

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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LOIS LERNER'S INVOLVEMENT
IN THE
IRS TARGETING OF TAX-EXEMPT ORGANIZATIONS

STAFF REPORT
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II. Executive Summary

In February 2012, the Committee on Oversight and Government Reform began investigating allegations that the Internal Revenue Service inappropriately scrutinized certain applicants seeking tax-exempt status. Section 501(c)(4) of the Internal Revenue Code permits incorporation of organizations that meet certain criteria and focus on advancing “social welfare” goals.¹ With a 501(c)(4) designation, such organizations are not subject to federal income tax. Donations to these organizations are not tax deductible. Consistent with the Constitutionally protected right to free speech, these organizations – commonly referred to as “501(c)(4)s” – may engage in campaign-related activities provided that these activities do not comprise a majority of the organizations’ efforts.²

On May 12, 2013, the Treasury Inspector General for Tax Administration (TIGTA) released a report that found that the Exempt Organizations (EO) division of the IRS inappropriately targeted “Tea Party” and other conservative applicants for tax-exempt status and subjected them to heightened scrutiny.³ This additional scrutiny resulted in extended delays that, in most cases, sidelined applicants during the 2012 election cycle, in spite of their Constitutional right to participate. Meanwhile, the majority of liberal and left-leaning 501(c)(4) applicants won approval.⁴

Documents and information obtained by the Committee since the release of the TIGTA report show that Lois G. Lerner, the now-retired Director of IRS Exempt Organizations (EO), was extensively involved in targeting conservative-oriented tax-exempt applicants for inappropriate scrutiny. This report details her role in the targeting of conservative-oriented organizations, which would later result in some level of increased scrutiny of applicants from across the political spectrum. It also outlines her obstruction of the Committee’s investigation.

Prior to joining the IRS, Lerner was the Associate General Counsel and Head of the Enforcement Office at the Federal Elections Commission (FEC).⁵ During her tenure at the FEC, she also engaged in questionable tactics to target conservative groups seeking to expand their political involvement, often subjecting them to heightened scrutiny.⁶ Her political ideology was evident to her FEC colleagues. She brazenly subjected Republican groups to rigorous investigations. Similar Democratic groups did not receive the same scrutiny.⁷

The Committee’s investigation of Lerner’s role in the IRS’s targeting of tax-exempt organizations found that she led efforts to scrutinize conservative groups while working to

¹ I.R.C. § 501(c)(4).

² I.R.C. § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1(a)(2).

³ TREASURY INSPECTOR GEN. FOR TAX ADMIN., INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW (May 14, 2013).

⁴ Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA Today, May 15, 2013.

⁵ Eliana Johnson, *Lois Lerner at the FEC*, NAT’L REVIEW (May 23, 2013) [hereinafter *Lois Lerner at the FEC*].

⁶ *Id.*

⁷ *Id.*; Rebekah Metzler, *Lois Lerner: Career Gov’t Employee Under Fire*, U.S. NEWS & WORLD REP. (May 30, 2013), available at <http://www.usnews.com/news/articles/2013/05/30/lois-lerner-career-government-employee-under-fire> (last accessed Jan. 14, 2014).

maintain a veneer of objective enforcement. Following the Supreme Court’s 2010 decision in *Citizens United v. Federal Election Commission*, the IRS faced pressure from voices on the left to heighten scrutiny of applicants for tax-exempt status. IRS EO employees in Cincinnati identified the first Tea Party applicants and promptly forwarded these applications to IRS headquarters in Washington, D.C. for further guidance. Officials in Washington, D.C. directed IRS employees in Cincinnati to isolate Tea Party applicants even though the IRS had not developed a process for approving their applications.

While IRS employees were screening applications, documents show that Lerner and other senior officials contemplated concerns about the “hugely influential Koch brothers,” and that Lerner advised her IRS colleagues that her unit should “do a c4 project next year” focusing on existing organizations.⁸ Lerner even showed her recognition that such an effort would approach dangerous ground and would have to be engineered as not a “*per se* political project.”⁹ Underscoring a political bias against the lawful activity of such groups, Lerner referenced the political pressure on the IRS to “fix the problem” of 501(c)(4) groups engaging in political speech at an event sponsored by Duke University’s Sanford School of Public Policy.¹⁰

Lerner not only proposed ways for the IRS to scrutinize groups with 501(c)(4) status, but also helped implement and manage hurdles that hindered and delayed the approval of groups applying for 501(c)(4) status. In early 2011, Lerner directed the manager of the IRS’s EO Technical Unit to subject Tea Party cases to a “multi-tier review” system.¹¹ She characterized these Tea Party cases as “very dangerous,” and believed that the Chief Counsel’s office should “be in on” the review process.¹² Lerner was extensively involved in handling the Tea Party cases—from directing the review process to receiving periodic status updates.¹³ Other IRS employees would later testify that the level of scrutiny Lerner ordered for the Tea Party cases was unprecedented.¹⁴

Eventually, Lerner became uncomfortable with the burgeoning number of conservative organizations facing immensely heightened scrutiny from a purportedly apolitical agency. Consistent with her past concerns that scrutiny could not be “*per se* political,” she ordered the implementation of a new screening method. Without doing anything to inform applicants that they had been subject to inappropriate treatment, this sleight of hand added a level of deniability for the IRS that officials would eventually use to dismiss accusations of political motivations – she broadened the spectrum of groups that would be scrutinized going forward.

⁸ E-mail from Paul Streckfus to Paul Streckfus (Sept. 15, 2010) (EO Tax Journal 2010-130); E-mail from Lois Lerner, IRS, to Cheryl Chasin et al., IRS (Sept. 15, 2010). [IRSR 191032-33].

⁹ E-mail from Lois Lerner, IRS, to Cheryl Chasin et al., IRS (Sept. 16, 2010). [IRSR 191030]

¹⁰ John Sexton, *Lois Lerner Discusses Political Pressure on the IRS in 2010*, BREITBART.COM, Aug. 6, 2013.

¹¹ Transcribed Interview of Michael Seto, IRS, in Wash., D.C., at 34 (July 11, 2013).

¹² E-mail from Lois Lerner, IRS, to Michael Seto, IRS (Feb. 1, 2011). [IRSR 161810-11]

¹³ Justin Lowe, IRS, Increase in (c)(3)/(c)(4) Advocacy Org. Applications (June 27, 2011). [IRSR 2735]; E-mail from Judith Kindell, IRS, to Lois Lerner, IRS (July 18, 2012). [IRSR 179406]

¹⁴ See, e.g., Transcribed interview of Carter Hull, IRS, in Wash., D.C. (June 14, 2013); Transcribed interview of Elizabeth Hofacre, IRS, in Wash., D.C. (May 31, 2013).

When Congress asked Lerner about a shift in criteria, she flatly denied it along with allegations about disparate treatment.¹⁵ Even as targeting continued, Lerner engaged in a surreptitious discussion about an “off-plan” effort to restrict the right of existing 501(c)(4) applicants to participate in the political process through new regulations made outside established protocols for disclosing new regulatory action.¹⁶ E-mails obtained by the Committee show she and other seemingly like-minded IRS employees even discussed how, if an aggrieved Tea Party applicant were to file suit, the IRS might get the chance to showcase the scrutiny it had applied to conservative applicants.¹⁷ IRS officials seemed to envision a potential lawsuit as an expedient vehicle for bypassing federal laws that protect the anonymity of applicants denied tax exempt status.¹⁸ Lerner surmised that Tea Party groups would indeed opt for litigation because, in her mind, they were “itching for a Constitutional challenge.”¹⁹

Through e-mails, documents, and the testimony of other IRS officials, the Committee has learned a great deal about Lois Lerner’s role in the IRS targeting scandal since the Committee first issued a subpoena for her testimony. She was keenly aware of acute political pressure to crack down on conservative-leaning organizations. Not only did she seek to convey her agreement with this sentiment publicly, she went so far as to engage in a wholly inappropriate effort to circumvent federal prohibitions in order to publicize her efforts to crack down on a particular Tea Party applicant. She created unprecedented roadblocks for Tea Party organizations, worked surreptitiously to advance new Obama Administration regulations that curtail the activities of existing 501(c)(4) organizations – all the while attempting to maintain an appearance that her efforts did not appear, in her own words, “*per se* political.”

Lerner’s testimony remains critical to the Committee’s investigation. E-mails dated shortly before the public disclosure of the targeting scandal show Lerner engaging with higher ranking officials behind the scenes in an attempt to spin the imminent release of the TIGTA report.²⁰ Documents and testimony provided by the IRS point to her as the instigator of the IRS’s efforts to crack down on 501(c)(4) organizations and the singularly most relevant official in the IRS targeting scandal. Her unwillingness to testify deprives Congress the opportunity to have her explain her conduct, hear her response to personal criticisms levied by her IRS coworkers, and provide vital context regarding the actions of other IRS officials. In a recent interview, President Obama broadly asserted that there is not even a “smidgeon of corruption” in the IRS targeting scandal.²¹ If this is true, Lois Lerner should be willing to return to Congress to testify about her actions. The public needs a full accounting of what occurred and who was involved. Through its investigation, the Committee seeks to ensure that government officials are never in a position to abuse the public trust by depriving Americans of their Constitutional right to participate in our democracy, regardless of their political beliefs. This is the only way to restore confidence in the IRS.

¹⁵ Briefing by IRS staff to Committee staff (Feb. 24, 2012); see Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov’t Reform, to Lois Lerner, IRS (May 14, 2013).

¹⁶ E-mail from Ruth Madrigal, Dep’t of the Treasury, to Victoria Judson et al., IRS (June 14, 2012). [IRSR 305906]

¹⁷ E-mail from Nancy Marks, IRS, to Lois Lerner, Holly Paz, & David Fish, IRS (Mar. 29, 2013). [IRSR 190611]

¹⁸ *Id.*

¹⁹ E-mail from Lois Lerner, IRS, to Nancy Marks, Holly Paz, & David Fish, IRS (Apr. 1, 2013). [IRSR 190611]

²⁰ See, e.g., E-mail from Lois Lerner, IRS, to Michelle Eldridge et al., IRS (Apr. 23, 2013). [IRSR 196295]; E-mail from Nikole Flax, IRS, to Lois Lerner, IRS (Apr. 23, 2013). [IRSR 189013]

²¹ “Not even a smidgeon of corruption”: Obama downplays IRS, other scandals, FOX NEWS, Feb. 3, 2014.

III. Background: IRS Targeting and Lois Lerner's Involvement

In February 2012, the Committee received complaints from several congressional offices alleging that the IRS was delaying the approval of conservative-oriented organizations for tax-exempt status. On February 17, 2012, Committee staff requested a briefing from the IRS about this matter. On February 24, 2012, Lerner and other IRS officials provided the Committee staff with an informal briefing. The Committee continued to receive complaints of disparate treatment by the IRS EO office, and the matter continued to garner media attention.²² On March 27, 2012, the Oversight and Government Reform Committee sent Lerner a joint letter requesting information about development letters that the IRS sent several applicants for tax-exempt status. In response, Lerner participated in a briefing with Committee staff on April 4, 2012. She also sent two letters to the Committee, dated April 26, 2012, and May 4, 2012, in response to the Committee's March 27, 2012 letter. Lerner's responses largely focused on rules, regulations, and IRS processes for evaluating applications for tax-exempt status. In the course of responding to the Committee's request for information, Lerner made several false statements, which are discussed below in greater detail.

A. Lerner's False Statements to the Committee

During the February 24, 2012, briefing, Committee staff asked Lerner whether the criteria for evaluating tax-exempt applications had changed at any point. Lerner responded that the criteria had not changed. In fact, they had. According to the Treasury Inspector General for Tax Administration (TIGTA), in late June 2011, Lerner directed that the criteria used to identify applications be changed.²³ **This was the first time Lerner made a false or misleading statement during the Committee's investigation.**

On March 1, 2012, the Committee requested that TIGTA begin investigating the IRS process for evaluating tax-exempt applications. Committee staff and TIGTA met on March 8, 2012 to discuss the scope of TIGTA's investigation. TIGTA's investigation commenced immediately and proceeded concurrently with the Committee's investigation.

During another briefing on April 4, 2012, Lerner told Committee staff that the information the IRS was requesting in follow-up letters to conservative-leaning groups—which, in some cases, included a complete list of donors and their respective contributions—was not out

²² See, e.g., Janie Lorber, *IRS Oversight Reignites Tea Party Ire: Agency's Already Controversial Role is in Dispute After Questionnaires Sent to Conservative Groups*, ROLL CALL, Mar. 8, 2012, available at http://www.rollcall.com/issues/57_106/IRS-Oversight-Reignites-Tea-Party-Ire-212969-1.html; Susan Jones, *IRS Accused of 'Intimidation Campaign' Against Tea Party Groups*, CNSNEWS.COM, Mar. 7, 2012, <http://cnsnews.com/news/article/irs-accused-intimidation-campaign-against-tea-party-groups>; Perry Chiaramonte, *Numerous Tea Party Chapters Claim IRS Attempts to Sabotage Nonprofit Status*, FOX NEWS, Feb. 28, 2012, <http://www.foxnews.com/politics/2012/02/28/numerous-tea-party-chapters-claim-irs-attempting-to-sabotage-nonprofit-status/>.

²³ Briefing by IRS staff to Committee staff (May 13, 2013); Treasury Inspector Gen. for Tax Admin., *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 2013) (2013-10-053), at 7, available at <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf> [hereinafter TIGTA Audit Rpt.].

of the ordinary. Moreover, on April 26, 2012, in Lerner’s first written response to the Committee’s request for information, Lerner wrote that the follow-up letters to conservative applicants were “in the ordinary course of the application process to obtain the information as the IRS deems it necessary to make a determination whether the organization meets the legal requirements for tax-exempt status.”²⁴

In fact, the scope of the information that EO requested from conservative groups was extraordinary. At a briefing on May 13, 2013, IRS officials, including Nikole Flax, the IRS Commissioner’s Chief of Staff, could not identify any other instance in the agency’s history in which the IRS asked groups for a complete list of donors with corresponding amounts. **These marked the second and third times Lerner made a false or misleading statement during the Committee’s investigation.**

On May 4, 2012, in her second written response to the Committee, Lerner justified the extraordinary requests for additional information from conservative applicants for tax-exempt status.²⁵ Among other things, Lerner stated, “the requests for information . . . are not beyond the scope of Form 1024 [the application for recognition under section 501(c)(4)].”²⁶

According to TIGTA, however, at some point in May 2012, the IRS identified seven types of information, including requests for donor information, which it had inappropriately requested from conservative groups. In fact, according to the TIGTA report, Lerner had received a list of these unprecedented questions on April 25, 2012—more than one week before she sent a response letter to the Committee defending the additional scrutiny applied by EO to certain applicants. **Lerner’s statement about the information requests was the fourth time she made a false or misleading statement during the Committee’s investigation.**

During the May 10, 2013, American Bar Association (ABA) tax conference, Lerner revealed, through a question she planted with an audience member,²⁷ that the IRS knew that certain conservative groups had in fact been targeted for additional scrutiny.²⁸ She blamed the inappropriate actions of the IRS on “line people” in Cincinnati. She stated:

²⁴ Letter from Lois G. Lerner, Director, Exempt Orgs., IRS, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Apr. 26, 2012).

