit's use of "specific names (Patriots and 9/12) or policy positions" to identify cases to be reviewed for political activity as inappropriate.[41] However, TIGTA's audit did not focus on similar methods used by the IRS to identify and select left-leaning applicants for review.[42]

A PowerPoint presentation and notes from a July 28, 2010 screening workshop meeting show that IRS employees were instructed to look for applications with the terms progressive and Emerge (an organization that sought to train female Democratic political candidates) in addition to Tea Party groups.[43] The notes from the meeting state that Gary Muthert indicated that the "following names and/or titles were of interest and should be flagged for review:

- o "9/12 Project,
- o "Emerge,
- o "Progressive
- o "We The People,
- o "Rally Patriots, and
- o "Pink-Slip Program."[44]

Similarly, the PowerPoint presentation from this screening workshop has a slide that reads, "Politics" with a picture of an elephant and a donkey. The slide states "Look for names like" preceding additional slides with the words "Tea Party … Patriots … 9/12 Project … Emerge … Progressive….We the People" under the heading "Current Activities."[45]

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[40] The Hill, IG: Audit of IRS Actions Limited to Tea Party Groups at GOP Request (June 26, 2013).
[41] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013-10-053 (May 14, 2013).
[42] It should also be noted that the term "Patriot" does not even necessarily indicate the organization is conservative leaning. According to Center for Responsive Politics, a group called Patriot Majority was the most active left-leaning group in 2012 election cycle, and the 14th most politically active of all 501(c)(4)s.
[43] Screening Workshop Notes (July 28, 2010) IRS0000012315; Screening Workshop PowerPoint (July 28, 2010) IRSR0000169695.
[44] Screening Workshop Notes (July 28, 2010) IRS0000012315.
[45] Screening Workshop PowerPoint (July 28, 2010) IRSR0000169695.

Numerous iterations of the BOLO spreadsheet included the term "progressive" on the "TAG Historical" tab. For example, a BOLO list dated August 12, 2010 instructed screeners to flag applications for the word "progressive." The BOLO list entry for "progressive" further instructed screeners that the:

> "Common thread is the word 'progressive.' Activities appear to lean towards a new political party. Activities are partisan and appear as anti-Republican. You see references to 'blue' as being 'progressive.'"[46]

According to IRS agent Ron Bell, who was responsible for the BOLO list, screening terms were placed on the "Tag Historical" tab after IRS employees were not seeing the cases as frequently.[47] While the organizations with the name "progressive" in their name were not applying for tax-exempt status as frequently as conservative or Tea Party organizations, the IRS was still instructing its employees to screen and set aside cases because of potential political activity based on the word "Progressive."

The Emerge applications that screeners were instructed to flag at the screening workshop were not specifically listed on the BOLO, but an IRS Determinations manager alerted screeners via email on September 24, 2008 to look for applicants with "Emerge" in their name along with other "politically sensitive" cases.[48]

1. ACORN

Another PowerPoint presentation presented at training events in June and July of 2010 titled "Heightened Awareness Issues," listed "Successor to Acorn" as a "Watch For Issue" specifying that "[s]pecial handling is [r]equired when [a]pplications are [r]eceived."[49] ACORN (Association of Community Organizations for Reform Now) was a national "community organization group" with local chapters that "fought for liberal causes like raising the minimum wage, registering the poor to vote, stopping predatory lending and expanding affordable housing."[50] In addition, ACORN assisted lower income families with tax return preparation.[51] The national organization declared bankruptcy in the wake of accusations of fraud, embezzlement, and mismanagement but several local organizations decided to regroup under new names.[52]

[46] Email from Liz Hofacre to IRS Staff (July 27, 2010) IRS0000008609-24.
[47] SFC Interview of Ron Bell (July 30, 2013).
[48] Email from Joseph Herr to IRS EO screeners (Sep. 24, 2008) IRS0000011492.
[49] Heightened Awareness Issues PowerPoint, IRS0000557291; Email between EO Employees (May 18, 2010) IRSR0000195587.
[50] *New York Times*, "ACORN on Brink of Bankruptcy, Officials Say" (May 19, 2014).
[51] *Id*.
[52] *Id*.

An entry for "ACORN successors" appears on copies of the BOLO list examined by the Committee from 2010 until it was removed by EO Director of Rulings and Agreements Holly Paz in June 2012.[53]

On March 22, 2010, EO Determinations Director Cindy Thomas notified EO Technical that descendants of ACORN were reorganizing citing three specific cases.[54] In April 2010, Sharon Camarillo emailed Cindy Thomas and Robert Choi telling them that EO Determinations received two ACORN-successor cases.[55]

The August 2010 BOLO lists "ACORN Successors" as an "Issue Name." The description states that "Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications." Screeners are instructed to send these cases "to the TAG Group."[56]

An October 7, 2010 email from Jon Waddell alerted Steven Bowling and Sharon Camarillo to two ACORN-related cases. Waddell recommended sending an alert to screeners "to be on the lookout for the following name [and] application factors associated with ACORN related cases."[57] In addition he suggested adding the following "factors to the Watch Issue Description section for this category:

> "1. The name(s) Neighborhoods for Social Justice or Communities Organizing for Change.
>
> "2. Activities that mention Voter Mobilization of the Low-Income/Disenfranchised.
>
> "3. Advocating for Legislation to Provide for Economic, Heathcare, and Housing Justice for the poor.
>
> "4. Educating Public Policy Makers (i.e. Politicians) on the above subjects." [58]

Sharon Camarillo forwarded the alert to John Shafer instructing that his screeners "be on the lookout for these cases."[59] John Shafer forwarded Camarillo's email to IRS screeners in his group.[60]

The February 2, 2011 BOLO instructs IRS screeners to look for the words "ACORN" or "Communities for Change in the name and/or throughout the application." It reads:

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[53] Email chain between Holly Paz, Cindy Thomas and others (June 1, 2012) IRS0000013434-35.
[54] Email from Cindy Thomas to Steven Grodnitzky (Mar. 22, 2010) IRS0000458448.
[55] Email from Sharon Camarillo to Cindy Thomas and Robert Choi (Apr. 28, 2010) IRS0000458467.
[56] Copy of Combined Spreadsheet TAG 8 12 10. (Aug. 12, 2010).
[57] Email from Jon Waddell to Steven Bowling and Sharon Camarillo (Oct. 7-8, 2010) IRS0000410433.
[58] *Id*.
[59] Email chain between EO Employees (Oct. 7-8, 2010) IRS0000389342.
[60] *Id*.

> Local chapters of the former ACORN organization have reformed under new names and are requesting exemption under section 501(c)(3). Succession indicators include ACORN and Communities for Change in the name and/or throughout the application.[61]

ACORN cases continued to be screened in 2012. Ron Bell wrote an email to Carter Hull on May 13, 2012 stating: "I've got a case that I believe is an acorn successor org. I googled the name of the org and that is where several websites (such as the capital research center) indicate that it is an acorn successor. The BOLO list states to contact you… Please advise how you want to process this case."[62] [sic]

2. WATCH FOR "OCCUPY" GROUPS

In January 2012, the IRS Determinations office began screening organizations with the term "Occupy" in its name on the "Watch For" list on the BOLO. After a news article was distributed within the IRS that suggested some organizations affiliated with the Occupy movement were seeking tax exempt status, Cindy Thomas told Steven Bowling, the manager of the IRS Determinations group that handles political advocacy cases, that the Occupy cases should be referred to his group so they can be worked "with the advocacy cases."[63]

EO Determinations Group Manager Steven Bowling told Cindy Thomas that the BOLO list would need to be modified in order to properly flag the Occupy cases but expressed frustration that the IRS does not want to use the words "Tea Party" or "Occupy" in screening.[64] Thomas replied:

> [w]e can't refer to "tea party" cases because it would appear as though we're singling them out and not looking at other Republican groups or Democratic groups… How about a compromise – What do you think about changing the description for advocacy organizations on the Emerging Issues tab to that which you've included under scenario #1; then, you could include the Occupy description from your scenario #2 on the Watch For tab specifying that these cases should be referred to your group? We could still have the same grade 13 agents working the advocacy and Occupy cases.[65]

After receiving this instruction from Thomas, Bowling adds "$ocial economic reform / movement" to the BOLO entry for advocacy cases. In addition, Bowling added "Occupy orgs" to the BOLO watch list. Ronald Bell wrote an email to Bowling questioning the need for a separate entry for "Occupy orgs" on the watch list since he thought "$ocial economic reform …

[61] BOLO Spreadsheet (Feb. 2, 2011) IRS0000389362.
[62] Email from Ronald Bell to Carter Hull (May 13, 2012) IRSR0000054963.
[63] Email chain between EO Employees, (Jan. 20, 2012) IRSR0000013418-19.
[64] *Id*.
[65] Email chain between EO Employees, (Jan. 20, 2012) IRSR0000013414; Email from Steven Bowling to Ronald Bell, (Jan. 25, 2012) IRSR0000013181.

was our 'code word' for the occupy organizations." Bowling replied, "I think we can leave it in. Some of the orgs are pushing that other than occupy groups."[66]

Emails written in May 2012 show that at least two Occupy cases were flagged by IRS screeners after the term was added to the BOLO list.[67] By the next month, Holly Paz had Cindy Thomas revise the BOLO list to "remove the references to ACORN and Occupy from the 'Watch List'" and replaced the "Emerging Issue" description of ideological positions of conservative and liberal groups with neutral language.[68]

3. LIBERAL AND PROGRESSIVE ORGANIZATIONS EXPERIENCED THREE-YEAR DELAYS

TIGTA's finding that "[o]rganizations that applied for tax-exempt status and had their applications forwarded to the team of specialists experienced substantial delays"[69] applies to left-leaning applicant organizations in addition to Tea Party and conservative groups. The Committee investigation and press reports show that applicants affiliated with Emerge, ACORN successor groups, and others also waited years for a determination from the IRS after their applications were flagged as potentially political by screeners and forwarded to the EO Technical office in Washington, D.C.

Emerge

In the case of three of the Emerge groups, it took three years from the time they applied until the applications were denied. Previously the IRS erroneously approved five applications affiliated with Emerge for 501(c)(4) status from 2004 through 2008, including the main umbrella organization Emerge America.[70] These approvals were subsequently determined to have been in error because Emerge groups were found to benefit the Democratic Party.[71]

On September 2008, emails show that IRS employee Donna Abner recommended issuing an "alert" for other incoming Emerge cases because of the "partisan nature of the cases" as well as a reminder that "'sensitive political issue' cases are subject to mandatory review" per IRS guidelines and subject to full development.[72] EO Technical staff asked EO Determinations to transfer the Emerge Maine and Emerge Nevada applications on October 10, 2008 to be held "until the litigation on this issue and concluded and then we will work them."[73] EO Technical instructed EO Determinations to hold any additional Emerge cases "pending the outcome of a

[66] Emails between Steven Bowling and Ronald Bell (Jan. 25, 2012) IRS0000013187.
[67] Email chain between EO Employees (May 24- 27, 2012) IRS0000013234.
[68] Email from Holly Paz to Cindy Thomas (June 1, 2012) IRS0000013434.
[69] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013-10-053 (May 14, 2013).
[70] Email from Donna Abner to Cindy Wescott, Sharon Camarillo, and Brenda Melahn (Sep. 8, 2008) IRS0000012292.
[71] Email from Park Nalee to Vasu Nair (October 21, 2011) IRS0000636331.
[72] Email from Donna Abner to Cindy Wescott, Sharon Camarillo, and Brenda Melahn (Sep. 8, 2008) IRSR0000012292.
[73] Email from Justin Lowe to Jon Waddell (Oct. 10, 2008) IRS0000012299.

similar issue in the DLC litigation."[74] However, a January 18, 2010 Sensitive Case Report indicates that Emerge Massachusetts applied for tax-exempt status on August 15, 2008 and was transferred to EO Technical on April 16, 2009. Additionally, Emerge Oregon applied on February 9, 2010 and its application was transferred to EO Technical on April 14, 2010.[75] The IRS did not inform the four Emerge groups, whose cases were selected for review and then developed at EO Technical until 2011, that their applications had been denied, creating delays of approximately three years for some of the organizations.[76]

ACORN

Organizations the IRS determined to be related to the disbanded ACORN organization also experienced delays of nearly three years. EO Determinations began receiving ACORN-successor organizations in April 2010.[77]

ACORN-successor organizations were the subject of congressional interest at this time as well. On June 3, 2010, Ranking Member Darrell Issa on the House Oversight Committee submitted a letter with an attached report to Commissioner Doug Shulman urging him not to "stop your investigation into ACORN and its use of federal funds. I ask that you maintain oversight over ACORN's rebranded affiliates."[78] In response, on June 8, 2010 the Acting Manager of EO Technical Steven Grodnitzky instructed Cindy Thomas not to develop or resolve ACORN-related cases until they receive further instruction.[79]

On July 15, 2010, Cindy Thomas alerted Robert Choi that EO Determinations received another "potential successor to ACORN" applying for 501(c)(3) status that is related to a 501(c)(4) ACORN-successor application received in April 2010.[80] Thomas reported that "[w]e placed the other case in suspense pending guidance from the Washington Office and are doing so with this case."[81]

Emails show that additional ACORN-successor organizations were flagged in October 2010.[82]

Cindy Thomas emailed Holly Paz on October 24, 2010 with a request for technical assistance on ACORN-successor cases from EO Technical. Over a month later, on November 26, 2010, Holly Paz told Cindy Thomas to work with Carter Hull in EO Technical on the ACORN-successor cases, the same employee in charge of developing the Tea Party cases.[83]

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[74] Email from Deborah Kant to Cindy Westcott (Oct. 16, 2008) IRS0000012304.
[75] TE/GE Division Sensitive Case Report (Apr. 2010) IRS0000147518.
[76] Email from Holly Paz to Cindy Thomas (July 21, 2011) IRS0000429500.
[77] Email from Sharon Camarillo to Cindy Thomas and Robert Choi (Apr. 28, 2010) IRS0000458467.
[78] Letter from House Oversight and Government Reform Committee Ranking Member Darrell Issa to IRS Commissioner Doug Shulman (June 3, 2010) IRS0000459733.
[79] Email from Steven Grodnitzky to Cindy Thomas and Donna Abner (June 8, 2010) IRS0000054956.
[80] Email from Cindy Thomas to Robert Choi (July 15, 2010) IRS0000054948.
[81] *Id*.
[82] Email from Jon Waddell to Steven Bowling and Sharon Camarillo (Oct. 7-8, 2010) IRS0000410433.
[83] Holly Paz email to Cindy Thomas (Nov. 26, 2010) IRS0000054942.

An EO Determinations employee contacted Carter Hull on March 4, 2011, telling him that "we have four exemption applications for organizations that have previously operated as ACORN. Could we arrange to discuss these cases with you by phone sometime next week?"[84] It is unclear what guidance Carter Hull provided EO Determinations on the ACORN-successor applications but he told another EO Determinations employee in July 2011 that "his manager informed him that he should not be doing research for our cases."[85] Hull asked EO Determinations to remove his name "from the BOLO list as a contact person."[86]

In April 2013, EO Technical was still developing two ACORN-successor applications including one of the applications that spurred EO Determinations managers to alert screeners to flag ACORN-successor cases in October 2010.[87] The other case mentioned in the email was transferred from EO Determinations to EO Technical in April 2012. [88] ACORN-successor cases were still on hold as of May 2013, according to Cindy Thomas.[89]

Other Left-Leaning Groups Also Experienced Delays

Other liberal and progressive groups told media outlets their applications were delayed as well. One left-leaning group, Alliance for a Better Utah, told NPR Morning Edition in a story that aired on June 13, 2013 that it had been waiting almost 600 days for a determination on its application for 501(c)(3) status to do "voter-education work."[90] The same group told *Politico* a month later that the delay was "causing problems because it can't apply for foundation and grant money while that application to become a charitable organization is in limbo."[91] Progress Texas reported that it took "18 months to get its 501(c)(4) approval."[92]

B. INAPPROPRIATE AND BURDENSOME INFORMATION REQUESTS TO LEFT-LEANING GROUPS

As summarized by the TIGTA report and described in the bipartisan narrative of this report, in January 2012, the IRS Determinations Unit made unnecessary and burdensome requests to a number of tax-exempt applicants that in some cases included requests for donor information. [93] Many groups that received these questions saw the inquiry about donors as an unwarranted intrusion.[94] Ultimately, IRS officials decided the request of the donor information was

[84] Email from John McGee to Carter Hull (Mar. 4, 2011) IRS0000631878.
[85] Email from Melissa Conley to Willian Agner (July 11, 2011) IRS0000054945.
[86] *Id*.
[87] Email from Cindy Thomas to Steven Bowling and Jon Waddell (Apr. 3, 2013) IRS0000054976.
[88] *Id*.
[89] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013) pp. 27-28.
[90] *NPR*, "Liberal Groups Say They Received IRS Scrutiny Too" (June 19, 2013).
[91] *Politico*, "IRS Scrutinized Some Liberal Groups" (July 22, 2013).
[92] *Id*.
[93] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013-10-053 (May 14, 2013).
[94] 501(c) entities are required to submit to the IRS a list of persons who have donated $5,000 or more on an annual basis. This information generally is not made public.

inappropriate and ordered the donor information destroyed.[95] Left-leaning/progressive groups also received inappropriate development questions regarding donor information while experiencing lengthy delays in the application process, similar to Tea Party groups.

Although TIGTA points out in its report that thirteen of the 27 organizations that received requests for donor information had "Tea Party, Patriots, or 9/12 in their names,"[96] it is clear from reviewing documents that the IRS was not acting on a partisan basis. Liberal and progressive groups were subject to burdensome requests for information from the IRS, similar to the requests made of conservative groups. At least three of the groups that received donor information requests were left-leaning applicants for tax-exempt status.[97] This treatment was unfair and inappropriate whether directed at conservative or left-leaning groups.

This indicates that the donor list requests were not a concerted political effort within the IRS to harass or discriminate against conservative groups. While more conservative groups were subject to burdensome development letters, there were simply more conservative groups applying for tax-exempt status during this period.

In addition to asking liberal organizations about their donors, IRS Exempt Organizations Specialist Grant Herring asked burdensome questions to at least one voter registration organization.[98] The letter asked the organization to respond to approximately 82 different questions/requests for information within twenty days. Two of the requests asked the applicant to provide "recruitment materials, training materials and manuals *you will* create and employ" (emphasis added) for the purposes of voter registration activities and assistance to other charitable organizations.[99] These questions indicate the IRS was asking the organization to provide documents that may not have existed at the time it was applying for tax-exempt status.

Herring provided the questionnaire as an example to another IRS employee who was reviewing a voter registration organization's application for tax-exempt status. In his email to the IRS employee he wrote:

> What worries me about the big ones is that they concentrate on turning out voters that historically support one of the two parties, and this is their unacknowledged purpose, rather than increasing civic participation or voter education.
>
> These questions are from one of my letters. I don't know how complicated your organization is. If it is big and ambitious all these questions may come in handy. I think we need at least to put them on record that in their voter contacts their conduct will be as

[95] SFC Interview of Holly Paz, July 26, 2013 pp. 130-132.
[96] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013-10-053, (May 14, 2013) footnote 43.
[97] Email with attachment from Judith Kindell to Holly Paz and Sharon Light (Apr. 25, 2012) IRS0000013868.
[98] IRS Letter to a Voter Registration Organization (Nov. 29, 2010) IRS0000631009.
[99] *Id*.