²⁵ Letter from Lois G. Lerner, Director, Exempt Orgs., IRS, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (May 4, 2012).

²⁶ *Id.* at 1.

²⁷ *Hearing on the IRS Targeting Conservative Groups: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Rep. Nunes); Bernie Becker, *Question that Revealed IRS Scandal was Planted, Chief Admits*, THE HILL, May 17, 2013, available at <http://thehill.com/blogs/on-the-money/domestic-taxes/150878-question-that-revealed-irs-scandal-was-planted-chief-admits>; Abby Phillip, *IRS Planted Question About Tax Exempt Groups*, ABC NEWS, May 17, 2013, <http://abcnews.go.com/blogs/politics/2013/05/irs-planted-question-about-tax-exempt-groups/>.

²⁸ John D. McKinnon & Corey Boles, *IRS Apologizes for Scrutiny of Conservative Groups*, WALL ST. J., May 10, 2013, available at <http://online.wsj.com/news/articles/SB10001424127887323744604578474983310370360>; Jonathan Weisman, *IRS Apologizes to Tea Party Groups Over Audits of Applications for Tax Exemption*, N.Y. TIMES, May 10, 2013; Abram Brown, *IRS, to Tea Party: Sorry We Targeted You & Your Tax Status*, FORBES, May 10, 2013, available at <http://www.forbes.com/sites/abrambrown/2013/05/10/irs-to-tea-party-were-sorry-we-targeted-your-taxes/>.

So our line people in Cincinnati who handled the applications did what we call centralization of these cases. They centralized work on these in one particular group. . . . However, in these cases, the way they did the centralization was not so fine. Instead of referring to the cases as advocacy cases, they actually used case names on this list. They used names like Tea Party or Patriots and they selected cases simply because the applications had those names in the title. **That was wrong, that was absolutely incorrect, insensitive, and inappropriate — that’s not how we go about selecting cases for further review. We don’t select for review because they have a particular name.**²⁹

This revelation occurred two days after members of the House Ways and Means Oversight Subcommittee on May 8, 2013, had asked Lerner for an update on the IRS’s internal investigation into allegations of improper targeting at a hearing.³⁰ During the hearing, she declined to answer and directed Members to questionnaires on the IRS website. Lerner’s failure to disclose relevant information to the House Ways and Means Committee—opting instead to leak the damaging information during an obscure conference—was the first in a series of attempts to obstruct the congressional investigation into targeting of conservative groups.

B. The Events of May 14, 2013

Three significant events occurred on May 14, 2013. First, TIGTA released its final audit report, finding that the IRS used inappropriate criteria and politicized the process to evaluate organizations for 501(c)(4) tax-exempt status.³¹ Specifically, TIGTA found that beginning in early 2010, the IRS used inappropriate criteria to target certain groups based on their names and political positions.³² According to the report, “ineffective management” allowed the development and use of inappropriate criteria for more than 18 months.³³ The IRS’s actions also resulted in “substantial delays in processing certain applications.”³⁴ TIGTA found that the IRS delayed beginning work on a majority of targeted cases for 13 months.³⁵ The IRS also sent follow-up requests for additional information to targeted organizations. During its audit, TIGTA “determined [these follow-up requests] to be unnecessary for 98 (58 percent) of 170 organizations” that received the requests.³⁶

Second, the Department of Justice announced that it had launched an FBI investigation into potential criminal violations in connection with the targeting of conservative tax-exempt

²⁹ Rick Hasen, *Transcript of Lois Lerner’s Remarks at Tax Meeting Sparking IRS Controversy*, ELECTION LAW BLOG (May 11, 2013, 7:37AM) <http://electionlawblog.org/?p=50160> (emphasis added).

³⁰ *Hearing on the Oversight of Tax-Exempt Orgs.: Hearing before the H. Comm. on Ways & Means, Subcomm. on Oversight*, 113th Cong. (2013).

³¹ TIGTA Audit Rpt., *supra* note 23.

³² *Id.* at 6.

³³ *Id.* at 12.

³⁴ *Id.* at 5.

³⁵ *Id.* at 14.

³⁶ *Id.* at 18.

organizations.³⁷ Despite this announcement, FBI Director Robert Mueller was unable to provide even the most basic facts about the status of the FBI's investigation when he testified before Congress on June 13, 2013.³⁸ He testified a month after the Attorney General announced the FBI's investigation, calling the matter "outrageous and unacceptable."³⁹ Chairman Issa and Chairman Jordan wrote to incoming FBI Director James B. Comey on September 6, 2013, with questions about the Bureau's progress in undertaking its investigation into the findings of the May 14, 2013, TIGTA targeting report.⁴⁰ While the FBI responded to the Committee's request on October 31, 2013, it failed to produce any documents in response to the Committee's request and has refused to provide briefings on related issues. Chairman Issa and Chairman Jordan wrote to Director Comey again on December 2, requesting documents and information relating to the Bureau's response to the Committee's September 6 letter.⁴¹ To date, the Bureau has responded with scant information, leaving open the possibility the Committee will have to explore other options to compel DOJ into providing the materials requested.⁴²

Third, Chairman Issa and Chairman Jordan sent a letter to Lerner outlining each instance that she provided false or misleading information to the Committee. The letter also pointed out Lerner's failure to be candid and forthright regarding the IRS's internal review and subsequent findings related to targeting of conservative-oriented organizations. The Chairmen's letter stated:

Moreover, despite repeated questions from the Committee over a year ago and despite your intimate knowledge of the situation, you failed to inform the Committee of IRS's plan, developed in early 2010, to single out conservative groups and how that plan changed over time. You also failed to inform the Committee that IRS launched its own internal review of this matter in late March 2012, or that the internal review was completed on May 3, 2012, finding significant problems in the review process and a substantial bias against conservative groups. At no point did you or anyone else at IRS inform Congress of the results of these findings.⁴³

³⁷ *Transcript: Holder on IRS, AP, Civil Liberties, Boston*, WALL STREET J. BLOG (May 14, 2013, 4:51PM), <http://blogs.wsj.com/washwire/2013/05/14/transcript-holder-on-irs-ap-civil-liberties-boston/>; Rachel Weiner, *Holder Has Ordered IRS Investigation*, WASH. POST, May 14, 2013, available at <http://www.washingtonpost.com/blogs/post-politics/wp/2013/05/14/holder-has-ordered-irs-investigation/> [hereinafter Weiner].

³⁸ *Hearing on the Federal Bureau of Investigation: Hearing before the H. Comm. on the Judiciary*, 113th Cong. (2013) (question and answer with Rep. Jordan).

³⁹ Weiner, *supra* note 37.

⁴⁰ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, & Hon. Jim Jordan, Chairman, Subcomm. on Econ. Growth, Job Creation & Reg. Affairs, to Hon. James B. Comey, Director, Federal Bureau of Investigation (Sept. 6, 2013).

⁴¹ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, & Hon. Jim Jordan, Chairman, Subcomm. on Econ. Growth, Job Creation & Reg. Affairs, to Hon. James B. Comey, Director, Federal Bureau of Investigation (Dec. 2, 2013).

⁴² *See id.* at 3.

⁴³ Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, & Hon. Jim Jordan, Chairman, H. Subcomm. on Econ. Growth, Job Creation, & Regulatory Affairs, to Lois G. Lerner, Director, Exempt Orgs., IRS (May 14, 2013).

The letter requested additional documents and communications between Lerner and her colleagues, and urged the IRS and Lerner to cooperate with the Committee's efforts to uncover the extent of the targeting of conservative groups. Lerner did not cooperate.

II. Lerner's Failed Assertion of her Fifth Amendment Privilege

In advance of a May 22, 2013 hearing regarding TIGTA's report, the Committee formally invited Lerner to testify. Other witnesses invited to appear were Neal S. Wolin, Deputy Treasury Secretary, Douglas Shulman, former IRS Commissioner, and J. Russell George, the Treasury Inspector General for Tax Administration. Wolin, Schulman, and George all agreed to appear voluntarily. Lerner's testimony was necessary to understand the rationale for and extent of the IRS's practice of targeting certain tax-exempt groups for heightened scrutiny. By then, it was well known that Lerner had extensive knowledge of the scheme to target conservative groups. In addition to the fact that she was director of the Exempt Organizations Division, the Committee believed, as set forth above, that Lerner made numerous misrepresentations of fact related to the targeting program. The Committee's hearing intended to answer important questions and set the record straight about the IRS's handling of tax-exempt applications.

However, prior to the hearing, Lerner's attorney informed Committee staff that she would assert her Fifth Amendment privilege⁴⁴—a refusal to appear before the Committee voluntarily to answer questions. As a result, the Chairman issued a subpoena on May 17, 2013, to compel her testimony at the Committee hearing on May 22, 2013. On May 20, 2013, William Taylor III, representing Lerner, sent the Chairman a letter advising that Lerner intended to invoke her Fifth Amendment privilege against self incrimination.⁴⁵ For this reason, Taylor requested that Lerner be excused from appearing.⁴⁶ On May 21, 2013, the Chairman responded to Taylor's letter, informing him that her attendance at the hearing was necessary due to "the possibility that [Lerner] will waive or choose not to assert the privilege as to at least certain questions of interest to the Committee."⁴⁷ The subpoena that compelled her appearance remained in place.⁴⁸

A. Lerner Gave a Voluntary Statement at the May 22, 2013 Hearing

On May 22, 2013, Lerner appeared with the other invited witnesses. The events that followed are now well known. Rather than properly asserting her Fifth Amendment privilege, Lerner, in the opinion of the Committee, the House General Counsel, and many legal scholars, waived her privilege by making a voluntary statement of innocence. Instead of remaining silent and declining to answer questions, with the exception of stating her name, Lerner read a lengthy statement professing her innocence:

⁴⁴ Letter from Mr. William W. Taylor, Partner, Zuckerman Spaeder LLP, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (May 20, 2013).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Letter from Hon. Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform to Mr. William W. Taylor, III, Zuckerman Spaeder, May 21, 2013.

⁴⁸ *Id.*

Good morning, Mr. Chairman and members of the Committee. My name is Lois Lerner, and I'm the Director of Exempt Organizations at the Internal Revenue Service.

I have been a government employee for over 34 years. I initially practiced law at the Department of Justice and later at the Federal Election Commission. In 2001, I became — I moved to the IRS to work in the Exempt Organizations office, and in 2006, I was promoted to be the Director of that office.

* * *

On May 14th, the Treasury inspector general released a report finding that the Exempt Organizations field office in Cincinnati, Ohio, used inappropriate criteria to identify for further review applications for organizations that planned to engage in political activity which may mean that they did not qualify for tax exemption. On that same day, the Department of Justice launched an investigation into the matters described in the inspector general's report. In addition, members of this committee have accused me of providing false information when I responded to questions about the IRS processing of applications for tax exemption.

I have not done anything wrong. I have not broken any laws. I have not violated any IRS rules or regulations, and I have not provided false information to this or any other congressional committee.

And while I would very much like to answer the Committee's questions today, I've been advised by my counsel to assert my constitutional right not to testify or answer questions related to the subject matter of this hearing. After very careful consideration, I have decided to follow my counsel's advice and not testify or answer any of the questions today.

Because I'm asserting my right not to testify, I know that some people will assume that I've done something wrong. I have not. One of the basic functions of the Fifth Amendment is to protect innocent individuals, and that is the protection I'm invoking today. Thank you.⁴⁹

B. Lerner Authenticated a Document during the Hearing

Prior to Lerner's statement, Ranking Member Elijah E. Cummings sought to introduce into the record a document containing Lerner's responses to questions posed by TIGTA. After

⁴⁹ *Hearing on the IRS: Targeting Americans for Their Political Beliefs: Hearing before the H. Comm. on Oversight & Gov't Reform, 113th Cong. 22 (2013) (H. Rept. 113-33) (statement of Lois Lerner, Director, Exempt Orgs., IRS] [hereinafter May 22, 2013 IRS Hearing] (emphasis added).*

her statement and at the request of the Chairman, Lerner reviewed and authenticated the document offered into the record by the Ranking Member.⁵⁰ In response to questions from Chairman Issa, she stated:

Chairman Issa: Ms. Lerner, earlier the ranking member made me aware of a response we have that is purported to come from you in regards to questions that the IG asked during his investigation. Can we have you authenticate simply the questions and answers previously given to the inspector general?

Ms. Lerner: I don't know what that is. I would have to look at it.

Chairman Issa: Okay. Would you please make it available to the witness?

Ms. Lerner: This appears to be my response.

Chairman Issa: So it's your testimony that as far as your recollection, that is your response?

Ms. Lerner: That's correct.⁵¹

Next, the Chairman asked Lerner to reconsider her position on testifying and stated that he believed she had waived her Fifth Amendment privilege by giving an opening statement and authenticating a document.⁵² Lerner responded: "I will not answer any questions or testify about the subject matter of this Committee's meeting."⁵³

C. Representative Gowdy's Statement Regarding Lerner's Waiver

After Lerner refused to answer any questions, Representative Trey Gowdy sought recognition at the hearing. He stated:

Mr. Issa, Mr. Cummings just said we should run this like a courtroom, and I agree with him. She just testified. She just waived her Fifth Amendment right to privilege. You don't get to tell your side of the story and then not be subjected to cross examination. That's not the way it works. She waived her right of Fifth Amendment privilege by issuing an opening statement. She ought to stay in here and answer our questions.⁵⁴

⁵⁰ *Id.* at 23 (statement of Lois Lerner, Director, Exempt Orgs., IRS).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Shortly after Representative Gowdy's comments, Chairman Issa excused Lerner, reserving the option to recall her at a later date. Chairman Issa stated that Lerner was excused "subject to recall after we seek specific counsel on the questions of whether or not the constitutional right of the Fifth Amendment has been properly waived."⁵⁵ Rather than adjourning the hearing on May 22, 2013, the Chairman recessed it, in order to reconvene at a later date after a thorough analysis of Lerner's actions.