> pure as the driven snow, because I do not think we will ever apply the American Campaign Academy rationale to these organizations, as we should.
>
> If it is getting a lot of [private foundation] money and seem to lean to the left, make sure it isn't an ACORN successor.[100]

After EO Determinations employees began receiving ACORN-successor applications in April 2010, Herring flagged a "get-out-the-vote" organization that had already been approved as tax-exempt but "many internet sources allege is an ACORN affiliate or front" and had asked the IRS for an advance 4945(f) ruling. A 4945(f) ruling is an IRS determination that the organization's voter registration activities satisfy legal requirements to receive private foundation grants for that purpose. On May 18, 2010, Herring wrote:

> I question whether the applicant qualifies for exemption. 501c3s can engage in non-partisan voter registration, of course, but what is the basis of their exemption if that is their exclusive or primary activity, as in this case (no voter ed)? Also, I don't think this org's activities are nonpartisan in effect: they don't say "Republican" or "Democrat", but they target their extremely-well-funded-by-left-leaning-PFs voter registration activities to areas where traditional Democrat constituencies are concentrated. I don't think it would be difficult for EOT to revoke the approval letter.[101]

Grant Herring reported his activities related to developing this case in July 2010:

> A letter was sent on 7/15, with response due 8/4. I asked very detailed questions about how they are conducting their voter registration activities, to make sure that they are being conducted in a non-partisan manner. I do not think there is any doubt that the targeted demographics will vote overwhelmingly for Democratic candidates, and that it is the unstated purpose of the organization to turn out the vote for "progressive" candidates; but I don't think the request can be denied on that basis, although I am going to make sure of that before I issue a favorable letter. However, I thought that a politically biased applicant like this one should be made to demonstrate that it treats all political candidates and parties even-handedly in its contacts with unregistered voters. I am talking to Mike Repass in Technical about this case and a different voter registration organization.[102] [sic]

The case was sent to EO Technical as a result of Herring "raising concerns" because "it involved voter registration and a possible link to ACORN," according to an EO Determinations manager summarizing the case a year later. As of May 2011, there was a decision to grant a favorable 4945(f) ruling with a referral to the Review of Operations Division but the case was awaiting another layer of review by EO Quality Assurance.[103]

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[100] Email from Grant Herring to Susan Maloney (Nov. 29, 2011) IRS0000631168.
[101] Email from Donald Herring to Joseph Herr (May 18, 2010) IRS0000629458.
[102] Email from Peggy Combs to Brenda Melahn (July 27, 2010) IRS0000622672.
[103] Email from Gerardo Fierro to Donna Abner (May 15, 2011) IRS0000640477.

IX. WHAT COULD HAVE BEEN

Another useful perspective on the inefficiency and mismanagement at the IRS is a focus on the month when the Tea Party applications first arrived in Cincinnati and a two week period when the IRS first acted decisively on the Tea Party and right-leaning applications.

As discussed in the bipartisan narrative of this report, the first Tea Party application arrived in February of 2010. Cindy Thomas contacted Washington D.C. and asked for guidance from EO technical. Holly Paz, in Washington D.C., agrees that the applications should be reviewed by experts in Washington D.C.

Results Come 26 Months Later

In May/June of 2012, the IRS finally finds a process and personnel who make decisions relatively efficiently about the about 200 applications that have been piling up starting in February of 2010.[104] This was referred to as a "triage" effort by IRS personnel. A team of five Washington D.C. based staff, led by Sharon Light, was sent to Cincinnati. There they meet up with a team from the Determinations unit. The two teams conducted a workshop to establish a common understanding of the rules for political activity and 501(c)(4) nonprofits.

Teams of two – one from Washington D.C. and the other from Cincinnati – were given applications to review. They were allowed to reach one of these conclusions:

- If they both agree an application should be approved it is approved – no further appeals to multiple IRS personnel in Washington D.C. follow. The decision of the team is final.
- The team can also agree to deny the application. Again, no final review is necessary.
- Finally the two teams can agree to gather more information about the applications.

Using this process the Sharon Light led team approved 65 applications and denied 30, about 100 applications were set aside for more information gathering.[105]

If this process had been used in the summer of 2010, a few months after the first Tea Party applications were received, much of the delay in processing the applications could have been avoided.

Another possible way to address large volumes of political advocacy cases was devised by Acting Commissioner Danny Werfel in the aftermath of the TIGTA report. This process allows applicants to declare that over 60% of their activities are non-political. If this declaration is made, a favorable determination on the application is issued by the IRS within 2 weeks.[106] (see discussion of the IRS 30 day response in these views).

[104] Email from Holly Paz to Winonna Holton (June 7, 2012) IRS0000344052.
[105] *Id*.
[106] IRS, Charting a Path Forward at the IRS: Initial Assessment and Plan of Action, Appendix E (June 24, 2013).

X. WHAT WAS

Between February of 2010 and the "triage" effort in June of 2012, the Finance Committee investigation found a continuing series of missteps, bad management, inefficiency, confusion and incompetence.

A quick summary of what transpired for two years in the Washington D.C. office is contained in an email from Steve Grodnitzky. EOT here is the Exempt Organization Technical office which had the lead in analyzing political advocacy issues related to 501(c)4s:

> EOT is working on the Tea Party applications in coordination with Cincy. We are developing a few applications here in DC and providing copies of our development letters with the agent to use as examples in the development of their cases. Chip Hull is working these cases in EOT and working with the agent in Cincy, so any communication should include him as well. Because the Tea Party applications are the subject of an SCR, we cannot resolve any of the cases without coordinating with [Robert Choi, the Director of Rulings and Agreements].[107]

In short, Tea Party cases piled up in Cincinnati for two years while Washington D.C. unsuccessfully tried to develop a way to process them, i.e. approve or deny them. For some time the focus was on two of the applications, but even that focus was lost toward the end of the two year period and the EO team became completely disorganized in its effort to make decisions on the applications.

On April 28, 2010 Grodnitzky emailed Lerner and Choi a summary chart of sensitive case reports (SCRs) being handled by EO Technical that included Tea Party applications.[108] He wrote:

> Of note, we added one new SCR concerning 2 Tea Party cases that are being worked here in DC. Currently, there are 13 Tea Party cases out in EO Determinations and we are coordinating with them to provide direction as to how to develop those cases based on our development of the ones in DC.[109]

The SCR dated April 19, 2010 describing the two Tea Party cases shows that the cases were flagged because they were determined to be "Likely to attract media or Congressional attention."[110]

On May 13, 2010, in response to an inquiry from Lerner about the basis for EO Technical's examination of Tea Party cases, Grodnitzky replied that:

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[107] Email from Steven Grodnitzky to Cindy Thomas and Sharon Camarillo (July 6, 2010) IRS0000165422-24.
[108] Email from Steven Grodnitzky to Lois Lerner and Robert Choi (Apr. 28, 2010) IRS0000141809.
[109] *Id*.
[110] TEGE Sensitive Case Report Tea Party (Apr. 19, 2010) IRS0000164074.

> The [Tea Party] organizations are arguing education, but the big issue for us is whether they are engaged in political campaign activity.[111]

By November 3, 2010, the number of applications on hold in EO Determinations increased to 40 as Cincinnati continued to wait for development of the two Tea Party test cases in EO Technical.[112]

Robert Choi told Committee investigators that he inferred the Tea Party cases were likely on their way to being resolved because a November 2010 summary of the sensitive case reports indicated that EO Technical (Carter Hull) was drafting a favorable determinations letter for one of the Tea Party test cases.[113]

This was not the case – the confusion and bureaucratic buck passing continued until the triage effort, 19 months later, in June of 2012, well after the TIGTA investigation had begun, sounding alarm bells at the IRS.

The bulk of the responsibility for managing the processing of these applications falls on Lerner as manager of the nonprofit tax division of the IRS. She refused to testify in open session before the House Government Affairs Committee, pleading the Fifth Amendment.[114] She has refused to talk to Finance Committee and Ways and Means investigators. Consequently, her side of the story will not be completely told in this report.

Perhaps the best summary of her perspective comes from a TIGTA interview with her conducted on May 22, 2012. Lerner describes the initial process used to collect the applications containing political advocacy issues:

> It has been customary for the applications group in Cincinnati to document emerging issues through emails. However, we received complaints at a CPE that employees were receiving too much information via e-mail and there was no consolidated place where employees could go for this information. As a result, Cincinnati began consolidating information into what is called a BOLO (Be On the Lookout). In the spring of 2010, the applications group began seeing a surge in applications that were very up front about political work the organizations would be conducting. It is not unusual for us to send cases to a specific group when we see an uptick of applications with the same issues. We like to have a specific group or set of people work the applications so that we are consistent in our determinations.[115]

She continued in the interview to summarize her decision to order a change in the Tea Party designation in the BOLO list:

> When I heard the criterion being used, I immediately asked that the criterion be changed. While I don't believe our folks in Cincinnati meant any malice, I was disappointed with

[111] Email chain between Steven Grodnitzky and Lois Lerner and Robert Choi (May 13, 2010) IRS0000167872.
[112] Email from Holly Paz to Lois Lerner and Robert Choi (Nov. 3, 2010) IRS0000156478.
[113] SFC Interview of Robert Choi (Sep. 19, 2013) p. 67.
[114] New York Times, IRS Suspends Official at Center of Story (May 23, 2013).
[115] Memorandum of Discussion between Lois Lerner and Troy Patterson (May 22, 2012).