D. Committee Business Meeting to Vote on Whether Lerner Waived Her Fifth Amendment Privilege

On June 28, 2013, the Chairman convened a business meeting to allow the Committee to vote on whether Lerner waived her Fifth Amendment privilege. The Chairman made clear that he recessed the May 22, 2013 hearing so as not to "make a quick or uninformed decision."⁵⁶ He took more than five weeks to review the circumstances, facts, and legal arguments related to Lerner's voluntary statements.⁵⁷ The Chairman reviewed advice from the Office of General Counsel of the U.S. House of Representatives, arguments presented by Lerner's counsel, and the relevant legal precedent.⁵⁸ After much deliberation, he determined that Lerner waived her constitutional privilege when she made a voluntary opening statement that involved several specific denials of various allegations.⁵⁹ Chairman Issa stated:

Having now considered the facts and arguments, I believe Lois Lerner waived her Fifth Amendment privileges. She did so when she chose to make a voluntary opening statement. Ms. Lerner's opening statement referenced the Treasury IG report, and the Department of Justice investigation, and the assertions she previously had provided -- sorry -- and the assertions that she had previously provided false information to the committee. **She made four specific denials.** Those denials are at the core of the committee's investigation in this matter. She stated that she had not done anything wrong, not broken any laws, not violated any IRS rules or regulations, and not provided false information to this or any other congressional committee regarding areas about which committee members would have liked to ask her questions. Indeed, committee members are still interested in hearing from her. Her statement covers almost the entire range of questions we wanted to ask when the hearing began on May 22.⁶⁰

Lerner's counsel disagreed with the Chairman's assessment that his client waived her constitutional privilege.⁶¹ In a letter dated May 30, 2013, Lerner's counsel argued that she had

⁵⁵ *Id.* at 24.

⁵⁶ Business Meeting, H. Comm. on Oversight & Gov't Reform (June 28, 2013).

⁵⁷ *Id.*

⁵⁸ *Id.* at 5.

⁵⁹ *Id.*

⁶⁰ *Id.* (emphasis added)

⁶¹ Letter from William W. Taylor, III, Zuckerman Spaeder LLP, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (May 30, 2013) [hereinafter May 30, 2013 Letter].

not waived the privilege.⁶² Specifically, he argued that a witness compelled to appear and answer questions does not waive her Fifth Amendment privilege by giving testimony proclaiming her innocence.⁶³ He cited the example of *Isaacs v. United States*, in which a witness subpoenaed to appear before a grand jury testified that he was not guilty of any crime while at the same time invoking his Fifth Amendment privilege.⁶⁴ The U.S. Court of Appeals for the Eighth Circuit rejected the government's waiver argument, holding that the witness's "claim of innocence . . . did not preclude him from relying upon his Constitutional privilege."⁶⁵

Lerner's lawyer further argued that the law is no different for witnesses who proclaim their innocence before a congressional committee.⁶⁶ In *United States v. Haag*, a witness subpoenaed to appear before a Senate committee investigating links to the Communist Party testified that she had "never engaged in espionage," but invoked her Fifth Amendment privilege in declining to answer questions related to her alleged involvement with the Communist Party.⁶⁷ The U.S. District Court for the District of Columbia held that the witness did not waive her Fifth Amendment privilege.⁶⁸ In *United States v. Costello*, a witness subpoenaed to appear before a Senate committee investigating his involvement in a major crime syndicate testified that he had "always upheld the Constitution and the laws" and provided testimony on his assets, but invoked his Fifth Amendment privilege in declining to answer questions related to his net worth and indebtedness.⁶⁹ The U.S. Court of Appeals for the Second Circuit held that the witness did not waive his constitutional privilege.⁷⁰

The cases cited by Lerner's lawyer do not apply to the facts in this matter. The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."⁷¹ By choosing to give an opening statement, Lerner cannot then claim the Fifth Amendment privilege to avoid answering questions on the subject matter contained in that statement.⁷² It is well established that a witness "may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details."⁷³ In such a case, "[t]he privilege is waived for the matters to which the witness testifies. . . ."⁷⁴

Furthermore, a witness may waive the privilege by voluntarily giving exculpatory testimony. In *Brown v. United States*, for example, the Supreme Court held that "a denial of any activities that might provide a basis for prosecution" waived the privilege.⁷⁵ The Court

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 256 F.2d 654, 656 (8th Cir. 1958).

⁶⁵ *Id.* at 661.

⁶⁶ May 30, 2013 Letter, *supra* note 61.

⁶⁷ 142 F. Supp. 667-669 (D.D.C. 1956).

⁶⁸ *Id.* at 671-72.

⁶⁹ 198 F.2d 200, 202 (2d Cir. 1952).

⁷⁰ *Id.* at 202-03.

⁷¹ U.S. CONST., amend. V.

⁷² See *Brown v. United States*, 356 U.S. 148 (1958).

⁷³ *Mitchell v. United States*, 526 U.S. 314, 321 (1999) ("A witness may not pick and choose what aspects of a particular subject to discuss without casting doubt on the trustworthiness of the statements and diminishing the integrity of the factual inquiry.").

⁷⁴ *Id.*

⁷⁵ *Brown*, 356 U.S. at 154-55.

analogized the situation to one in which a criminal defendant takes the stand and testifies on his own behalf, and then attempts to invoke the Fifth Amendment on cross-examination.⁷⁶

Even though the Committee's subpoena compelled her to appear at the hearing, Lerner made an entirely voluntary statement. She denied breaking any laws, she denied breaking any IRS rules, she denied providing false information to Congress—in fact, she denied any wrongdoing whatsoever. Then she refused to answer questions posed by the Committee Members and exited the hearing.

On the morning of June 28, 2013, the Committee convened a business meeting to consider a resolution finding that Lois Lerner waived her Fifth Amendment privilege against self-incrimination when she made a voluntary opening statement at the Committee's May 22, 2013, hearing entitled "The IRS: Targeting Americans for Their Political Beliefs."⁷⁷ After lengthy debate, the Committee approved the resolution by a vote of 22 ayes to 17 nays.⁷⁸

E. Lois Lerner Continues to Defy the Committee's Subpoena

Following the Committee's resolution that Lerner waived her Fifth Amendment privilege, Chairman Issa recalled her to testify before the Committee. On February 25, 2014, Chairman Issa sent a letter to Lerner's attorney advising him that the May 22, 2013 hearing would reconvene on March 5, 2014.⁷⁹ The letter also advised that the subpoena that compelled Lerner to appear on May 22, 2013 remained in effect.⁸⁰

Because of the possibility that she would choose to answer some or all of the Committee's questions, Chairman Issa required Lerner to appear in person on March 5, 2014. When the May 22, 2013 hearing, entitled "The IRS: Targeting Americans for Their Political Beliefs," was reconvened, Chairman Issa noted that the Committee might hold Lois Lerner in contempt of Congress if she continued to refuse to answer questions, based on the fact that the Committee had resolved that Lerner waived her Fifth Amendment privilege.

Despite the fact that Lerner was compelled by a duly issued subpoena and had been warned by Chairman Issa of the possibility of contempt proceedings, and despite the Committee having previously voted that she waived her Fifth Amendment privilege, Lerner continued to assert her Fifth Amendment privilege, and refused to answer any questions posed by Members of the Committee. Chairman Issa subsequently adjourned the hearing and excused Lerner from the hearing room. At that point, it was clear Lerner would not comply with the Committee's subpoena for testimony.

⁷⁶ *Id.*

⁷⁷ Business Meeting, H. Comm. on Oversight & Gov't Reform (June 28, 2013).

⁷⁸ *Id.* at 65-66.

⁷⁹ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. On Oversight & Gov't Reform to William W. Taylor III, Zuckerman Spaeder LLP (Feb. 25, 2014).

⁸⁰ *Id.*

Following Lerner's appearance before the Committee on March 5, 2014, her lawyer revealed during a press conference that she had sat for an interview with Department of Justice prosecutors and TIGTA staff within the past six months.⁸¹ According to the lawyer, the interview was unconditional and not under oath, and prosecutors did not grant her immunity.⁸² This interview weakens the credibility of her assertion of the Fifth Amendment privilege before the Committee. More broadly, it calls into question the basis for the assertion in the first place.

III. Lerner's Testimony Is Critical to the Committee's Investigation

Prior to Lerner's attempted assertion of her Fifth Amendment privilege, the Committee believed her testimony would advance the investigation of the targeting of tax-exempt conservative-oriented organizations. The following facts supported the Committee's assessment of the probative value of Lerner's testimony:

- **Lerner was head of the IRS Exempt Organization's division, where the targeting of conservative groups occurred.** She managed the two IRS divisions most involved with the targeting – the EO Determinations Unit in Cincinnati and the EO Technical Unit in Washington, D.C.
- **Lerner has not provided any testimony since the release of TIGTA's audit.** Committee staff have conducted transcribed interviews of numerous IRS officials in Cincinnati and Washington. Without testimony from Lois Lerner, however, the Committee will never be able to fully understand the IRS's actions. Lerner has unique, first-hand knowledge of how and why the IRS decided to scrutinize conservative applicants.
- **Acting Commissioner Daniel Werfel did not interview Lerner as part of his ongoing internal review.** In finding no intentional wrongdoing associated with the targeting of conservative groups, Werfel never spoke to Lois Lerner. Furthermore, Werfel lacks the power to require Lerner to provide answers.
- **Lerner's signature appears on harassing letters the IRS sent to targeted groups.** As part of the "development" of the cases, the IRS sent harassing letters to the targeted organizations, asking intrusive questions consistent with guidance from senior IRS officials in Washington. Letters sent under Lois Lerner's signature included inappropriate questions, including requests for donor information.
- **Lerner appears to have edited the TIGTA report.** According to documents provided by the IRS, Lerner was the custodian of a draft version of the TIGTA report that contained tracked changes and written edits that became part of the final report.

⁸¹ John D. McKinnon, *Former IRS Official Lerner Gave Interview to DOJ*, WALL ST. J., Mar. 6, 2014, <http://blogs.wsj.com/washwire/2014/03/06/former-irs-official-lerner-gave-interview-to-doj/>.

⁸² *Id.*

In addition, many of Lerner's voluntary statements from May 22, 2013, have been refuted by evidence obtained by the Committee. Contrary to her statement that she did not do "anything wrong," the Committee knows that Lerner was intrinsically involved in the IRS's inappropriate treatment of tax-exempt applicants. Contrary to Lerner's plea that she has not "violated any IRS rules or regulations," the Committee has learned that Lerner transmitted sensitive taxpayer information to her non-official e-mail account in breach of IRS rules. Contrary to Lerner's statement that she has not provided "false information to this or any other congressional committee," the Committee has confirmed that Lerner made four false and misleading statements about the IRS's screening criteria and information requests for tax-exempt applicants.

In the months following the May 22, 2013 hearing, and after the receipt of additional documents from IRS, it is clear that Lerner's testimony is *essential* to understanding the truth regarding the targeting of certain groups. Subsequent to Lois Lerner's Fifth Amendment waiver during a hearing before the Committee on May 22, 2013, Committee staff learned through both additional transcribed interviews and review of additional documents that she had a greater involvement in targeting tax-exempt organizations than was previously understood.

A. Lerner's Post-Citizens United Rhetoric

After the Supreme Court decided the *Citizens United v. Federal Election Commission* case, holding that government of restrictions of corporations and associations' expenditures on political activities was unconstitutional,⁸³ the IRS faced mounting pressure from the public to heighten scrutiny of applications for tax-exempt status. IRS officials in Washington played a key role in the disparate treatment of conservative groups. E-mails obtained by the Committee show that senior-level IRS officials in Washington, including Lerner, were well aware of the pressure the agency faced, and actively sought to scrutinize applications from certain conservative-leaning groups in response to public pressure.

On the same day of the *Citizens United* decision, White House Press Secretary Robert Gibbs warned that Americans "should be worried that special interest groups that have already clouded the legislative process are soon going to get involved in an even more active way in doing the same thing in electing men and women to serve in Congress."⁸⁴ On January 23, 2010, President Obama proclaimed that the *Citizens United* "ruling strikes at our democracy itself" and "opens the floodgates for an unlimited amount of special interest money into our democracy."⁸⁵ Less than a week later, the President publicly criticized the decision during his State of the Union address. The President declared:

With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit

⁸³ *Citizens United v. Federal Election Comm.*, 558 U.S. 310 (2010).

⁸⁴ The White House, Briefing by White House Press Secretary Robert Gibbs and PERAB Chief Economist Austan Goolsbee (Jan. 21, 2010).

⁸⁵ The White House, Weekly Address: President Obama Vows to Continue Standing Up to the Special Interest on Behalf of the American People (Jan. 23, 2010).

in our elections. I don't think American elections should be bankrolled by America's most powerful interests, or worse by foreign entities. They should be decided by the American people.⁸⁶

Over the next several months, the President continued his public tirade against the decision, so-called "secret money" in politics, and the emergence of conservative grassroots groups. In a July 2010 White House Rose Garden speech, the President proclaimed:

Because of the Supreme Court's decision earlier this year in the *Citizens United* case, big corporations . . . can buy millions of dollars worth of TV ads – and worst of all, they don't even have to reveal who's actually paying for the ads. . . . These shadow groups are already forming and building war chests of tens of millions of dollars to influence the fall elections.⁸⁷

During an August 2010 campaign event, the President declared:

Right now all around this country there are groups with harmless-sounding names like Americans for Prosperity, who are running millions of dollars of ads against Democratic candidates all across the country. And they don't have to say who exactly the Americans for Prosperity are. You don't know if it's a foreign-controlled corporation. You don't know if it's a big oil company, or a big bank. You don't know if it's a insurance [sic] company that wants to see some of the provisions in health reform repealed because it's good for their bottom line, even if it's not good for the American people.⁸⁸

Similarly, while speaking at a September 2010 campaign event, the President stated:

Right now, all across this country, special interests are running millions of dollars of attack ads against Democratic candidates. And the reason for this is last year's Supreme Court decision in *Citizens United*, which basically says that special interests can gather up millions of dollars – they are now allowed to spend as much as they want without limit, and they don't have to ever reveal who's paying for these ads.⁸⁹

These public statements criticizing conservative-leaning organizations in the aftermath of the Supreme Court's *Citizens United* opinion affected how the IRS identified and evaluated applications. In September 2010, *EO Tax Journal* published an article critical of certain tax-exempt organizations which purportedly engaged in political activity.⁹⁰ The article—published several months after the *Citizens United* opinion and during the President's tirade against the

⁸⁶ The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).

⁸⁷ The White House, Remarks by the President on the DISCLOSE ACT (July 26, 2010).

⁸⁸ The White House, Remarks by the President at a DNC Finance Event in Austin, Texas (Aug. 9, 2010).

⁸⁹ The White House, Remarks by the President at Finance Reception for Congressman Sestak (Sept. 20, 2010).

⁹⁰ E-mail from Paul Streckfus to Paul Streckfus (Sept. 15, 2010) (EO Tax Journal 2010-130) [IRSR 191032-33].

decision—argued that tax-exempt groups, which participate in the political process, are abusing their status.⁹¹ Lerner sent the article to several IRS officials, including her senior advisor, Judy Kindell. Lerner stated “I’m really thinking we need to do a c4 project next year.”⁹²

Kindell agreed with Lerner that the IRS should focus special attention on certain tax-exempt groups.⁹³ Kindell conveyed her belief that tax-exempt groups participating in political activities should not qualify as 501(c)(4) groups.⁹⁴ Lerner agreed with her senior advisor, explaining in response that those tax-exempt groups which support political activity should be subject to scrutiny from the IRS.⁹⁵ Lerner wrote:⁹⁶

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 1:51 PM
To: Kindell Judith E; Chasin Cheryl D; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

I'm not saying this is correct--but there is a perception out there that that is what is happening. My guess is most who conduct political activity never pay the tax on the activity and we surely should be looking at that. Wouldn't that be a surprising turn of events. My object is not to look for political activity--more to see whether self-declared c4s are really acting like c4s. Then we'll move on to c5,c6,c7--it will fill up the work plan forever!

Lois J. Lerner
Director, Exempt Organizations

Soon thereafter, Cheryl Chasin, an IRS official within the Exempt Organizations division, replied to Lerner with the names of several organizations which, in Chasin’s opinion, were engaging in political activity.⁹⁷ In turn, Lerner replied that the IRS officials “need to have a plan” to handle the applications from certain tax-exempt groups.⁹⁸ Lerner wrote “We need to be cautious so it isn’t a *per se* political project.”⁹⁹

⁹¹ *Id.*

⁹² E-mail from Lois Lerner, IRS, to Cheryl Chasin et al., IRS (Sept. 15, 2010). [IRSR 191032-33].

⁹³ E-mail from Judith Kindell, IRS, to Lois Lerner, Cheryl Chasin, & Laurice Ghougasian, IRS (Sept. 15, 2010) [IRSR 191032].

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ E-mail from Cheryl Chasin, IRS, to Lois Lerner, Judith Kindell, & Laurice Ghougasian, IRS (Sept. 15, 2010). [IRSR 191030]

⁹⁸ E-mail from Lois Lerner, IRS, to Cheryl Chasin, Judith Kindell, & Laurice Ghougasian, IRS (Sept. 16, 2010). [IRSR 191030]

⁹⁹ *Id.*

From: Lerner Lois G
Sent: Thursday, September 16, 2010 9:58 AM
To: Chasin Cheryl D; Kindell Judith E; Ghougaslan Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: Re: EO Tax Journal 2010-130

Ok guys. We need to have a plan. We need to be cautious so it isn't a per se political project. More a c4 project that will look at levels of lobbying and pol. activity along with exempt activity. Cheryl- I assume none of those came in with a 1024?
Lois G. Lerner-----

In addition to her e-mails critical of applications from certain groups, Lerner publicly criticized the Supreme Court's *Citizens United* opinion.¹⁰⁰ On October 19, 2010, Lerner spoke at an event sponsored by Duke University's Sanford School of Public Policy. At the event, Lerner referenced the political pressure the IRS faced to "fix the problem" of 501(c)(4) groups engaging in political activity.¹⁰¹ She stated:

What happened last year was the Supreme Court – the law kept getting chipped away, chipped away in the federal election arena. The Supreme Court dealt a huge blow, overturning a 100-year old precedent that basically corporations couldn't give directly to political campaigns. And everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it.

They want the IRS to fix the problem. The IRS laws are not set up to fix the problem: (c)(4)s can do straight political activity. They can go out and pay for an ad that says, "Vote for Joe Blow." That's something they can do as long as their primary activity is their (c)(4) activity, which is social welfare.

So everybody is screaming at us right now: 'Fix it now before the election. Can't you see how much these people are spending?' I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can't do anything right now.¹⁰²

Lerner reiterated her views to TIGTA investigators:

The *Citizens United* decision allows corporations to spend freely on elections. Last year, there was a lot of press on 501(c)(4)s being used to funnel money on elections and the IRS was urged to do something about it.¹⁰³

¹⁰⁰ *Citizens United v. Federal Election Comm.*, 558 U.S. 310 (2010).

¹⁰¹ John Sexton, *Lois Lerner Discusses Political Pressure on the IRS in 2010*, BREITBART.COM, Aug. 6, 2013.

¹⁰² See "Lois Lerner Discusses Political Pressure on IRS in 2010," www.youtube.com (last visited Feb. 28, 2013) (transcription by authors).

¹⁰³ Treasury Inspector General for Tax Admin., Memo of Contact (Apr. 5, 2012).

Lerner openly shared her opinion that the Executive Branch needed to take steps to undermine the Supreme Court’s decision. Her view was abundantly clear in many instances, including in one when Sharon Light, another senior advisor to Lerner, e-mailed Lerner an article about allegations that unknown conservative donors were influencing U.S. Senate races.¹⁰⁴ The article explained how outside money was making it increasingly difficult for Democrats to remain in the majority in the Senate.¹⁰⁵ Lerner replied: “Perhaps the FEC will save the day.”¹⁰⁶

In May 2011, Lerner again commented about her disdain for the *Citizens United* decision.¹⁰⁷ In her view, the decision had a major effect on election laws and, more broadly, the Constitution and democracy going forward.¹⁰⁸ She stated, “The constitutional issue is the big *Citizens United* issue. I’m guessing no one wants that going forward.”¹⁰⁹

From:	Lerner Lois G
Sent:	Tuesday, May 17, 2011 10:37 AM
To:	Urban Joseph J
Subject:	Re: BNA - IRS Answers Few Questions Regarding Audits Of Donors Giving to Section 501(c)(4) Groups

The constitutional issue is the big Citizens United issue. I'm guessing no one wants that going forward Lois G. Lerner-----

IRS officials, including Lerner, were acutely aware of criticisms of the political activities of conservative-leaning tax-exempt groups through electronic publications.¹¹⁰ In October 2011, *EO Tax Journal* published a report regarding a letter sent by a group called “Democracy 21” to then-IRS Commissioner Doug Shulman and Lerner.¹¹¹ The letter called on the IRS to investigate certain conservative-leaning tax-exempt groups.¹¹² The IRS Deputy Division Counsel for the Tax Exempt Entities Division, Janine Cook, sent, via e-mail, the report and letter to the Division Counsel, Victoria Judson, calling the matter a “very hot button issue floating around.”¹¹³

On several occasions, Lerner received articles from her colleagues that focused on discussions about conservative-leaning groups’ political involvement. In March 2012, Cook e-mailed Lerner another *EO Tax Journal* article.¹¹⁴ The article discussed congressional investigations and the IRS’s treatment of tax-exempt applicants.¹¹⁵ In response, Lerner stated, “we’re going to get creamed.”¹¹⁶

¹⁰⁴ Peter Overby, *Democrats Say Anonymous Donors Unfairly Influencing Senate Races*, NAT’L PUBLIC RADIO, July 10, 2012.

¹⁰⁵ *Id.*

¹⁰⁶ E-mail from Lois Lerner, IRS, to Sharon Light, IRS (July 10, 2010). [IRS 179093]

¹⁰⁷ E-mail from Lois Lerner, IRS, to Joseph Urban, IRS (May 17, 2011). [IRSR 196471]

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *See, e.g.*, e-mail from Monice Rosenbaum, IRS, to Kenneth Griffin, IRS (Sept. 30, 2010). [IRSR 15430]

¹¹¹ E-mail from Paul Streckfus to Paul Streckfus (Oct. 3, 2011) (EO Tax Journal 2011-163) [IRSR 191032-33].

¹¹² *Id.*

¹¹³ E-mail from Janine Cook, IRS, to Victoria Judson, IRS (Oct. 10, 2011). [IRSR 15433]

¹¹⁴ E-mail from Janine Cook, IRS, to Lois Lerner, IRS (Mar. 2, 2012). [IRSR 56965]

¹¹⁵ *Id.*

¹¹⁶ E-mail from Lois Lerner, IRS, to Janine Cook, IRS (Mar. 2, 2012). [IRSR 56965]

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Friday, March 02, 2012 9:20 AM
To: Cook Janine
Subject: RE: Advocacy orgs

If only you could help--we're going to get creamed being able to provide the guidance piece ASAP will be the best--thanks

Lois G. Lerner

Director of Exempt Organizations

In June 2012, Roberta Zarin, Director of the Tax-Exempt and Government Entities Communication and Liaison, forwarded an e-mail to Lerner and her senior advisor, Judy Kindell, about an article published by *Mother Jones* entitled “How Dark-Money Groups Sneak by the Taxman.”¹¹⁷ The article specifically named several conservative-leaning groups, including the American Action Network, Crossroads GPS, Americans for Prosperity, FreedomWorks and Citizens United, and commented negatively on specific methods conservative-leaning groups have purportedly used to influence the political process.¹¹⁸

The *Mother Jones* article caught Lerner’s attention. She forwarded the article to the Director of Examinations, Nanette Downing.¹¹⁹

From: Lerner Lois G
Sent: Wednesday, June 13, 2012 12:48 PM
To: Downing Nanette M
Subject: FW: Mother Jones on (c)(4)s

6103

Lois G. Lerner

Director of Exempt Organizations

Lerner’s e-mail contained confidential tax return information, which was redacted pursuant to 26 U.S.C. § 6103, meaning that Lerner referenced a particular tax-exempt group in connection with the article.¹²⁰

Not long after, in October 2012, Justin Lowe, a tax law specialist, alerted Lerner to yet another article critical of anonymous money allegedly donated to conservative-leaning groups.¹²¹ The article, published by *Politico*, criticized the IRS’s inability to restrain corporate money

¹¹⁷ E-mail from Roberta Zarin, IRS, to Lois Lerner, Joseph Urban, Judith Kindell, Moises Medina, Joseph Grant, Sarah Hall Ingram, Melaney Partner, Holly Paz, David Fish, & Nancy Marks, IRS (June 13, 2012). [IRSR 177479]

¹¹⁸ Gavin Aronsen, *How Dark-Money Groups Sneak by the Taxman*, MOTHER JONES, June 13, 2012, available at <http://www.motherjones.com/mojo/2012/06/dark-money-501c4-irs-social-welfare>.

¹¹⁹ E-mail from Lois Lerner, IRS, to Nanette Downing, IRS (June 13, 2012). [IRSR 177479]

¹²⁰ *Id.*

¹²¹ E-mail from Justin Lowe, IRS, to Roberta Zarin, Lois Lerner, Holly Paz, & Melaney Partner, IRS (Oct. 17, 2012). [IRSR 180728]

donated to conservative-leaning groups.¹²² Lerner’s response showed that she believed Congress ought to change the law to prohibit such activity.¹²³ She wrote, “I never understand why they don’t go after Congress to change the law.”¹²⁴

From:	Lerner Lois G
Sent:	Wednesday, October 17, 2012 9:28 AM
To:	Lowe Justin; Zarin Roberta B; Paz Holly O; Partner Melaney J
Subject:	RE: Politico Article on the IRS, Disclosure, and (c)(4)s

I never understand why they don't go after Congress to change the law!

Lois G. Lerner
Director of Exempt Organizations

In the spring of 2013, the IRS was again facing mounting pressure from congressional leaders – largely on the Democratic side of the aisle – to crack down on certain organizations engaged in political activity. An official with the IRS Criminal Investigations Division testified before the Senate Judiciary Committee’s Subcommittee on Crime and Terrorism at a hearing on campaign speech.¹²⁵ An e-mail discussion between Lerner and other IRS officials demonstrates that IRS officials believed that the purpose of the hearing was to discuss the extent to which certain tax-exempt organizations were participating in political activities.¹²⁶ In an e-mail to several top IRS officials, including Nikole Flax, the Chief of Staff to former Acting Commissioner Steve Miller, Lerner stated that the pressure from certain congressional leaders was completely focused on certain 501(c)(4) organizations.¹²⁷ She stated in part: “[D]on’t be fooled about how this is being articulated—it is ALL about 501(c)(4) orgs and political activity.”¹²⁸

She also explained that her previous boss at the Federal Election Commission, Larry Noble, was now working as the President of Americans for Campaign Reform to “shut these [501(c)(4)s] down.”¹²⁹

Lerner’s public statements, comments to TIGTA investigators, and candid e-mails to colleagues show that she was aware that Senate Democrats and certain Administration officials were not only aware of, but actively opposed to, the political activities of conservative-oriented groups. Further, she was well aware of the drumbeat that the IRS should crack down on applications from certain tax-exempt groups engaging in political activity.

¹²² Kenneth Vogel & Tarini Parti, *The IRS’s ‘Feeble’ Grip on Political Cash*, POLITICO, Oct. 15, 2012.

¹²³ E-mail from Lois Lerner, IRS, to Justin Lowe, Roberta Zarin, Holly Paz, & Melaney Partner, IRS (Oct. 17, 2012). [IRSR 180728]

¹²⁴ *Id.*

¹²⁵ *Hearing on the Current Issues in Campaign Finance Law Enforcement: Hearing before the S. Comm. on the Judiciary, Subcomm. on Crime & Terrorism*, 113th Cong. (2013).