> the language used to describe the emerging issue. I would agree that the language should be more about the issues in the applications and not about particular groups that are applying for tax exemption. I believe that Cincinnati was just using shorthand to describe the cases and was not thinking about the impact of describing the cases in a particular manner. Our work is much more out in the public and, while I believe the Cincinnati employees were just trying to find an easy way to describe the applications, our employees need to be cognizant of the fact that we need to make it clear that we do not select cases for additional determinations or examination work based on political affiliation. It should not enter into the conversation.[116]

Holly Paz, a key EO figure and by all accounts a conscientious worker, shifted jobs frequently and was often designated as "acting" while filling a position. She was not able, perhaps understandably, to take charge and move the Exempt Organization team towards a quick resolution of the Tea Party applications piling up in Cincinnati. Paz, between March of 2010 and May of 2012, went through four different position changes. This constant changing of jobs, and the multiple times she was placed in an acting position, whether as a manager or director, probably contributed to her inability to take charge and resolve the challenge of dealing with the dozens of 501(c)(4) applicants who were intending to become involved in political campaigns.[117]

She did not feel able, apparently, to confront Lerner about the endless process of review and delay that was inevitably leading to the TIGTA investigation, and the eventual explosion of the issue in Congress and in the U.S. media.[118]

Months and months went by with the IRS personnel developing "guidesheets," constructing a "bucket" system for analyzing the cases, drafting development letters, and training personnel on the 501(c)(4) political advocacy issues. "Triage" was attempted in the fall of 2011 (reviewing all the applications and attempting to make a quick decision on denial or approval), meetings occurred, various offices refused to take charge and resolve the pending applications. No evidence was uncovered that political motivations fed this bureaucratic nightmare, but that does not make it acceptable. Once the TIGTA investigation began it was too late to undo the damage.

Two email chains providing an example of the endless, confused and disorganized process is included in the appendix of this report. In one, two months are squandered in an email exchange that is almost incomprehensible. This occurs, incredibly, 18 months after the first Tea Party emails were received in Cincinnati, and 10 months after the Tea Party had been partially credited with taking back the House of Representatives for the Republican Party, an event that produced a massive amount of media exposure and national attention.[119] In another email the reader can see a narrative of buck passing and confusion that squandered three months, from June 8, 2012 to September 12, 2012. Incredibly this email covers a period after the TIGTA investigation had begun.[120]

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[116] *Id*.
[117] SFC Interview of Holly Paz (July 26, 2013) pp. 14-17.
[118] SFC Interview of Holly Paz (July 26, 2013) pp. 50-51.
[119] Email chain between EO Employees (Sep 15, 2011 – Nov. 15, 2011) IRS0000057399-426.
[120] Email chain between EO Employees (June 8, 2012 – Sep. 12, 2012) IRSR0000441141.

Three opportunities to expedite the processing of the conservative leaning applications were missed from the summer of 2010 to the summer of 2011.

Carter Hull was given the job of analyzing two Tea Party applications (a 501(c)(3) and a 501(c)(4)) in April of 2010. As one of the EO Technical employees with the most experience with nonprofit political activity he was in a position to develop a definitive test for the applications waiting to be resolved.

He took until January of 2011 to recommend that one of these applications be approved. Had he been managed better and finished his analysis in September or October of 2010 the standards he set could have been used to test the dozens of applications sitting in Cincinnati.

Another opportunity was wasted when Hull recommended approving the (c)(4) application in January. A better management team would have seized this moment and used his analysis to immediately resolve the Tea Party applications pending in Cincinnati.

A "triage" team similar to the one formed in June of 2012 could have made short work of the applications using the standards set by Hull in recommending approval of the two applications selected by the Washington D.C. office for special analysis.

Instead of using the Hull decision on the 501(c)(4) application to kick off a final review of the pending applications his decision was reviewed by Senior Technical Advisory Judy Kindell. Kindell recommended the application be reviewed by Chief Counsel's office because the issue of private benefit, namely whether the Tea Party groups were operating for the benefit of the Republican Party, was not explored by Carter Hull in his examination.[121] This may have been a good idea if a two week deadline for that effort had been enforced. But the meeting with Don Spellman of the Office of Chief Counsel did not occur until August – seven months after Hull had belatedly made a final decision on the two applications.

No clear 501(c)(4) political activity guidance was ever given by the Counsel's office so this step in the process was a complete waste of time.

A final missed opportunity was the failure to follow up on the July 2011 meeting between Lerner and her senior team with a plan to approve or disapprove the applications.

Lerner does get credit for ordering a change to problematic BOLO terms that specifically mentioned the Tea Party and conservative groups.[122] But at the same meeting (June 29, 2011) at which she ordered the offending language removed she did nothing to get her team to expedite the processing of Tea Party applications.[123] One hundred applications had piled up in Cincinnati at this point.[124]

[121] SFC Interview of Judith Kindell (July 18, 2013) pp. 53-55.
[122] Emails from Cindy Thomas to Steven Bowling and John Shafer (July 5, 2011) IRS0000619080-81.
[123] *Id*.
[124] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (May 14, 2013) See Appendix VII, "Over 100 applications were identified by this time. It was decided to develop a guide sheet for processing these cases."

This turned out to the last chance for the IRS to resolve the pending applications before the TIGTA investigation was initiated. From the June 29 meeting on, the IRS tax-exempt office continued drifting on the political advocacy cases. With no decisive action by Lerner or Paz, the IRS bureaucracy stumbled forward without establishing a competent and efficient plan for processing the applications.

Without a resolution of the applications in the fall of 2011 the frustration of the applicants increased. In early 2012 press reports and congressional inquiries triggered the TIGTA investigation.

XI. RESPONSE TO ADDITIONAL REPUBLICAN VIEWS

A. NO EVIDENCE OF POLITICAL BIAS IN 501(C)(4) DETERMINATIONS

1. NO EVIDENCE OF LOIS LERNER POLITICAL BIAS

Federal employees are allowed to have political affiliations. The question is whether they let those affiliations affect their professional duties. There is no evidence that Lois Lerner allowed her political beliefs affect how she carried out her duties as manager of the Exempt Organizations, merely anecdotal evidence that she was a Democrat.

Even though the decision came too late, Lois Lerner was responsible for removing from the BOLO list the terms Tea Party, 9/12 and Patriots out of a concern that these terms gave the appearance of "targeting" the groups.[125]

In addition, a September 15, 2010 email chain shows that Lerner's office was concerned about the potential abuse of 501(c)(4) status by organizations from across the political spectrum.[126] After Lerner expressed concern about "a perception out there that" 501(c)(4) organizations were set up specifically for political activity, her colleague Cheryl Chasin emailed her and wrote the abuse was "definitely happening."[127] In this email she listed "a few organizations … that sure sound … like they are engaging in political activity:

> Faulkner County Tea Party
> Paradise Republican Womens Club
> Culver PAC
> Taxpayersadvocate Org State PAC
> Escondido Republican Women Federated
> Folsom Republican Women Federated
> Alice B Toklas Lesbian & Gay Democratic Club
> Obama Democratic Club Of Silicon Valley
> National Breast Cancer Coalition Political Action Committee."[128]

Lerner's response was, "OK guys. We need to have a plan. We need to be cautious so it isn't a per se political project. More a (c)4 project that will look at levels of lobbying and pol. activity along with exempt activity."[129] The email shows that employees in the Exempt Organizations division were concerned about abuse of the tax code no matter what political views represented.

Lerner's weakness in managing her office's processing of tax-exempt applicants affected both left and right-leaning organizations. Both types of groups faced delays in the processing of their

[125] Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735.
[126] Email chain between Lois Lerner, Cheryl Chasin, Judith Kindell, Nannette Downing and others (September 15-16, 2010) IRS0000633894.
[127] *Id*.
[128] *Id*.
[129] *Id*.

applications for nonprofit status. There is no evidence Lerner treated left and right-leaning groups differently.

There are no facts demonstrating that Lerner told her employees to focus in an unfair way on right-leaning applications. As the report states, left-leaning groups were also placed on the BOLO list, were asked extensive questions about their activities as part of the nonprofit approval or disapproval process and waited years for their applications to be processed.

Lerner's concern with the *Citizens United* decision was appropriate given her role at the IRS. If the Supreme Court decision led to more political advocacy activity by nonprofits then the case was central to the Exempt Organizations team that Lerner led. Making reference to it in conversations or in speeches is not surprising; to ignore the decision would have been odd.

It is similarly appropriate for Lerner to take notice of Congressional efforts to reform campaign finance through the DISCLOSE Act. The bill, which would require independent groups to disclose the names of contributors who gave more than $10,000 for use in political campaigns, had wide support in 2012. The Senate version, S. 3369, had 40 co-sponsors, while the House version, H.R. 4010 had 165 co-sponsors.

Furthermore, campaign finance reform and the *Citizens United* decision are issues that are important to many Americans. Eighty five percent of Americans believe we should either "rebuild" or make "fundamental changes" to our campaign finance system.[130] In addition, 75% of Americans believe that groups who participate in political campaigns should be required to publicly disclose their donors, and 8 in 10 Americans oppose *Citizens United*.[131]

As for congressional inquiries, media interest and outside groups contacting the EO office, this is the norm for any federal agency or department. These interactions occur on a daily basis in every federal government office. There is no evidence that Lerner reacted to these contacts by ordering a delay in the processing of 501(c)(4) applications.

2. NO DOUBLE STANDARD FOR MEMBERS OF CONGRESS

The Additional Republican Views cite three cases in which they say that Democratic Senators intervened to request that the review of applications for tax-exempt status be expedited, and where that apparently was done. The inference is that there was a double standard, contrasting the quick resolution of these cases to the long delays, described in this report, in the cases of applications for 501(c) status by Tea Party and other advocacy groups.