¹²⁶ E-mail from Lois Lerner, IRS, to Nikole Flax, Suzanne Sinno, Catherine Barre, Scott Landes, Amy Amato, & Jennifer Vozne, IRS (Mar. 27, 2013) [IRSR 188329]

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

B. Lerner's Involvement in the Delay and Scrutiny of Tea Party Applicants

Lerner, along with several senior officials, subjected applications from conservative leaning groups to heightened scrutiny. She established a “multi-tier review” system, which resulted in long delays for certain applications.¹³⁰ Furthermore, according to testimony from Carter Hull, a tax law specialist who retired in the summer of 2013, the IRS still has not approved certain applications.¹³¹

1. “Multi-Tier Review” System

Lerner and her senior advisors closely monitored and actively assisted in evaluating Tea Party cases. In April 2010, Steve Grodnitzky, then-acting manager of EO Technical Group in Washington, directed subordinates to prepare “sensitive case reports” for the Tea Party cases.¹³² These reports summarized the status and progress of the Tea Party test cases, and were eventually presented to Lerner and her senior advisors.

In early 2011, Lerner directed Michael Seto, manager of EO Technical, to place the Tea Party cases through a “multi-tier review.”¹³³ He testified that Lerner “sent [him an] e-mail saying that when these cases need to go through multi-tier review and they will eventually have to go to [Judy Kindell, Lerner’s senior technical advisor] and the Chief Counsel’s office.”¹³⁴

In February 2011, Lerner sent an e-mail to her staff advising them that cases involving Tea Party applicants were “very dangerous,” and something “Counsel and Judy Kindell need to be in on.”¹³⁵ Further, Lerner explained that “Cincy should probably NOT have these cases.”¹³⁶ Holly Paz, Director of the Office of Rulings and Agreements, also wrote to Lerner stating that “He [Carter Hull] reviews info from TPs [taxpayers] correspondence to TPs etc. No decisions are going out of Cincy until we go all the way through the process with the c3 and c4 cases here.”¹³⁷

In a transcribed interview with Committee staff, Carter Hull testified that during the winter of 2010-2011, Lerner’s senior advisor told him the Chief Counsel’s office would need to review the Tea Party applications.¹³⁸ This review process was an unusual departure from standard procedure.¹³⁹ He told Committee staff that during his 48 years with the IRS, he never

¹³⁰ Transcribed Interview of Michael Seto, IRS, in Wash., D.C., at 34 (July 11, 2013).

¹³¹ Transcribed Interview of Carter Hull, IRS, in Wash., D.C., at 53 (June 14, 2013).

¹³² Email from Steven Grodnitzky, IRS, to Ronald J. Shoemaker & Cindy M. Thomas, IRS (Apr. 5, 2010). [Muthert 6]

¹³³ Transcribed Interview of Michael Seto, IRS, in Wash., D.C., at 34 (July 11, 2013).

¹³⁴ *Id.*

¹³⁵ E-mail from Lois Lerner, IRS, to Michael Seto, IRS (Feb. 1, 2011). [IRSR 161810-11]

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Transcribed Interview of Carter Hull, IRS, at 44-45 (June 14, 2013).

¹³⁹ *Id.*

previously sent a case to Lerner's senior advisor and did not remember ever sending a case to the Chief Counsel for review.¹⁴⁰

In April 2011, Lerner's senior advisor, Kindell, wrote to Lerner and Holly Paz explaining that she instructed tax law specialists Carter Hull and Elizabeth Kastenberg to coordinate with the Chief Counsel's office to work through two specific Tea Party cases.¹⁴¹ Kindell thought it would be beneficial to request that all Tea Party cases be sent to Washington. She stated "there are a number of other (c)(3) and (c)(4) applications of orgs related to the Tea Party that are currently in Cincinnati. Apparently the plan had been to send one of each to DC to develop a position to be applied to others."¹⁴²

From: Kindell Judith E
Sent: Thursday, April 07, 2011 10:16 AM
To: Lerner Lois G; Paz Holly O
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: sensitive (c)(3) and (c)(4) applications

I just spoke with Chip Hull and Elizabeth Kastenberg about two cases they have that are related to the Tea Party - one a (c)(3) application and the other a (c)(4) application. I recommended that they develop the private benefit argument further and that they coordinate with Counsel. They also mentioned that there are a number of other (c)(3) and (c)(4) applications of orgs related to the Tea Party that are currently in Cincinnati. Apparently the plan had been to send one of each to DC to develop a position to be applied to the others. Given the sensitivity of the issue and the need (I believe) to coordinate with Counsel, I think it would be beneficial to have the other cases worked in DC as well. I understand that there may be TAS inquiries on some of the cases.

In response, Holly Paz expressed her reservations about sending all of the Tea Party cases to Washington.¹⁴³ She explained that because of the IRS's considerable responsibilities in overseeing the implementation of the Affordable Care Act, as well as the approximately 40 Tea Party cases that were already pending, she was doubtful Washington would be able to handle all of the cases.¹⁴⁴

2. Lerner's Briefing on the "Advocacy Cases"

During the summer of 2011, Lerner ordered her subordinates to reclassify the Tea Party cases as "advocacy cases."¹⁴⁵ She told subordinates she ordered this reclassification because she thought the term "Tea Party" was "just too pejorative."¹⁴⁶ Consistent with her earlier concern that scrutiny could not be "*per se* political," she also ordered the implementation of a new screening method. This change occurred without informing applicants selected for enhanced scrutiny that they had been selected through inappropriate criteria. This sleight-of-hand change

¹⁴⁰ *Id.* at 44, 47.

¹⁴¹ E-mail from Judith Kindell, IRS, to Lois Lerner & Holly Paz, IRS (Apr. 7, 2011). [IRSR 69898]

¹⁴² *Id.*

¹⁴³ E-mail from Holly Paz, IRS, to Judith Kindell & Lois Lerner, IRS (Apr. 7, 2011). [IRSR 69898]

¹⁴⁴ *Id.*

¹⁴⁵ Transcribed Interview of Carter Hull, IRS, in Wash., D.C., at 132 (June 14, 2013).

¹⁴⁶ *Id.*

added a level of deniability for the IRS, which officials would eventually use to dismiss accusations of political motivations.

According to testimony from Cindy Thomas, the IRS official in charge of the Cincinnati office, Lerner “cares about power and that it’s important to her maybe to be more involved with what’s going on politically and to me we should be focusing on working the determinations cases . . . and it shouldn’t matter what type of organization it is.”¹⁴⁷

In June 2011, Holly Paz contacted Cindy Thomas regarding the Tea Party cases.¹⁴⁸ Paz explained that Lerner wanted a briefing on the cases.¹⁴⁹

From: Paz Holly O
Sent: Wednesday, June 01, 2011 2:21 PM
To: Thomas Cindy M
Cc: Melahn Brenda
Subject: group of cases

re: Tea Party cases

Two things re: these cases:

1. Can you please send me a copy of the Crossroads Grassroots Policy Strategies (EIN 27-2753378) application? Lois wants Judy to take a look at it so she can summarize the issues for Lois.
2. What criteria are being used to label a case a "Tea Party case"? We want to think about whether those criteria are resulting in over-inclusion.

Lois wants a briefing on these cases. We'll take the lead but would like you to participate. We're aiming for the week of 6/27.

Thanks!

Holly

In late June 2011, Justin Lowe, a tax law specialist with EO Technical, prepared a briefing paper for Lerner summarizing the test cases sent from Cincinnati.¹⁵⁰ The paper described the groups as “organizations [that] are advocating on issues related to government spending, taxes, and similar matters.”¹⁵¹ The paper listed several criteria, which were used to identify Tea Party cases, including the phrases “Tea Party,” “Patriots,” or “9/12 Project” or “[s]tatements in the case file [that] criticize how the country is being run.”¹⁵²

¹⁴⁷ Transcribed Interview of Lucinda Thomas, IRS, in Wash., D.C., at 212 (June 28, 2013).

¹⁴⁸ E-mail from Holly Paz, IRS, to Cindy Thomas, IRS (June 1, 2011). [IRSR 69915]

¹⁴⁹ *Id.*

¹⁵⁰ Justin Lowe, IRS, Increase in (c)(3)/(c)(4) Advocacy Org. Applications (June 27, 2011). [IRSR 2735]

¹⁵¹ *Id.*

¹⁵² *Id.*

The briefing paper prepared for Lerner further stated that the applicant for 501(c)(4) status “stated it will conduct advocacy and political campaign intervention, but political campaign intervention will account for 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.”¹⁵³ Although the applicant planned to engage in minimal campaign activities, the IRS did not immediately approve the application. Despite the fact that Hull recommended the application for approval, as of June 2013, the application was still pending.¹⁵⁴

In July 2011, Holly Paz wrote to an attorney in the IRS Chief Counsel’s office expressing her reluctance to approve the Tea Party applications and noting Lerner’s involvement in handling the cases. She wrote: “Lois would like to discuss our planned approach for dealing with these cases. We suspect we will have to approve the majority of the c4 applications.”¹⁵⁵

In August 2011, the Chief Counsel’s office held a meeting with Carter Hull, Lerner’s senior advisor, and other Washington officials to discuss the test cases.¹⁵⁶ For the next few months, however, these test cases were still pending. Later, the Chief Counsel’s office told Hull that the office required updated information to evaluate the applications.¹⁵⁷ The request for updated information was unusual since the applications had been up-to-date as of a few months earlier.¹⁵⁸ In addition, the Chief Counsel’s office discussed the possibility of creating a template letter for all Tea Party applications, including those which had remained in Cincinnati.¹⁵⁹ Hull testified that the template letter plan was impractical since each application was different.¹⁶⁰

3. The IRS’s Internal Review

Despite Lerner’s substantial involvement in delaying the approval of Tea Party applications, IRS leadership excluded Lerner from an internal review of allegations of inappropriate treatment of the Tea Party applications.¹⁶¹ Steve Miller, then-Deputy Commissioner, testified during a transcribed interview that he asked Nan Marks, a veteran IRS official, to conduct the review because he wanted someone independent to examine the allegations.¹⁶² Lerner contacted Miller, expressing her confusion and a lack of direction on the IRS’s review. She asked, “What are your expectations as to who is implementing the plan?”¹⁶³

¹⁵³ *Id.*

¹⁵⁴ Transcribed Interview of Carter Hull, IRS, in Wash., D.C., at 53 (June 14, 2013).

¹⁵⁵ E-mail from Holly Paz, IRS, to Janine Cook, IRS (July 19, 2011). [IRSR 14372-73]

¹⁵⁶ Transcribed Interview of Carter Hull, IRS, in Wash., D.C., at 47-49 (June 14, 2013).

¹⁵⁷ *Id.* at 50-51.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 51-52.

¹⁶⁰ *Id.* at 50-51.

¹⁶¹ E-mail from Lois Lerner, IRS, to Steven Miller, IRS (May 2, 2012). [IRSR 198685]

¹⁶² Transcribed interview of Steven Miller, IRS, in Wash., D.C., at 32-33 (Nov. 13, 2013).

¹⁶³ *Id.*

From: Lerner Lois G
Sent: Wednesday, May 02, 2012 9:40 AM
To: Miller Steven T
Subject: A Question

I'm wondering if

you might be able to give me a better sense of your expectations regarding roles and responsibilities for the c4 matters. I understand you have asked Nan to take a deep look at the what is going on and make recommendations. I'm fine with that. Then there was the discussion yesterday about how we plan to approach the issues going forward. That is where the confusion lies. What are your expectations as to who is implementing the plan?

Prior to that

meeting, unbeknownst to me, Cathy had made comments regarding the guidance--which Nan knew about. Nan then directed one of my staff to meet with Cathy and start moving in a new direction. The staff person came to me and I talked to Nan, suggesting before we moved, we needed to hear from you, which is where we are now.

We're all on good

terms and we all want to do the best, but I fear that unless there's a better understanding of roles, we may step on each others toes without intending to.

Your thoughts

please. Thanks

Lois G. Lerner

Director of Exempt Organizations

Once Marks's internal review confirmed that the IRS had inappropriately treated conservative applications, Lerner was personally involved in the aftermath. Echoing Lerner's

early 2011 orders to create a multi-layer review system for the Tea Party cases, Seto, manager of EO Technical, explained in June 2012 the new procedures for certain cases with “advocacy issues.”¹⁶⁴ Seto advised staff that reviewers required the approval of senior managers, including Seto himself, before approving any cases with “advocacy issues.”¹⁶⁵

From: Seto Michael C
Sent: Wednesday,

June 20, 2012 2:11 PM

To: McNaughton Mackenzie P; Salins Mary J;

Shoemaker Ronald J; Lieber Theodore R
Cc: Grodnitzky Steven; Megosh

Andy; Giuliano Matthew L; Fish David L; Paz Holly O
Subject:

Additional procedures on cases with advocacy issues - before issuing any favorable or Initial denial ruling

Please

inform the reviewers and staff in your groups that before issuing any

favorable or Initial denial rulings on any cases with advocacy issues, the

reviewers must notify me and you via e-mail and get our

approval. No favorable or initial denial rulings can be issued

without your and my approval. The e-mail notification includes the

name of the case, and a synopsis of facts and denial rationale. I may

require a short briefing depending on the facts and circumstances of the

particular case.

If you have any

questions, please let me know.

Thanks, _____

Mike

¹⁶⁴ E-mail from Michael Seto, IRS, to Mackenzie McNaughton, Mary Salins, Ronald Shoemaker, & Theodore Lieber, IRS (June 20, 2012). [IRSR 199229]

¹⁶⁵ *Id.*

These new procedures again delayed applications because reviewers were unable to issue any rulings on their own. Paz forwarded the e-mail to Lerner, ensuring Lerner was aware of the additional review procedures.¹⁶⁶

Lerner's e-mails show she was well-aware that IRS officials had set aside numerous Tea Party cases for further review.¹⁶⁷ In July 2012, her senior advisor, Judy Kindell, explained what percentage of both (c)(3) and (c)(4) cases officials had set aside.¹⁶⁸ Kindell estimated that half of the (c)(3) applicants and three-quarters of the (c)(4) applicants appeared to be conservative leaning "based solely on the name."¹⁶⁹ Kindell also noted that the number of conservative-leaning applications set aside was much larger than that of applications set aside for liberal or progressive groups.¹⁷⁰

From:	Kindell Judith E
Sent:	Wednesday, July 18, 2012 10:54 AM
To:	Lerner Lois G
Cc:	Light Sharon P
Subject:	Bucketed cases

Of the 84 (c)(3) cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

Of the 199 (c)(4) cases, approximately 3/4 appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

The multi-tier review process in Washington and requests for additional information sent to applicants led to the delay of the test cases as well as other Tea Party applications pending in Cincinnati. The Chief Counsel's office also directed Lerner's staff to request additional information from Tea Party applicants, including information about political activities leading up to the 2010 election. In fact, it appears the IRS never resolved the test applications.¹⁷¹

¹⁶⁶ E-mail from Holly Paz, IRS, to Lois Lerner, IRS (June 20, 2012). [IRSR 199229]

¹⁶⁷ E-mail from Judith Kindell, IRS, to Lois Lerner, IRS (July 18, 2012). [IRSR 179406]

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See Transcribed Interview of Carter Hull, IRS, at 53 (June 14, 2013).