On their face, the facts of the three cases relied on do not support the inference of a double standard. It appears that the three applications were for 501(c)(3) status, organizations that are not allowed to engage in any political activity, not for the 501(c)(4) status which is the focus of this report. Further, there is nothing to indicate that the three applications were particularly difficult or controversial. The one exception appears to be a request for the expeditious

[130] *New York Times*, "American's Views on Money in Politics" (June 2, 2015).
[131] *Id*.; *Washington Post*, "Poll: Large Majority Opposes Supreme Court's Decision on Campaign Financing" (Feb. 17, 2010).

consideration of an application for tax-exempt status by the One Boston Foundation, in order to facilitate fundraising and assistance to the victims of the Boston Marathon attacks in April, 2013; in that case, it appears that the IRS did in fact cut through some red tape so that the organization could get up and running quickly.[132] The three cases that the Additional Republican Views rely on were *not* cases where Democratic officeholders sought to expedite the approval of progressive groups' applications for 501(c)(4) status. Further, we have not looked carefully to consider how similar requests from Republican Senators and Representatives (i.e., requests for expeditious treatment of noncontroversial 501(c)(3) applications) were handled.

As the bipartisan narrative makes clear, the IRS took far too long to review 501(c)(4) applications from Tea Party and other advocacy groups, and subjected many of the groups to inappropriate review; the IRS was insufficiently responsive to requests, from those groups as well as members of Congress, for information and for better consideration. But the fact that the

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[132] Boston Bar Journal, Disaster Relief: The One Fund Boston Model (April 1, 2014). (An article in the Boston Bar Journal described the efforts to get 501(c)(3) status for the "One Fund":

In the wake of the Boston Marathon bombings on April 15, 2013, Boston Mayor Menino and Massachusetts Governor Patrick proposed creating a charity to benefit the survivors and families of those killed in the attack. On April 16, Mayor Menino reached out to local businesses Hill Holliday and John Hancock to assist with the creation of the One Fund Boston. Later that day, before the fund was even incorporated and before Ken Feinberg was brought on as administrator, the One Fund received its first $1 million commitment from John Hancock.
As the One Fund's attorneys, we at Goodwin Procter had to seek quick incorporation of the fund and apply on an expedited basis for 501(c)(3) tax-exempt status with the IRS. However, applications for 501(c)(3) status often take up to eighteen months to process, and in addition, obtaining the necessary approval was challenging, due to IRS limitations on the types of distributions that charitable organizations can make to individuals in the context of disaster relief.
Generally, to qualify for tax-exempt status, an organization must show that it will assist a large enough or sufficiently indefinite charitable class so that it is providing a public rather than a private benefit. In addition, in IRS Publication 3833, the IRS takes the position that an organization cannot distribute funds to individuals merely because they are victims of a disaster, but generally must determine that a recipient lacks adequate financial resources of his or her own. The IRS therefore had questions about the One Fund's plans to make distributions without financial needs testing.
The One Fund team worked closely with the IRS to overcome these issues and to show that the One Fund instead met the criteria for a 501(c)(3) tax-exempt charitable organization as an organization that lessens the burdens of government, focusing on the organization's relationship with the City of Boston and the City's role in approving distributions. "Lessening the burdens of government" is an alternative method of qualifying as a 501(c)(3) organization. As far as we know, this method has not been used before in the disaster relief context. This approach to the formation of a relief organization allowed the One Fund Boston to accomplish its immediate and ongoing goals for distributions.
On May 14, just one month after the bombings, the IRS granted the One Fund Boston 501(c)(3) tax-exempt status. The One Fund's attorneys were able to use procedures for expedited approval and effective dialogue with the IRS to obtain this unusually quick and favorable result.
The One Fund has been a huge success and an important contribution to Boston's recovery. All of the $60 million in funds donated to the One Fund Boston through June 26, 2013 were distributed to those who were most affected by the bombings, in accordance with a protocol developed by Mr. Feinberg. In addition, the One Fund Boston will continue to provide support for those affected and has announced that it will make a second distribution.

IRS was able to handle a few very different cases reasonably well does not show a double standard. In this regard, the Additional Republican Views are comparing apples and oranges.

3. NO EVIDENCE TO VALIDATE CHARGE OF UNION BIAS

Union membership in and of itself does not mean political bias. The Additional Republican Views establish no factual evidence that any IRS employee, whether they belonged to a union or not, was politically biased in their actions related to the 501(c)(4) applications with political advocacy issues. Moreover, Lerner, as a senior manager, was not eligible for union membership.

4. NO EVIDENCE INDIVIDUAL EMPLOYEE VIEWS INFLUENCED DECISIONS FOR POLITICAL PURPOSES

Again, there is no evidence of political bias on the part of IRS personnel involved in the processing of the 501(c)(4) applications with political advocacy issues. The Committee has received signed statements from each of the IRS employees in interviewed asserting that politics was not involved in the decision making process.[133] TIGTA also found no evidence of political bias on the part of IRS personnel involved in processing of 501(c)(4) applications.

Of the 85,000 employees at the IRS, the Additional Republican Views highlight three who engaged in political activity during company time in violation of the Hatch Act. None work in the IRS offices processing the 501(c)(4) applications.

5. NO EVIDENCE WHITE HOUSE OR TREASURY OFFICIALS INFLUENCED TEA PARTY APPLICATIONS

There is no evidence of Treasury or White House officials participating in the processing of 501(c)(4) applications or influencing how they were processed. There is no evidence that any Treasury or White House employee directed or influenced the actions of the IRS with regard to Tea Party or other political advocacy applications. The Additional Republican Views provide only unfounded speculation about the involvement of Treasury and White House officials in the processing of advocacy applications.

Two high ranking Treasury officials were interviewed by the Committee, Mark Patterson, former chief of staff to the Secretary, and Neal Wolin, former Deputy Secretary. One other employee was requested by the Republican staff to appear for an interview, Ruth Madrigal. Madrigal served as a policy expert on 501(c)(4) law at main Treasury.

Her interview transcript with the Oversight and Government Reform/Ways and Means Republican staff was made available, and after reviewing the transcript of the interview the Democratic staff was satisfied that Madrigal had not even a remote connection to the key decisions made by the EO office regarding the applications with political advocacy issues. She did not participate in any way in the management of those applications by the IRS Exempt Organizations office. Nor did she consult with upper level management of the IRS on how to

[133] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).

respond to the delay in processing of those applications once the mismanagement was uncovered.

B. IRS FAILURE TO PRESERVE LERNER'S EMAILS

On June 23, 2014, then-Chairman Wyden and then-Ranking Member Hatch asked Inspector General George to investigate the circumstances surrounding a June 2011 hard drive crash suffered by Lois Lerner, and to determine whether any additional documents belonging to Lerner could be recovered.[134] The hard drive crash predated any investigations of Lerner by nearly two years. TIGTA's resulting investigation found no evidence that any IRS employee intentionally destroyed records to hide information from Congress. TIGTA invested a significant amount of time and resources to activate available disaster recovery backup tapes used by the IRS. This effort resulted in the production of 1,007 emails that had not been previously produced as part of the 1,500,000 documents produced to the Committee.[135] Very few of these documents were germane to the Committee's investigation.

TIGTA's investigation also uncovered a second batch of backup tapes dating back to May 2011 that were erased by IRS employees in May 2014. TIGTA "did not uncover evidence that the IRS and its employees purposely erased the tapes and order to conceal responsive e-mails from the Congress, the DOJ and TIGTA."[136] The IRS reasonably, but erroneously, assumed that these backup tapes, which sat in storage in an IRS warehouse for years, had been destroyed long ago. Disaster recovery backup tapes do not store information in an easily accessible format and are rarely utilized in litigation.[137] However, given the extraordinary interest in this matter, the IRS should have exercised greater care and diligence in determining whether meaningful information could be recovered from disaster recovery tapes.

The Additional Republican Views take great issue with the amount of time that elapsed between when the IRS learned of Lois Lerner's hard drive crash, February 2014, and when it disclosed that information to Congress, June 2014. There is bipartisan agreement that the IRS showed a lack of candor in this matter. However, the Additional Republican Views characterize statements made by the IRS to the Committee on March 19, 2014 as "false" and "intended to hasten the Committee to complete its investigation." While the Democratic staff respects the Republican staff and their view about the veracity of these statements, we do not reach the same conclusions. On March 27, 2014, Committee staff asked the IRS for a statement attesting to the completeness of the IRS production. When the statement arrived on June 13, 2014, Lerner's hard drive crash was clearly disclosed.[138]

[134] Letter from Chairman Wyden and Ranking Member Hatch to J. Russell George (June 23, 2014).
[135] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 15.
[136] *Id*. p. 13.
[137] See, e.g., Fed. R. Civ. P. 26(b)(2)(B); Zubulake v. UBS Warburg LLC, 220 F.R.D. 212 (S.D.N.Y. 2003)
[138] Letter from Leonard Oursler to Senator Wyden and Senator Hatch (June 13, 2014) Enclosure 3, p. 7.

C. MISLEADING CONGRESS

The Additional Republican Views charge that senior IRS officials continuously mislead Congress, citing hearings before various Congressional committees and subcommittees, a meeting with Finance Committee staff, and responses to letters from Senator Hatch and other Republican Senators. The veracity of these IRS officials' testimony and statements has not been a subject of our bipartisan staff investigation. While we have particular respect for Chairman Hatch's views about the veracity and completeness of responses to him, it would, in our view, take considerably more bipartisan work to reach conclusions about such serious charges.