C. Lerner’s Involvement in Regulating 501(c)(4) groups “off-plan”

According to information available to the Committee, the IRS and the Treasury Department considered regulating political speech of § 501(c)(4) social welfare organizations well before 2013.¹⁷² The IRS and Treasury Department worked on these regulations in secret without noticing its work on the IRS’s Priority Guidance Plan. Lois Lerner played a role in the this “off-plan” regulation of § 501(c)(4) organizations.

In June 2012, Ruth Madrigal of the Treasury Department’s Office of Tax Policy wrote to Lerner and other IRS leaders about potential § 501(c)(4) regulations. She wrote: “Don’t know who in your organization is keeping tabs on c4s, but since we mentioned potentially addressing them (off-plan) in 2013, I’ve got my radar up and this seemed interesting.”¹⁷³ Madrigal forwarded a short article about a court decision with “potentially major ramifications for politically active section 501(c)(4) organizations.”¹⁷⁴

From:	Ruth.Madrigal [REDACTED]
Sent:	Thursday, June 14, 2012 3:10 PM
To:	Judson Victoria A; Cook Janine; Lerner Lois G; Marks Nancy J
Subject:	501(c)(4)s - From the Nonprofit Law Prof Blog

Don’t know who in your organizations is keeping tabs on c4s, but since we mentioned potentially addressing them (off-plan) in 2013, I’ve got my radar up and this seemed interesting...

In a transcribed interview with Committee staff, Madrigal discussed her e-mail. She explained that the Department worked with Lerner and her IRS colleagues to develop the § 501(c)(4) regulation “off-plan.” She testified:

Q And ma’am, you wrote, “potentially addressing them.” Do you know what you meant by, quote, “potentially addressing them?”

A Well, at this time, we would have gotten the request to do guidance of general applicability relating to (c)(4)s. And while I can’t – I don’t know exactly what was in my mind at the time I wrote this, the “them” seems to refer back to the (c)(4)s. And the communications between our offices would have had to do with guidance of general applicability.

Q So, sitting here today, you take the phrase, “potentially addressing them” to mean issuing guidance of general applicability of 501(c)(4)s?

¹⁷² See Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov’t Reform, to John Koskinen, IRS (Feb. 4, 2014).

¹⁷³ E-mail from Ruth Madrigal, Dep’t of the Treasury, to Victoria Judson et al., IRS (June 14, 2012). [IRSR 305906]

¹⁷⁴ *Id.*

A I don't know exactly what was in my head at the time when I wrote this, but to the extent that my office collaborates with the IRS, it's on guidance of general applicability.

Q And the recipients of this email, Ms. Judson and Ms. Cook are in the Chief Counsel's Office, is that correct?

A That's correct.

Q And Ms. Lerner and Ms. Marks are from the Commissioner side of the IRS?

A At the time of this email, I believe that Nan Marks was on the Commissioner's side, and Ms. Lerner would have been as well, yes.

Q So those are the two entities involved in rulemaking process or the guidance process for tax exempt organizations, is that right?

A Correct.

Q What did the term "off plan" mean in your email?

A Again, I don't have a recollection of doing – of writing this email at the time. I can't say with certainty what was meant at the time.

Q Sitting here today, what do you take the term "off plan" to mean?

A Generally speaking, off plan would refer to guidance that is not on – or the plan that is mentioned there would refer to the priority guidance plan. And so off plan would be not on the priority guidance plan.

Q And had you had discussions with the IRS about issuing guidance on 501(c)(4)s that was not placed on the priority guidance plan?

A In 2012, we – yes, in 2012, there were conversations between my office, Office of Tax Policy, and the IRS regarding guidance relating to qualifications for tax exemption under (c)(4).

Q And this guidance was in response to requests from outside parties to issue guidance?

A Yes. Generally speaking, our priority guidance plan process starts with – includes gathering suggestions from the public and evaluating suggestions from the public regarding guidance, potential guidance topics, and by this point, to the best of my recollection, we had had requests to do guidance on this topic.¹⁷⁵

Similarly, IRS attorney Janine Cook explained in a transcribed interview how the IRS and Treasury Department develop a regulation “off-plan.” She testified that “it’s a coined term, the term means the idea of spending some resources on working it, getting legal issues together, things like that, but not listing it on the published plan as an item we are working. That’s what the term off plan means.”¹⁷⁶ In a separate transcribed interview, IRS Division Counsel Victoria Judson explained that the IRS develops regulations “off-plan” when it seeks to “stop behavior that we feel is inappropriate under the tax law.” She testified:

We also have items we work on that are off-plan, and there are reasons we don’t want to solicit comments. For example, if they might relate to a desire to stop behavior that we feel is inappropriate under the tax law, we might not want to publicize that we are working on that before we come out with the guidance.¹⁷⁷

Information available to the Committee indicates that Lerner played some role in the IRS’s and the Treasury Department’s secret “off-plan” work to regulate § 501(c)(4) groups. Because the Committee has not obtained Lerner’s testimony, it is unclear as to the nature and extent of her role in this “off-plan” regulatory work.

D. IRS Discussions about Regulatory Reform

In 2012, the IRS received letters from Members of Congress and certain public interest groups about regulatory reform for 501(c)(4) groups. The letters asked the IRS to change the regulations regarding how much political activity is permissible. As IRS officials were contemplating the possibility of changing the level of permissible political activity for 501(c)(4) groups, the press picked up their discussions. After learning that the press was aware of the discussions, Nikole Flax, the Chief of Staff to then-Acting Commissioner Steve Miller, instructed IRS officials that she wanted to delay sending any responses, and that all response letters would require her approval.¹⁷⁸ Flax alerted Lerner that the letters “created a ton of issues including from Treasury and [the] timing [is] not ideal.”¹⁷⁹ In response, Lerner wrote to Flax, explaining that she thought all the attention was “stupid.”¹⁸⁰

¹⁷⁵ Transcribed interview of Ruth Madrigal, U.S. Dep’t of the Treasury, in Wash., D.C. (Feb. 3, 2014).

¹⁷⁶ Transcribed interview of Janine Cook, IRS, in Wash., D.C. (Aug. 23, 2013).

¹⁷⁷ Transcribed interview of Victoria Ann Judson, IRS, in Wash., D.C. (Aug. 29, 2013).

¹⁷⁸ E-mail from Nikole Flax, IRS, to Lois Lerner, Holly Paz, Andy Megosh, Nalee Park, & Joseph Urban, IRS (July 24, 2012). [IRSR 179666]

¹⁷⁹ E-mail from Nikole Flax, IRS, to Lois Lerner, IRS (July 24, 2012). [IRSR 179666]

¹⁸⁰ *Id.*

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 10:36 AM
To: Flax Nikole C
Subject: Re: c4 letters

That is why I told them every letter had to go thru you. Don't know why this didn't, but have now told all involved, I hope! Sorry for all the noise. It is just stupid, but not welcome, I'm sure.
Lois G. Lerner-----

Lerner instructed IRS officials that Nikole Flax, one of the agency's most senior officials, would have to approve all response letters to Members of Congress and public interest groups regarding regulatory reform for 501(c)(4) groups.¹⁸¹ She advised staff that "NO responses related to c4 stuff go out without an affirmative message, in writing from Nikole."¹⁸²

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 10:40 AM
To: Paz Holly O; Megosh Andy; Fish David L; Park Nalee; Williams Melinda G
Cc: Flax Nikole C
Subject: C4

I know you all have received messages independently, but I wanted all to hear same message at same time. Regardless whether language has previously been approved, NO responses related to c4 stuff go out without an affirmative message, in writing from Nikole. Thanks Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

E. Lerner's Reckless Handling Section 6103 Information

According to e-mails obtained by the Committee, Lerner recklessly treated taxpayer information covered by 26 U.S.C. § 6103.¹⁸³ Section 6103 of the Internal Revenue Code of 1986 generally prohibits the disclosure of "tax returns" and other "tax return information" outside the IRS. In February 2010, Lerner sent an e-mail to William Powers, a Federal Election Commission attorney, which contained confidential taxpayer information according to the IRS.¹⁸⁴

¹⁸¹ E-mail from Lois Lerner, IRS, to Holly Paz, Andy Megosh, David Fish, Nalee Park, & Melinda Williams, IRS (July 24, 2012). [IRSR 179669]

¹⁸² *Id.*

¹⁸³ E-mail from Lois Lerner, IRS, to William Powers, Fed. Election Comm'n (Feb. 3, 2010, 11:25AM). [IRSR 123142]

¹⁸⁴ *Id.*

From: Lerner Lois G
Sent: Wednesday, February 03, 2010 11:25 AM
To: [REDACTED]
Cc: Fish David L
Subject: Your request

Per your request, we have checked our records and there are no additional filings at this time. [REDACTED] 6103
[REDACTED] Hope that helps.

Lois J. Lerner
Director, Exempt Organizations

In addition, Lerner received confidential taxpayer information on her non-official e-mail account.¹⁸⁵ Her receipt of confidential taxpayer information on an unsecure, non-IRS computer system and e-mail account poses a substantial risk to the security of the taxpayer information. Her willingness to handle this information on a non-official e-mail account highlights her disregard for confidential taxpayer information. It also suggests a fundamental lack of respect for the organizations applying to the IRS for tax-exempt status.

From: Biss Meghan R
Sent: Saturday, May 04, 2013 11:07 AM Eastern Standard Time
To: Lerner Lois G; [REDACTED] Lerner's Non-official E-mail Address
Subject: Summary of Application

Lois:

Attached is a summary of the entire application from [REDACTED]. It includes the information from their initial 1023, our development letter, and their May 3 response. In it, I also point out situations where the revenue rulings they cite aren't exactly on point. Additionally, where they reference other [REDACTED] I included the information we have on those [REDACTED] from internet research.

As a note, the [REDACTED] may be an issue for the community foundation that made the payments. The [REDACTED]
[REDACTED] But we won't know anything for sure until their 2012 Form 990 is filed.

Also, this article re [REDACTED] is interesting:
[REDACTED]

After you have had a chance to look over this document, we can have a discussion about it and any questions prior to your meeting with Steve.

Thanks,
Meghan

Lerner's messages contained private tax return information, redacted pursuant to 26 U.S.C. § 6103 when the IRS reviewed the e-mails prior to production to the Committee.¹⁸⁶ Section 6103 is in place to prevent federal workers from disclosing confidential taxpayer

¹⁸⁵ E-mail from Meghan Biss, IRS, to Lois Lerner, IRS (May 4, 2013, 11:07 AM). [Lerner-ORG 1607]

¹⁸⁶ *Id.*

information.¹⁸⁷ Tax returns and return information, which meet the statutory definitions, must remain confidential.¹⁸⁸ Lerner's e-mails containing confidential return information therefore represent a disregard for the protections of the statute and present very serious privacy concerns. These reckless disclosures of such sensitive information also raise questions of whether they were isolated events.

F. The Aftermath of the IRS's Scrutiny of Tea Party Groups

As congressional committees and TIGTA began to examine more closely the IRS's treatment of applications from certain Tea Party groups, top officials within the agency were reluctant to disclose information. After Steve Miller, then Acting Commissioner of the IRS, testified at a House Committee on Ways and Means hearing in July 2012, Lerner stated in an e-mail a sense of relief that the hearing was more "boring" than anticipated.¹⁸⁹

When Lerner learned about TIGTA's audit regarding the Tax Exempt Entities Division's treatment of applications from certain groups, she accepted the fact that the Division would be subject to a critical analysis from TIGTA officials.¹⁹⁰ Despite TIGTA and congressional scrutiny, Lerner's approach to the applications did not change. Documents show that, Lerner, along with several other IRS officials, were somehow emboldened and believed it was necessary to make their efforts known publicly, albeit not necessarily in a truthful manner. Specifically, they contemplated ways to make their denial of a 501(c)(4) group's application public knowledge.¹⁹¹ The officials contemplated using the court system to do so.¹⁹²

1. Lerner's Opinion Regarding Congressional Oversight

In July 2012, Lerner received an e-mail from Steve Miller soon after he testified at a House Ways and Means Committee hearing on charitable organizations.¹⁹³ Miller thanked Lerner and other IRS officials in Washington for their assistance in preparing for the hearing. In response, Lerner conveyed her relief that the hearing was less interesting than it could have been.¹⁹⁴ Because the Committee has not been able to speak with Lerner, it is uncertain what she meant by this e-mail.

¹⁸⁷ 26 U.S.C. § 6103 (2012).

¹⁸⁸ *Id.*

¹⁸⁹ E-mail from Lois Lerner, IRS, to Steven Miller, IRS (July 25, 2012). [IRSR 179767]

¹⁹⁰ E-mail from Lois Lerner, IRS, to Richard Daly, Sarah Hall Ingram, Dawn Marx, Joseph Urban, Nancy Marks, Holly Paz, & David Fish, IRS (June 25, 2012). [IRSR 178166]

¹⁹¹ E-mail from Lois Lerner, IRS, to Nancy Marks, Holly Paz, & David Fish, IRS (Apr. 1, 2013). [IRSR 190611]

¹⁹² *Id.*

¹⁹³ E-mail from Steven Miller, IRS, to Justin Lowe, Joseph Urban, Christine Mistr, Nikole Flax, Catherine Barre, William Norton, Virginia Richardson, Richard Daly, Lois Lerner, & Holly Paz, IRS (July 25, 2012) [IRSR 179767]

¹⁹⁴ E-mail from Lois Lerner, IRS, to Steven Miller, IRS (July 25, 2012). [IRSR 179767]

From: Lerner Lois G
Sent: Wednesday, July 25, 2012 7:47 PM
To: Miller Steven T
Subject: Re: thank you

Glad it turned out to be far more boring than it might have. Happy to be able to help.
Lois G. Lerner

The Committee has sent numerous letters to the IRS requesting documents and information relating to the scrutiny of Tea Party applications. The IRS has often been evasive in its responses, and the Committee has encountered great difficulty in obtaining the agency's cooperation in conducting its investigation. In one instance in 2012, the Committee sent a letter to the IRS requesting information about the agency's treatment of Tea Party groups. Documents obtained by the Committee demonstrate that Lerner not only was aware of the letter, but also reviewed the request, and approved the written response sent to the Committee.¹⁹⁵

¹⁹⁵ Action Routing Sheet, IRS (Apr. 25, 2012). [IRSR 14425]

Action Routing Sheet			
Request for Signature of Lois G. Lerner		e-trak Control Number 2012-30672	Due date 04/25/2012
Subject EO response to The Honorable Jim Jordan, Chairman, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending.			
Reviewing Office	Support Staff Initial / Date	Reviewer Initial / Date	Comment
NaLee Park	RP 4/25/12		
Dawn Marx	DM 4/25/12		
Lois Lerner		LL 4/25/12	
Summary			
Prepared By Dawn Marx	Phone number 202-283-8861	Office Location / Building	Return to
Form 14074 (Rev. 9-2010) Catalog Number 53167M publish.no.irs.gov Department of the Treasury - Internal Revenue Service			

This IRS routing sheet, documenting which IRS offices reviewed and approved the letter, clearly shows Lerner's awareness of the Committee's investigation into the targeting of Tea Party-like groups. Still, Lerner failed to take the investigation seriously and was not forthright with the Committee. Instead, Lerner engaged in a pattern of concealment and making light of this serious misconduct by the IRS.