D. IRS INDEPENDENCE

The IRS is organized under the Treasury Department because the tax function is a critical element of government and clear lines of authority and management need to be established. This report demonstrates how important accountability and the power to act quickly are when mismanagement has occurred. Treasury Secretary Jack Lew was able to fire the head of the IRS almost immediately after revelations about the alleged Tea Party targeting were unveiled. A truly independent agency, with lengthy burdensome process for removing executives, could have continued with its existing management for some period of time.

While there are clear lines of authority, this is balanced by the nonpolitical nature of the IRS, demonstrated by the fact that unlike other agencies, only two executives are political appointees – nominated by the President and confirmed by Congress. Except for the Commissioner and the Chief Counsel, every other employee at the IRS is nonpartisan, ensuring that the IRS acts in a nonpolitical fashion. Furthermore, it is important to note that Commissioner Shulman, the Commissioner during the relevant time of this investigation, was a George W. Bush appointee.

Most agencies and departments have dozens of political appointees, resulting in a much greater political focus by the managers of the department.

E. NO INAPPROPRIATE FEC INTERACTION

501(c)(4) nonprofits report their campaign spending to the Federal Election Commission. It is clear from the investigation that the IRS tries to determine levels of political spending in their processing of 501(c)(4) applications with political advocacy. The FEC deals with political spending even more directly. Essentially there is overlapping jurisdiction over campaign activities/spending between the FEC and the IRS. Agencies in the federal government, all existing under the umbrella of the executive branch, are encouraged to share information when that information will assist them in carrying out their responsibilities to the taxpayer. The information shared in this case between the FEC and the IRS constitutes proper cooperation between two agencies in the executive branch.

F. ATTEMPTS TO "SUPPRESS" POLITICAL SPEECH

Efforts to change the law governing nonprofit political advocacy are addressed in the following section entitled "Evolution of 501(c)(4) Nonprofits into Political Entities Creates a Need for More Transparency." The IRS withdrew proposed regulations governing political activity by 501(c)(4) nonprofits on May 22, 2014.

G. WAYS AND MEANS REFERRAL LETTER

On April 9, 2014, the Ways and Means Committee voted to send a letter to the Attorney General asking DOJ to investigate Lois Lerner to determine whether she violated "multiple federal criminal statutes."[139] The primary charge in the letter is that Lerner focused intensively on the 501(c)(4) application from Crossroads GPS and turned a blind eye to liberal groups. The letter attempts to make the case that Lerner relied on her own political party affiliation to investigate the group's activities, eventually seeking to cancel their 501(c)(4) status.[140]

The issues raised in the Ways and Means referral letter have not been the focus of the investigation conducted by the Democratic and Republican Finance Committee staff summarized in this report. There has not been enough development of the facts in the current investigation to reach any informed conclusion about the legality of Lerner's actions regarding Crossroads. In addition, it is properly the role of the Justice Department to determine the legality of Lois Lerner's actions highlighted by the Ways and Means Committee.

However, the public should also be aware of significant facts about Crossroads GPS that the House Ways and Means Chairman omitted from his letter to the Justice Department. These facts may explain why the Lois Lerner, the IRS official primarily responsible for ensuring that political campaign organizations are not masquerading as social welfare organizations, would focus on Crossroads GPS.

The IRS permits 501(c)(4) organizations to "engage in political campaigns on behalf or in opposition to candidates for public office provided that such intervention does not constitute the organization's primary activity."

A Federal Election Commission First General Counsel's Report filed in November of 2012 concluded that Crossroads GPS spent 53% of its budget on federal campaign activity in 2010. Chairman Baucus's letter to the IRS in 2010 was partially based on public reports of the vast amounts of money being spent on political activity by Crossroads and left-leaning groups.[141] OpenSecrets.org concluded that in the 2010 and 2012 election cycles Crossroads spent almost $90 million on independent expenditures (ads that advocate the election or defeat of specific candidates). Consequentially it is not surprising that Lois Lerner examined the activities of Crossroads as Director of the Exempt Organizations team. Her job was to make sure that

[139] Letter from the Ways and Means Committee to Attorney General Eric Holder (April 9, 2014).
[140] *Id*.
[141] Letter from Chairman Baucus the Commissioner Doug Shulman (Sept. 28, 2010).

501(c)(4) nonprofits obey the law and are not engaged primarily in political activities. Without a full investigation it is unfair to criticize her for doing her job on this matter.

Whether Lerner was evenhanded in doing her job is certainly a legitimate question for any full investigation. As pointed out in these views, left-leaning nonprofits were subject to delay, applications for nonprofit status were denied and withdrawn. Applications from left-leaning organizations were subject to full development. The BOLO list contained terms identifying left-leaning nonprofits.

A new investigation would have to examine the total number of left-leaning nonprofits conducting political activity and how Lerner dealt with each of them. Large left-leaning nonprofits involved in political activity such as Priorities USA and Organizing for America would be part of this inquiry. Only after a complete investigation examining Lerner's actions regarding both right and left-leaning applicants could a final determination of bias be established.

XII. IRS RESPONSE TO THE TIGTA REPORT

A. IRS 30 DAY REPORT

On June 24, 2013 a report was released by the IRS describing their response to the TIGTA investigation.

- A team appointed by Danny Werfel, Acting Commissioner of the IRS, found no evidence of intentional wrongdoing by IRS personnel, or "involvement in these matters by anyone outside the IRS."
- Personnel were replaced in the four levels of the managerial chain that had responsibility for the activities identified in the TIGTA report.
- The following personnel were removed from or left their management positions: the IRS: Acting IRS Commissioner Steve Miller, Commissioner for Tax Exempt and Government Entities Joseph Grant, Lois Lerner (Lerner was put on paid leave on May 23, 2013 and retired from federal service in September of 2013), and Holly Paz.
- BOLO (Be on the Lookout) lists were suspended. These are the lists that contained the term Tea Party and that identified left-leaning organizations.

The 30 day plan also established a method of expediting the processing of applications for nonprofit status. The new procedures are available to applicants that are:

- Involved in political campaign activities or issue advocacy, and
- Have had applications pending for more than 120 days as of May 28, 2013.

The IRS mailed letters to applicants caught up in the enhanced scrutiny process. They received Letter 5228, "Application Notification of Expedited 501c4 Option."

The organization is allowed to self-certify by signing and returning the letter if it agrees to abide by special rules for obtaining tax exempt status.

Groups are granted 501(c)(4) status within two weeks if they certify that 60% or more of their time and expenses are devoted to activities promoting "social welfare." They must also certify their political campaign intervention involves less than 40% of their spending and time.

B. ADDITIONAL IRS RESPONSE

In testimony before the House Oversight and Government Reform Committee on March 26, 2014 IRS Commissioner John Koskinen summarized additional changes made following the TIGTA report:

- Establishing a new process for documenting the reasons why applications are chosen for further review;

- Developing new training and workshops on a number of critical issues, including the difference between issue advocacy and political campaign intervention, and the proper way to identify applications that require review of political campaign intervention activities;
- Establishing guidelines for IRS EO specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention; and
- Creating a formal, documented process for EO determinations personnel to request assistance from technical experts.

XIII. NEED FOR REFORM OF THE TAX CODE TREATMENT OF POLITICAL ACTIVITY BY NONPROFITS

The Joint Tax Committee summarizes the law addressing political advocacy by 501(c)(3) organizations as follows:

> [U]nder present law 501(c)(3) charitable organizations may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. The prohibition on such political campaign activity is absolute and, in general, includes activities such as making contributions to a candidate's political campaign, endorsements of a candidate, lending employees to work in a political campaign, or providing facilities for use by a candidate. Many other activities may constitute political campaign activity, depending on the facts and circumstances. The sanction for a violation of the prohibition is loss of the organization's tax-exempt status.
>
> For organizations that engage in prohibited political campaign activity, the Code provides three penalties that may be applied either as alternatives to revocation of tax exemption or in addition to loss of tax-exempt status: an excise tax on political expenditures, termination assessment of all taxes due, and an injunction against further political expenditures. [142]

Section 501(c)(3) organizations are required to apply for exempt status.[143] Contributions to these organizations are tax deductible.

The Joint Tax Committee description of the law relating to 501(c)(4) organizations is as follows:

> The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office; however, social welfare organizations are permitted to engage in political campaign activity so long as it is not the organization's primary activity.
>
> […]
>
> Social welfare organizations need not, but may, seek formal IRS recognition of exempt status, whereas charitable organizations are required to file an application for recognition of exemption. [144]

Along with section 501(c)(4) organizations (social welfare), (c)(5) organizations (labor unions) and (c)(6) organizations (trade associations) may participate in some political activity as long as that activity is not the organization's primary activity. [145]

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[142] Joint Committee on Taxation, "Report to the House Committee on Ways and Means on Present Law and Suggestions for Reform Submitted to the Tax Reform Working Groups" (May 6, 2013) p. 35.
[143] *Id*. p. 20.
[144] *Id*. p. 39.
[145] *Id*.

If it is determined the primary purpose of the 501(c)(4) organization is political activity – that 70 or 80 or 90 percent of the money goes to political activity – then that organization could lose its tax exempt status.[146]

Contributions to 501(c)(4) organizations are not deductible. [147]

Section 527 organizations are political organizations and may engage in unlimited political activities. At formation, these groups must give notice to the IRS within 24 hours. These organizations are required to make public donors making contributions of more than $200 per person, per calendar year.[148]

A. Evolution of 501(c)(4) Nonprofits into Political Entities Creates a Need for More Transparency

Much has changed since the Tariff Act of 1894, which contained the earliest statutory reference to tax exemptions for nonprofits. A critical change was made in 1959 when the IRS issued an administrative rule opening the door to 501(c)(4) political activity by interpreting "exclusively" to mean that groups had to be "primarily" engaged in social welfare and helping the community Whether or not this was a valid interpretation of the statute,[149] it put the IRS in the position of determining what level and type of activities constitute "primarily political" activities. The events described in this report illustrate the difficulty of such an exercise. This is especially true given the vagueness of the existing regulations, which have not been significantly modified since 1959. A lot has changed since then, including the apparent surge of political activity by 501(c)(4) groups in recent years. The story told in this report is not just about mismanagement. It also is about vague regulations that are inherently difficult to apply and have become outdated.