2. Tax Exempt Entities Division's Contacts with TIGTA

In January 2013, a TIGTA official contacted Holly Paz to inquire about an e-mail regarding Tea Party cases.¹⁹⁶ The official explained that during a recent briefing, he had mentioned TIGTA was seeking an e-mail from May 2010, which called for Tea Party applications to receive additional review.¹⁹⁷

From: Paterson Troy D TIGTA [REDACTED]
Sent: Thursday, January 24, 2013 8:51 AM
To: Paz Holly O
Subject: E-Mail Retention Question

Holly,

Good morning.

During a recent briefing, I mentioned that we do not have the original e-mail from May 2010 stating that "Tea Party" applications should be forwarded to a specific group for additional review. After thinking it through, I was wondering about the IRS's retention or backup policy regarding e-mails. Do you know who I could contact to find out if this e-mail may have been retained?

Troy

Lerner was aware of the request for the May 2010 Tea Party e-mail because Paz replied to the TIGTA official and copied Lerner on the response.¹⁹⁸ Paz wrote that she could not provide any assistance in retrieving the e-mail, but rather the Chief Counsel's office needed to handle the request.¹⁹⁹

From: Paz Holly O
Sent: Thursday, January 31, 2013 4:15 AM
To: Paterson Troy D TIGTA
Cc: Lerner Lois G
Subject: RE: E-Mail Retention Question

Troy,

I'm sorry we won't get to see you today. We have reached out to determine the appropriate contact regarding your question below and have been told that, if this data request is part of e-Discovery, the coordination needs to go through Chief Counsel. The person to contact regarding e-Discovery requests is Glenn Melcher. His email address is [REDACTED] and his phone number is [REDACTED]

Holly

¹⁹⁶ E-mail from Troy Paterson, IRS, to Holly Paz, IRS (Jan. 24, 2013). [IRSR 202641]

¹⁹⁷ *Id.*

¹⁹⁸ E-mail from Holly Paz, IRS, to Troy Paterson, Treasury Inspector Gen. for Tax Admin. (Jan. 31, 2013). [IRSR 202641]

¹⁹⁹ *Id.*

The e-mails above show Lerner and her colleagues unnecessarily delayed TIGTA's audit. Rather than simply providing the documents and information requested by TIGTA, Paz, who reported to Lerner directly, instructed TIGTA to go through the Chief Counsel's office for certain information.

3. Lerner Anticipates Issues with TIGTA Audit

Lerner anticipated blowback from TIGTA over the disparate treatment of certain applications for tax-exempt status. In June 2012, Lerner received an e-mail from Richard Daly, a technical executive assistant to the Tax Exempt and Government Entities Division Commissioner, informing her that TIGTA would be investigating how the tax-exempt division handles applications from § 501(c)(4) groups.²⁰⁰

²⁰⁰ E-mail from Richard Daly, IRS, to Sarah Hall Ingram, Lois Lerner, & Dawn Marx, IRS (June 22, 2012). [IRSR 178167].

From: Daly Richard M
Sent: Friday,

June 22, 2012 5:10 PM

To: Ingram Sarah H; Lerner Lois G; Marx Dawn R;
Urban Joseph J; Marks Nancy J

Subject: FW: 201210022 Engagement

Letter

Importance: High

TIGTA is going to look at how we deal with the applications from (c)(4)s. Among other things they will look at our consistency, and whether we had a reasonable basis for asking for information from the applicants. ~~The engagement letter bears a close~~ reading. To my mind, it has a more skeptical tone than usual.

Among the documents they want to look at are the following:

All

documents and correspondence (including e-mail) concerning the Exempt Organizations function's response to and decision-making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.

TIGTA expects to issue its report in the spring.

Daly recommended a "close reading" of TIGTA's engagement letter, noting that it had a "more skeptical tone than usual."²⁰¹

Lerner accepted the fact that TIGTA would scrutinize the tax-exempt division. In reply, she stated, in part: "It is what it is . . . we will get dinged."²⁰²

²⁰¹ *Id.*

²⁰² E-mail from Lois Lerner, IRS, to Richard Daly, Sarah Hall Ingram, Dawn Marx, Joseph Urban, Nancy Marks, Holly Paz, & David Fish, IRS (June 25, 2012). [IRSR 178166]

From: Lerner Lois G
Sent: Monday, June 25, 2012 5:00 PM
To: Daly Richard M; Ingram Sarah H; Marx Dawn R; Urban Joseph J; Marks Nancy J
Cc: Paz Holly O; Fish David L
Subject: RE: 201210022 Engagment Letter

It is what it is. Although the original story isn't as pretty as we'd like, once we learned this were off track, we have done what we can to change the process, better educate our staff and move the cases. So, we will get dinged, but we took steps before the "dinging" to make things better and we have written procedures. So, it is what what it is.

Lois G.

Lerner

Director of Exempt Organizations

4. Lerner Contemplates Retirement

By January 28, 2013, Lerner was considering retirement from the IRS.²⁰³ She wrote to benefits specialist Richard Klein to request reports regarding the benefits she could expect to receive upon retirement.²⁰⁴

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

Here are your reports you requested.....set your sick leave at 1360 for the first report and bumped it up to 1700 for the second.....redposit amount and hi three used are shown on the bottom right.....call or email if you need any thing else please.

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

Richard T. Klein
Benefits Specialist

²⁰³ E-mail from Richard Klein, IRS, to Lois Lerner, IRS (Jan. 28, 2013). [IRSR 202597]

²⁰⁴ *Id.*

The reports Klein sent prompted several questions from Lerner, including an estimate of the amount in benefits she would receive if she retired in October 2013.²⁰⁵

From:	Lerner Lois G
Sent:	Monday, January 28, 2013 10:06 AM
To:	Klein Richard T
Subject:	RE: personnel info

OK--questions already. I see at the bottom what my CSRS repayment amount would be should I decide to repay. It looks like the calculation at the top assumes I am repaying--is that correct? Can I see what the numbers look like if I decide not to repay? Also, how do I go about repaying, if I choose to? Where would I find that information? Would you mind running a calculation for a retirement date of October 1, 2013? Also, the definition of monthly social security offset seems to say that at age 62(which I am) my monthly annuity will be offset by social security even if I don't apply. First--what the heck does that mean? Second, I don't see an offset on the chart--please explain. Thank you.

Lois G. Lerner
Director of Exempt Organizations

5. The IRS's Plans to Make an Application Denial Public

IRS officials in Washington wanted to publicize the fact that the IRS had closely scrutinized applications from Tea Party groups. The officials wanted to make the denial of one specific Tea Party group's application public knowledge. At the end of March 2013, Lerner had a discussion with other IRS officials about how they could inform the public about the application denial.²⁰⁶ IRS officials discussed the possibility of bringing the case through the court system, rather than an administrative hearing, to ensure that the denial became public.²⁰⁷ Lerner assumed these groups would opt for litigation because, in her mind, they were "itching for a Constitutional challenge."²⁰⁸

G. Lerner's Role in Downplaying the IRS's Scrutiny of Tea Party Applications

In the spring of 2013, senior IRS officials prepared a plan to acknowledge publicly yet downplay the scrutiny given to Tea Party applications. Although Lerner spoke on the subject at an ABA event in May 2013, the IRS had originally planned to have Lerner comment on it at a Georgetown University Law Center conference in April. Lerner e-mailed several of her

²⁰⁵ E-mail from Lois Lerner, IRS, to Richard Klein, IRS (Jan. 28, 2013). [IRSR 202597]

²⁰⁶ E-mail from Nancy Marks, IRS, to Lois Lerner, Holly Paz, & David Fish, IRS (Mar. 29, 2013). [IRSR 190611]

²⁰⁷ *Id.*

²⁰⁸ E-mail from Lois Lerner, IRS, to Nancy Marks, Holly Paz, & David Fish, IRS (Apr. 1, 2013). [IRSR 190611]

colleagues about the Georgetown speaking engagement, noting that she might add “remarks that are being discussed at a higher level.”²⁰⁹

To:	Eldridge Michelle L; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc:	Partner Melaney J; Marx Dawn R
Subject:	RE: Georgetown

I will now be speaking somewhere between 11-11:30 depending on when previous speaker finishes. I am or may not be adding some remarks that are being discussed at a higher level. If approved, I have not been told whether those remarks will be in the written speech, or I will simply give them orally. There am be a desire to get the speech up ASAP if the new proposed language is added to the draft--these are Nikole questions. Right now, though, we're simple on hold.

Lois J. Lerner
Director of Exempt Organizations

Contemporaneously, Nikole Flax sent Lerner a draft set of remarks on 501(c)(4) activity.²¹⁰ The remarks stated in part:

Here's where a problem occurred. In centralizing the cases in Cincinnati, my review team placed too much reliance on the particular name of an organization; in this case, relying on names in organization titles like 'tea party' or 'patriot,' rather than looking deeper into the facts to determine the level of activity under c4 guidelines. Our Inspector General is looking at this situation, but I believe and the IRS leadership team believe[s] this to be an error – not a political vendetta.²¹¹

Although Lerner did not acknowledge the extra scrutiny given to Tea Party applications at the Georgetown conference, the officials in the Acting Commissioner's office made plans to have her speak on the subject at an ABA event using a question planted with an audience member. In May 2013, Flax contacted Lerner to inquire about the topic of her remarks at the event.²¹² Flax's inquiry demonstrates that senior IRS officials were seeking a venue for Lerner to speak about the Tea Party scrutiny in order to downplay and gloss over the issue.²¹³ At the ABA event on May 10, 2013, Lerner did so.

²⁰⁹ E-mail from Lois Lerner, IRS, to Michelle Eldridge, Roberta Zarin, Terry Lemons, & Anthony Burke, IRS (Apr. 23, 2013). [IRSR 196295]

²¹⁰ E-mail from Nikole Flax, IRS, to Lois Lerner, IRS (Apr. 23, 2013). [IRSR 189013]

²¹¹ Preliminary Draft, Recent Section 501(c)(4) Activity, IRS (Apr. 22, 2013). [IRSR 189014]

²¹² E-mail from Nikole Flax, IRS, to Lois Lerner, IRS (May 3, 2013). [IRSR 189445]

²¹³ *Id.*

H. Lerner's Management Style

During transcribed interviews with Committee staff, several IRS officials testified that Lerner is a bad manager who is “unpredictable”²¹⁴ and “emotional.”²¹⁵ On October 22, 2013, during a transcribed interview, Nikole Flax, the former IRS Acting Commissioner’s Chief of Staff, discussed the July 2012 House Ways and Means Committee hearing on tax-exempt issues.²¹⁶ Steve Miller, then-Deputy Commissioner of the IRS, testified at the hearing. Lerner did not.²¹⁷ Committee staff asked Flax why the IRS did not choose Lerner as a witness.²¹⁸ Flax testified:

Q And you said before that [Acting Commissioner of Tax Exempt and Government Entities Joseph] Grant wasn’t the best witness at the hearing. Was there any discussion about having Ms. Lerner as a witness for that hearing?

A No.

Q Why not?

A **Lois is unpredictable. She’s emotional.** I have trouble talking negative about someone. I think in terms of a hearing witness, she was not the ideal selection.²¹⁹

Further, during an interview with Cindy Thomas, the IRS official in charge of the Cincinnati office, Thomas stated that when she became aware of Lerner’s comments about the IRS’s treatment of Tea Party applications at the ABA event, she was extremely upset. Thomas wrote Lerner an e-mail on May 10, 2013, with “Low Level workers thrown under the Bus” in the subject line.²²⁰ Thomas excoriated Lerner, noting that through Lerner’s remarks, **“Cincinnati wasn’t publicly ‘thrown under the bus’ (but) instead was hit by a convoy of Mack trucks.”**²²¹ Thomas explained Lerner’s statements at the event were “derogatory” to lower level employees working determinations cases.²²² She testified:

Q And what was your reaction to hearing the news?

A I was really, really mad.

Q Why?

²¹⁴ Transcribed Interview of Nikole Flax, IRS, at 153 (Oct. 22, 2013).

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* (emphasis added).

²²⁰ E-mail from Cindy M. Thomas to Lois G. Lerner, et al. (May 10, 2013). [IRSR 366782]

²²¹ *Id.* (emphasis added).

²²² Transcribed Interview of Lucinda Thomas, IRS, at 210 (June 28, 2013).