For this reason, Democratic staff are surprised by the implication, in the Additional Republican Views, that the 1959 regulations never should be revised in any way. This goes too far. The current regulations are part of the problem. Granted, the revisions that the Treasury Secretary proposed in 2013 generated a huge public response, and there were places where the proposed revisions clearly went overboard, such as with respect to voter registration and get-out-the-vote activity. But that is not a sufficient argument for maintaining the 1959 regulations into perpetuity. Organizations seeking tax-exempt status, as well as the IRS itself, would benefit from greater clarity in this area, and we believe that the IRS and the Treasury Department should continue to seek improvements to the current regulations, with appropriate public input.

Better guidance on how to measure what is the "primary activity" of social welfare organizations was also recommended by the May 2013 TIGTA audit report.

We also are surprised by the Republican views' broad opposition to transparency with respect to disclosing the identity of contributors to groups engaging in extensive political activities. One of the underlying questions in this case is why there was such an apparent surge in applications for

[146] *Id*.
[147] *Id*.
[148] IRS, Section 527 Political Organizations – Tax Filing Requirements.
[149] See footnote 102 in the Bipartisan Investigative Report.

tax-exempt status under section 501(c)(4), thereby necessitating the IRS review of whether an applicant's primary activities would be political. As it now stands, groups can obtain tax-exempt status and engage in as much political campaign activity as they want: their activities can be not only *primarily* political but *exclusively* political. They simply have to obtain their tax-exempt status pursuant to section 527 rather than section 501(c)(4); section 527 requires, in turn, greater disclosure, including of the identity of those who contribute $200 or more. To some extent, the increase in applications may have been designed to avoid disclosure requirements.

According to the Center for Responsive Politics, in 2012 nonprofit 501(c)(4) organizations spent over $200 million on political activity.[150] By electing to use 501(c)(4)s instead of 527s, none of the organizations behind this $200 million effort were required to reveal their donors.

Some have pointed to the *Citizens United* case as the reason political spending by nonprofits has increased exponentially. In *Citizens United v. FEC* (2010) the Supreme Court invalidated restrictions on independent political campaign expenditures by corporations, associations and labor unions.

Acting IRS Commissioner Steven Miller said at the Senate Finance Committee hearing on the TIGTA report in May of 2013 that:

> There is no doubt that since 2010 when *Citizens United* sort of released this wave of cash that some of that cash headed towards c 4 organizations. This is proven out by FEC data and IRS data. That does put pressure on us to take a look.[151]

During a time where campaign spending is soaring and the Supreme Court is loosening controls on political spending it is critical that as much transparency as possible is required by federal regulation and law.

Finance Committee Chairman Max Baucus wrote a letter to IRS Commissioner Shulman in September of 2010 encouraging the IRS to investigate the flood of political spending by social welfare organizations. He asked this question: "Is the tax code being used to eliminate transparency in the funding of our elections – elections that are the constitutional bedrock of our democracy?" [152]

The Additional Republican Views sharply criticize proposals to increase disclosure requirements for political campaign contributions, arguing that such proposals would violate free speech, citing the Supreme Court's decision in *NAACP v. Alabama*. This shows a lack of confidence in the positive role that transparency plays in our political process, and it also dramatically overstates the constitutional point. The *NAACP v. Alabama* decision stands for the proposition that organizations cannot be required to disclose membership lists without a sufficient justification from the government that outweighs the implicated First Amendment and privacy

[150] Center for Responsive Politics, 2012 Outside Spending by Group.
[151] Senate Finance Committee Hearing, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) p. 23.
[152] Letter from Chairman Baucus to Commissioner Doug Shulman (Sept. 28, 2010). (Sep. 28, 2010).

rights.[153] In contrast, the Supreme Court has repeatedly upheld reasonable political campaign disclosure requirements. Most notably, in *Buckley v. Valeo*, the Supreme Court considered *NAACP v. Alabama* when deciding the constitutionality of campaign finance disclosure rules enacted in the Federal Election Campaign Act of 1971.[154] The disclosure provisions required candidates and political committees to file quarterly reports containing detailed information about donors who contributed over $100.[155] While the Court decided that, as a result of *NAACP v. Alabama*, campaign finance disclosure rules should be subject to strict scrutiny, it ultimately decided that the government's interest can prevail in matters where the "'free functioning of our national institutions' is involved."[156] The Court found that the disclosure requirements were a "reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our federal election system to public view."[157] The Supreme Court cited three justifications for upholding campaign finance disclosure: (1) campaign finance disclosure laws provide voters with information about candidates, (2) the rules "deter actual corruption and avoid the appearance of corruption," and (3) recordkeeping is required to detect violations of disclosure limitations.[158] Similarly, in *McConnell v. FEC*, the Supreme Court upheld the expanded campaign finance disclosure provisions of McCain Feingold, including a provision requiring the disclosure of contributors to political campaigns.[159] Most recently, in *McCutcheon v. FEC*, Justice Roberts cited campaign finance disclosure laws as part of the Court's justification for striking down aggregate limits on campaign contributions to candidates.[160] He argued that "disclosure of contributions minimizes the potential for abuse of the campaign finance system."[161] In addition, disclosure laws are more effective against corruption now as opposed to when *Buckley* was decided.[162]

Justice Scalia summed the point up well in in a 2010 case (*Doe v. Reed*):

> Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.

Chief Justice John Roberts observed in the *McCutcheon v. Federal Election Commission* case:

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[153] NAACP v. Alabama, 357 U.S. 449 (1958).
[154] Buckley v. Valeo, 424 U.S. 1 (1976).
[155] *Id*. at 61.
[156] *Id*. at 66 (quoting Communist Party v. Subversive Activities Control Bd., 367 U.S. 1, 97 (1961)).
[157] *Id*. at 62.
[158] *Id*. pp. 66-68.
[159] McConnell v. FEC, 540 U.S. 93. The Court left the door open to a challenge to disclosure laws in the case where a "group can show a 'reasonable probability' that disclosing its contributors' names would subject them to threats, harassment or reprisals from either Government officials or private parties." Citizens United v. FEC, 558 U.S. 310, 367 (2010) (citing 540 U.S. 93, 198).
[160] McCutcheon v. FEC, No. 12-536, slip op. (U.S April 2, 2014).
[161] *Id*. p. 35.
[162] *Id*. p. 36.

> With modern technology, disclosure now offers a particularly effective means of arming the voting public with information.

Our political system will benefit from *more* transparency, not less.

An argument for why transparency matters was set forth in a New York Times article on March of 2014. A report from a special investigative committee in the Utah state legislature described a 501(c)(4) organization set up solely to fund a candidate for Attorney General who told payday loan companies he would advocate for their policy interests. [163] After winning election in 2012 the Attorney General resigned amid allegations of corruption a year later. [164] The article states that the campaign "exploited a web of vaguely named nonprofit organizations in several states to mask hundreds of thousands of dollars in campaign contributions from payday lenders." [165] According to the New York Times, the Attorney General knew that the public would view his defense of payday lenders as unsavory:

> It was important to 'not make this a payday race,' he (the candidate) wrote. The solution: Hide the payday money behind a string of PACs and nonprofits, making it difficult to trace donations from payday lenders to Mr. Swallow's campaign.[166]

The section in the bipartisan views on flaws in the IRS's response to a FOIA request also demonstrates the need for transparency in the operations of government.

The goal of greater transparency is the basis for many proposals to reform the law governing political advocacy by nonprofits.

B. STATUTORY CHANGES ARE NEEDED

Democratic staff believes further changes in the 501(c)(4) law are necessary and recommend the following be considered by the Senate Finance Committee.

(1) Require (c)(4)s, (5)s, and (6)s to file notice of formation within 24 hours (same as 527s)

(2) Create a bright-line test on political activity (lobbying and campaigning) – for example, a limitation of 10% of expenditures during the calendar year

(3) Penalty: Apply Section 4955 penalty to (c)(4)s – excise tax on excess political expenditures.

(4) Require the disclosure of donors who contribute over $200 to 501(c)(4)s who engage in political activity (same as 527 organizations), or $1,000, which is the threshold in the Wyden-Murkowski bill.

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[163] *New York Times*, "A Campaign Inquiry in Utah is the Watchdogs' Worst Case" (Mar. 18, 2014).
[164] *Id*.
[165] *Id*.
[166] *Id*.

(5) Require FEC filings to be attached to 990s.

(6) Require electronic filing of 990s (included in the Senate Finance Committee's Tax Administration Discussion Draft).[167]

Possible Alternative Proposals

- Require disclosure similar to 527 organizations (or by cross reference) for tax exempt organizations that do any "electioneering communications" as defined under FEC rules;
- Require tax exempt organizations that wish to fund electioneering communications to fund these operations through a segregated 527 account, thus, contributions would be subject to disclosure; or
- Require these organizations be reclassified as 527 organizations

1. THE FOLLOW THE MONEY ACT

The Follow the Money Act introduced by Chairman Wyden and Senator Murkowski requires that all individuals and entities engaged in independent political spending, including 501(c)(4)s, disclose the names of donors that contribute over $1,000 per year. The legislation also requires real-time disclosure of significant independent political expenditures by 501(c)(4)s similar to the way political candidates report spending to the FEC. This legislation would lessen the processing burden on the IRS Exempt Organizations office because its disclosure regime will eliminate the incentive for organizations to apply for tax-exempt 501(c)(4) status as a means to funnel large anonymous donations into federal elections.

2. RETURN TO THE PRE-1959 STANDARD

A final option which would not require changes in law envisions the IRS reversing its decision in 1959 to interpret "exclusively" as meaning "primarily." The regulatory decision that has led to hundreds of millions of dollars of political spending by "social welfare" organizations could be cancelled by another regulatory decision setting the same standards that applied before 1959.

3. REFORM OF 501(C)(5) AND 501(C)(6) ORGANIZATIONS

The Democratic staff recommends that additional work be done to determine what reforms to 501(c)(5) and 501(c)(6) organizations are needed. Because the TIGTA report did not involve those nonprofit categories, the Democratic staff does not include a discussion of them in these views.

[167] Senate Finance Committee, Summary of Staff Discussion Draft: Tax Administration (Nov. 20, 2013).

XIV. CONCLUSION

Hundreds of thousands of federal government employees work hard every day to perform their duties, from the CIA personnel that tracked Osama Bin Laden to Abbattobad, Pakistan to the NIH researcher who makes it possible to take steps toward stopping cancer, from border patrol agents preventing human trafficking to weather forecasters tracking hurricanes. Sadly, in this case IRS personnel fell short. They took exactly the wrong approach to evaluating many 501(c)(4) applications, in particular the flood of politically right-leaning organizations. There is no evidence IRS personnel had any political bias, nor did they receive outside interference or pressure from political appointees in the IRS, at Treasury or in the White House, but their actions created the appearance of political bias and discrimination.

This was a consequence of bad management and bad judgment.

The director of the Exempt Organizations office, Lois Lerner, deserves the largest share of the blame. It was her job to manage and lead the EO division. In this case she failed to organize her staff to quickly review and either approve or deny the 501(c)(4) applications.

In a generous summary of her performance, former Acting IRS Commissioner Steven Miller said that Lerner "undermanaged" the influx of Tea Party applications.[168] Mr. Miller also took a personnel action against Ms. Lerner, showing his frustration with the failure to resolve the right-leaning applications.[169] Because Lerner refused to testify or be interviewed on this matter, we were not able to establish her side of the story.

This investigation, as well as the TIGTA investigation, did not find any of the IRS actions to be politically motivated. Interviews of IRS personnel showed them to be uninterested in politics or politically naïve. The following email from a TIGTA investigator concludes that there was "no indication of" political motivation.

> Review of these emails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated. The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. This is a very important nuance.[170]

Again, Russell George confirmed in a question from House Ways and Means Committee Ranking Member Sander Levin that no political motivation was found:

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[168] SFC Interview of Steven Miller (Dec. 12, 2014) pp. 164-165.
[169] *Id*.
[170] Email from TIGTA Deputy Inspector General for Investigations Timothy Camus to TIGTA staff (May 3, 2013).

> LEVIN: Did you find any evidence of political motivation in the selection of the tax exemption applications?
>
> GEORGE: We did not, sir.[171]

IRS employees involved in processing and overseeing the processing of Tea Party applications were each asked if their actions were politically motivated. None of them answered affirmatively.

No evidence was found linking political appointees at the IRS, Treasury or the White House to this delay and mismanagement. No IRS employees identified pressure from political appointees as the cause of the delayed scrutiny of right leaning applications.[172]

This was a case of gross mismanagement, rather than an attempt to exert political influence. While the numbers of left leaning 501(c)(4) applications were not as great as the right-leaning 501(c)(4) applications, the IRS did use the BOLO list to select left-leaning cases. IRS personnel subjected them to a lengthy review, approving some applications and denying others.

The IRS employees set aside Tea Party applications, waiting on a review in Washington D.C., and placed the term on a BOLO list when the applications should have been treated like any other 501(c)(4) seeking nonprofit status and processed accordingly.

To compound the error, various IRS personnel in the Washington D.C. office allowed month after month to go by as they analyzed a handful of the applications. One application was approved on January 11, 2011 by one of the most experienced 501(c)(4) political activity experts, Carter Hull, but his superiors decided even more review was warranted.

At the same time this was taking place efforts were underway to develop a guidesheet to help Cincinnati process the applications. Months were wasted on this project. In the end no guidesheet was ever agreed to.

A key meeting in July of 2011 between Lois Lerner and her team discussed the idea of processing the applications expeditiously, but there was no follow through – the EO team stumbled along in the remaining months of 2011 until the TIGTA investigation began in early 2012.

While these disorganized efforts to process the applications continued, the Tea Party was attracting massive amounts of media coverage – multiple in-depth articles appeared in the *New York Times*, the *Washington Post*, the *Wall Street Journal* and other publications across the country.

Many political commentators credited the Tea Party with shifting control of the House of Representatives to the Republican Party.

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[171] House Ways and Means Committee Hearing on IRS Tax-Exempt Investigation (May 17, 2013).
[172] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).

Yet no alarm bells went off at the IRS after the mid-term elections in November of 2010. More than a year and a half went by after this historic election without any efficient or aggressive action on the 501(c)(4) right-leaning applications.

IRS personnel were completely oblivious to the harsh consequences waiting for them because they ignored a new wave of activism in the American political system.

No plan to process the applications quickly was organized until June of 2012 – after the TIGTA investigation was begun. By that time it was too late to avoid damage to the reputation of the IRS.

Commentators have complained that any attempt to review an application for 501(c)(4) status, investigate how that nonprofit operates, or for the IRS to propose clarifying the political advocacy rules, is somehow a violation of the Constitution's First Amendment protection of free speech. This demonstrates a misunderstanding of the tax laws of the United States and the Constitution. Any American or group of Americans have freedom of speech in political matters. What they don't have is a Constitutional right to a tax break for engaging in political activity. IRS personnel have the responsibility to scrutinize applications for 501(c)(4) status in an evenhanded, thorough way. And after approving an application the IRS can investigate that nonprofit's activities to determine if the 501(c)(4) law is being followed. Under the law the tax status of nonprofits is determined by the IRS. If the participants in the nonprofit feel their freedom of speech is being limited they are free to engage in political activity outside the tax advantaged status of a 501(c)(4) nonprofit.

Management at the IRS has moved aggressively to address the broken system of processing 501(c)(4) applications with policy advocacy issues.

Four key employees in the IRS who failed to manage properly have been removed from their jobs.

A new process for quickly approving 501(c)(4) applications with political advocacy issues has been put in place.

Finally, the Democratic staff believes the law governing political activity by nonprofits must be strengthened further to prevent abuses.

The Finance Committee staff will continue to monitor the IRS to ensure these mistakes are not repeated.

XV. TIMELINE OF KEY EVENTS

2010

February 25: Tea Party case arrives in Cincinnati Determinations Unit. Because of recent media attention, the case is determined to be "high profile" and sent, along with two other Tea Party applications, to Washington D.C. for analysis.

March/April: Tea Party applications are held in Cincinnati while the D.C. office examines the 3 test cases.

April: Tax Law Specialist Carter Hull is assigned two of the three Tea Party test cases to review. Hull prepares development letters to send to the organizations.

July: EO Determinations holds a screening workshop in Cincinnati. A presentation instructs staff to "look for names like Tea Party, Patriots, 9/12 Project, Emerge, Progressive, We the People."

August: Be On the Lookout or "BOLO" spreadsheet distributed with Tea Party designation added to "Emerging Issues" Tab. Spreadsheet also identifies "Progressive" and "ACORN Successor" on other tabs.

October 18: Hull sends a memo to his manager summarizing the relevant issues of the Tea Party cases he is developing and apprising him of his progress.

October 26: Determinations Director Cindy Thomas expresses concern to her superior about the manner and pace with which Tea Party cases are being worked.

November: Burdensome development questions sent to left-leaning voter registration applicant.

December: Cindy Thomas inquires about status of Tea Party test cases in Washington D.C.

2011

January: Carter Hull recommends approval of Tea Party test case applications. Recommendation sent to senior staff for review.

March: Cindy Thomas is still concerned with pace of Tea Party applications. Recommends developing a specific plan of action to resolve cases.

April: Hull's recommendation is reviewed by a senior staff member, who decides more development of the test cases is needed. The case is sent to personnel in the Chief Counsel's office for review.

July 5: Lois Lerner meets with staff on BOLO list issue (at this point 100 Tea Party cases were in Cincinnati waiting for decisions).

July 5: BOLO terminology changed to remove Tea Party, per instructions from Lerner.

August: Meeting with Don Spellman of Chief Counsel's office to discuss the two Tea Party test applications that had been sent for review.

September: First attempt at application "triage."

November: Guidesheet for evaluating Tea Party applications sent to Cincinnati; IRS personnel did not find it helpful.

2012

January: BOLO terminology changed again, modified to capture conservative and left-leaning groups.

January: Extensive development letters are sent to Tea Party and a few left-leaning applicants.

February: Beginning of press attention regarding failure of IRS to approve or deny 501(c)(4) applications with political activity issues. Lerner attempts to disseminate new guidance to staff on how to reduce burdensome development requests.

March: TIGTA audit begins.

May: Commissioner Doug Shulman and Deputy Commissioner Steven Miller briefed on audit.

May: Workshop conducted on bucketing exercise to expedite Tea Party applications.

May 17: BOLO is changed again to eliminate current advocacy organization language that is capturing conservative and liberal groups.

June: Bucketing exercise begins in Cincinnati.

June 4: Acting General Counsel of Treasury Christopher Meade briefed by Russell George.

End of 2012: Commissioner Shulman leaves IRS, Steve Miller becomes Acting Commissioner.

2013

May: TIGTA report issued.