A **I feel as though Cincinnati employees and EO Determinations was basically thrown under a bus and that the Washington office wasn't taking any responsibility for knowing about these applications, having been involved in them and being the ones to basically delay processing of the cases.**²²³

Although Thomas admitted that the Cincinnati office made mistakes in handling tax-exempt applications, she explained that IRS officials in Washington were primarily responsible for the delay.²²⁴ She stated: **[Y]es, there were mistakes made by folks in Cincinnati as well [as] D.C. but the D.C. office is the one who delayed the processing of the cases.**²²⁵

While Thomas found Lerner's reference to the culpability of lower level workers for the delay of the applications during her talk at the ABA event was upsetting and misguided, Thomas also stated in part: **"It's not the first time that she has used derogatory comments about the employees working determination cases and she has done it before."**²²⁶

Thomas testified that Lerner's statements about lower level employees in Cincinnati were just one example of offensive remarks she often made to other IRS employees. She explained that Lerner "referred to us as backwater before."²²⁷ Thomas also noted the impact of Lerner's comments on employee morale. She stated in part: "[I]t's frustrating like how am I supposed to keep them motivated when our so-called leader is referring to people in that direction."²²⁸ Thomas also stated: "She also makes comments like, well, you're not a lawyer."²²⁹

Lerner's comments reflect a startling attitude toward her subordinates. As the director of the Exempt Organizations Division, she was a powerful figure at IRS headquarters in Washington. It is evident from testimony that Lerner brazenly shifted blame to lower level employees for delaying the Tea Party applications. Instead of taking responsibility for the major role she played in the delay, she found fault with others, diminishing employee morale in the process.

I. Lerner's Use of Unofficial E-mail

As the Committee has continued to investigate Lerner's involvement in targeting Tea Party groups, Committee staff has also learned that she improperly used a non-official e-mail account to conduct official business. On several occasions, Lerner sent documents related to her official duties from her official IRS e-mail account to an msn.com e-mail account labeled "Lois Home."

²²³ *Id.* (emphasis added).

²²⁴ *Id.* at 211.

²²⁵ *Id.*

²²⁶ *Id.* at 210 (emphasis added).

²²⁷ *Id.* at 213.

²²⁸ *Id.*

²²⁹ *Id.*

Lerner's use of a non-official e-mail account to conduct official business not only implicates federal records requirements, but also frustrates congressional oversight obligations. Use of a non-official e-mail account raises the concern that official government e-mail archiving systems did not capture the records, as defined by the Federal Records Act.²³⁰ Further, it creates difficulty for the agency when responding to Freedom of Information Act, congressional subpoenas, or litigation requests.

IV. Conclusion

Since Lois Lerner first publicly acknowledged the IRS's inappropriate treatment of conservative tax-exempt applicants during an American Bar Association speech on May 10, 2013, substantial debate has ensued over the nature of the IRS misconduct. While bureaucratic bumbling played an undeniable role in some delays and inappropriate treatment, questions have persisted. Could someone with a political agenda – or under instructions – and a sophisticated understanding of the IRS cause a partisan delay for organizations seeking to promote social welfare and exercise their Constitutionally guaranteed First Amendment right to participate in the political process?

From her days at the Federal Election Commission, Lerner's left-leaning politics were known and recognized.²³¹ Even at a supposedly apolitical agency like the IRS, her views should not have been an obstacle to fair and impartial judgment that would impair her job performance. But amidst a scandal in which her agency deprived Americans of their Constitutional rights, a relevant question is whether the actions she took in her job improperly reflected her political beliefs. Congressional investigators found evidence that this occurred.

Lerner's views on the *Citizens United* Supreme Court ruling, which struck down certain restrictions on election-related activities, showed a keen awareness of arguments that the Court's decision would be detrimental to Democratic Party candidates. As she explained in her own words to her agency's Inspector General:

The *Citizens United* decision allows corporations to spend freely on elections. Last year, there was a lot of press on 501(c)(4)s being used to funnel money on elections and the IRS was urged to do something about it.²³²

When a colleague sent her an article about allegations that unknown conservative donors were influencing U.S. Senate races, she responded hopefully: "Perhaps the FEC will save the day."²³³

Evidence indicates Lerner and her Exempt Organizations unit took a three pronged approach to "do something about it" to "fix the problem" of nonprofit political speech:

²³⁰ 44 U.S.C. § 3101.

²³¹ *Lois Lerner at the FEC*, *supra* note 5.

²³² Treasury Inspector Gen. for Tax Admin, Memo of Contact (Apr. 5, 2012) (memorandum of contact with Lois Lerner).

²³³ E-mail from Lois Lerner, IRS, to Sharon Light, IRS (July 10, 2010). [IRS 179093]

- 1) Scrutiny of new applicants for tax-exempt status (which began as Tea Party targeting);
- 2) Plans to scrutinize organizations, like those supported by the “Koch Brothers,” that were already acting as 501(c)(4) organizations; and
- 3) “[O]ff plan” efforts to write new rules cracking down on political activity to replace those that had been in place since 1959.

Even without her full testimony, and despite the fact that the IRS has still not turned over many of her e-mails, a political agenda to crack down on tax-exempt organizations comes into focus. Lerner believed the political participation of tax-exempt organizations harmed Democratic candidates, she believed something needed to be done, and she directed action from her unit at the IRS. Compounding the egregiousness of the inappropriate actions, Lerner’s own e-mails showed recognition that she would need to be “cautious” so it would not be a “*per se* political project.”²³⁴ She was involved in an “off-plan” effort to write new regulations in a manner that intentionally sought to undermine an existing framework for transparency.²³⁵

Most damning of all, even when she found that the actions of subordinates had not adhered to a standard that could be defended as not “*per se* political,” instead of immediately reporting this conduct to victims and appropriate authorities, Lerner engaged in efforts to cover it up. She falsely denied to Congress that criteria for scrutiny had changed and that disparate treatment had occurred. The actions she took to broaden scrutiny to non-conservative applicants were consistent with efforts to create plausible deniability for what had happened – a defense that the Administration and its most hardcore supporters have repeated once unified outrage eroded over one of the most divisive controversies in American politics today.

Bureaucratic bumbling and IRS employees who sincerely believed they were following the directions of superiors did occur. Even when Lerner directed what employees would characterize as “unprecedented” levels of scrutiny for Tea Party cases, they did not attribute this direction to a partisan agenda. Ironically, the bureaucratic bumbling that seems to have been behind many inappropriate requests for information from applicants and a screening criterion that could never pass as not “*per se* political” may have had a silver lining. Without it, Lois Lerner’s agenda to scrutinize tax-exempt organizations that exercised their First Amendment rights might not have ever been exposed.

The Committee continues to offer Lois Lerner the opportunity to testify. Many questions remain, including the identities of others at the IRS and elsewhere who may have known about key events and decisions she undertook. Americans, and particularly those Americans who faced mistreatment at the hands of the IRS, deserve the full documented truth that both Lois Lerner and the IRS have withheld from them.

²³⁴ E-mail from Lois Lerner, IRS, to Cheryl Chasin et al., IRS (Sept. 16, 2010). [IRSR 191030]

²³⁵ See E-mail from Ruth Madrigal, Dep’t of the Treasury, to Victoria Judson et al., IRS (June 14, 2012). [IRSR 305906]

To: Eldridge Michelle L; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

I will now be speaking somewhere between 11-11:30 depending on when previous speaker finishes. I may or may not be adding some remarks that are being discussed at a higher level. If approved, I have not been told whether those remarks will be in the written speech, or I will simply give them orally. There may be a desire to get the speech up ASAP if the new proposed language is added to the draft--these are Nikole questions. Right now, though, we're simple on hold.

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, April 23, 2013 9:55 AM
To: Lerner Lois G; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

I'm sorry--I've lost track. What time is your speech? Given timing of other stuff that day--we may be looking at posting both in the afternoon. I'm sure this will continue to be discussed...as I hear more details, I will pass it along. Please let me know what you are hearing as well. Thanks. --Michelle

From: Lerner Lois G
Sent: Monday, April 22, 2013 6:49 PM
To: Zarin Roberta B; Lemons Terry L; Eldridge Michelle L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown
Importance: High

Hmm--I was thinking the speech would go up right after I speak and the report would go up later in the afternoon. Will that work?

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Monday, April 22, 2013 1:32 PM
To: Lemons Terry L; Eldridge Michelle L; Burke Anthony
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

Thanks, but Melaney deserves credit for that one! We are planning to post Lois' speech, along with the report, Thursday afternoon

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

From: Lemons Terry L
Sent: Monday, April 22, 2013 1:10 PM
To: Zarin Roberta B; Eldridge Michelle L; Burke Anthony
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

Bobby – good catch on the news release. Think we should try doing a short one since we did the interim one. Think text should track what we did before (below.) Anthony Burke will be reaching out to you. Think we need text by mid-day Tuesday so we can get through clearance channels on third floor and Treasury.

Also possible we may post text of Thursday speech on IRS.gov.

Thanks.

From: Zarin Roberta B
Sent: Monday, April 22, 2013 11:09 AM
To: Lemons Terry L; Eldridge Michelle L
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: FW: Georgetown

Fun for the week:

Do you know if we have language Lois can use re: the furlough? (see below.) I'm sure other IRS speakers are facing the same issue.

Also, as you know, she'll be announcing that the College and University Report that afternoon. We never discussed a press release (you did one for the interim report), and it may be too late now, but should it be considered?

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

From: Flax Nikole C
Sent: Friday, April 19, 2013 11:44 AM
To: Lerner Lois G; Lemons Terry L
Cc: Grant Joseph H; Zarin Roberta B
Subject: Re: Georgetown

We will pull something together - can you let me know when/if you are open later today to discuss other topics?

From: Lerner Lois G
Sent: Friday, April 19, 2013 11:37 AM Eastern Standard Time
To: Flax Nikole C; Lemons Terry L
Cc: Grant Joseph H; Zarin Roberta B
Subject: Georgetown

We have numerous speakers over 2 days at the conference, starting on Wed. I am sure we will be asked about the furloughs. There is already press out there on the NTEU issue, so I don't

think we can avoid saying something. I'm thinking it would be best for me to lead off with some statement at the beginning before I get into my formal written speech to respond before the question comes. That way, all that follow me can either say exactly what I say or refer the questioner back to my earlier remarks. Otherwise I fear we may have someone get nervous and say more than we planned. Does that sound like a plan? If so, can we get parameters of what my statement should look like? Sorry, but this isn't one we can skate by. Thanks

Luis G. Lerner

Director of Exempt Organizations

From: Rosenbaum Monice L
Sent: Thursday, September 30, 2010 10:18 AM
To: Griffin Kenneth M
Subject: FW: EO Tax Journal 2010-139

Ken,
You may already be a subscriber to Mr. Streckfus's journal, but below is his brief summary of the DC Bar lunch meeting. He hopes a transcript will be available soon. Monice

From: paul streckfus [REDACTED]
Sent: Thursday, September 30, 2010 11:07 AM
To: paul streckfus
Subject: EO Tax Journal 2010-139

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

Email Update 2010-139 (Thursday, September 30, 2010)
Copyright 2010 Paul Streckfus

Two events occurred yesterday at about the same time. One was the release of a letter (reprinted below) by the Chairman of the Senate Finance Committee, Senator Max Baucus. The other was a panel discussion titled "Political Activities of Exempt Organizations This Election Cycle" sponsored by the D.C. Bar, from which I hope to have a transcript in the near future.

After reading Senator Baucus' letter and accompanying news release, my sense is that Senator Baucus should have been at the D.C. Bar discussion since he is concerned that political campaigns and individuals are manipulating 501(c)(4), (5), and (6) organizations to advance their own political agenda, and he wants the IRS to look into this situation.

At the D.C. Bar discussion, Marc Owens of Caplin & Drysdale, Washington, explained that there is little that the IRS can do on a current, real-time basis to regulate (c)(4)s for two reasons. First, a new (c)(4) does not have to apply for recognition of exemption. Second, a new (c)(4) formed this year would not have to file a Form 990 until next year at the earliest and the IRS would probably not do a substantive review of the filed Form 990 until 2012 at the earliest. By then, Owens joked, the winners are in office, and the losers are in another career.

At the same time that the IRS can do little to regulate new (c)(4)s, it is not even looking at existing (c)(4)s. According to Owens, the IRS has little interest in regulating exempt organizations beyond (c)(3)s. The IRS has "effectively abandoned the field" at a time of heightened political activity by all exempt organizations, including (c)(3)s. Owens added that "we seem to have a haphazard IRS enforcement system now breaking down completely." This results in a corrosive effect on the integrity of exempt organizations in general and a stimulus to evasion of their responsibilities by organizations and their tax advisors.

Karl Sandstrom of Perkins Coie, Washington, was equally negative. According to Sandstrom, the IRS is "a poor vehicle to regulate political activity," in that this is not their focus or interest. In defense of the IRS, he did say Congress was also guilty in foisting upon the IRS regulation of political activity, using section 527 as an example. At the same time, Sandstrom did not see an active IRS as an answer to current concerns. Section 501(c)(4) organizations are just the current vehicle *du jour*. If (c)(4)s are shut down, Sandstrom said many other vehicles remain.

My guess: I doubt if we'll see much of Owens' and Sandstrom's views in the IRS' report to Senator Baucus and the Finance Committee.

* * * * *

Senate Committee on Finance News Release

For Immediate Release
September 29, 2010

Contact: Scott Mulhauser/Erin Shields
[REDACTED]

Baucus Calls On IRS to Investigate Use of Tax-Exempt Groups for Political Activity

Finance Chairman works to ensure special interests don't use tax-exempt groups to influence communities, spend secret donations

Washington, DC – Senate Finance Committee Chairman Max Baucus (D-Mont.) today sent a letter to IRS Commissioner Doug Shulman requesting an investigation into the use of tax-exempt groups for political advocacy. Baucus asked for the investigation after recent media reports uncovered instances of political activity by nonprofit organizations secretly backed by individuals advancing personal interests and organizations supporting political campaigns. Under the tax code, political campaign activity cannot be the main purpose of a tax-exempt organization and limits exist on political campaign activities in which these organizations can participate. Tax-exempt organizations also cannot serve private interests. Baucus expressed serious concern that if political groups are able to take advantage of tax-exempt organizations, these groups could curtail transparency in America's elections because nonprofit organizations do not have to disclose any information regarding their donors.

“Political campaigns and powerful individuals should not be able to use tax-exempt organizations as political pawns to serve their own special interests. The tax exemption given to nonprofit organizations comes with a responsibility to serve the public interest and Congress has an obligation to exercise the vigorous oversight necessary to ensure they do,” said Baucus. “When political campaigns and individuals manipulate tax-exempt organizations to advance their own political agenda, they are able to raise and spend money without disclosing a dime, deceive the public and manipulate the entire political system. Special interests hiding behind the cloak of independent nonprofits threatens the transparency our democracy deserves and does a disservice to fair, honest and open elections.”

Baucus asked Shulman to review major 501(c)(4), (c)(5) and (c)(6) organizations involved in political campaign activity. He asked the Commissioner to determine if these organizations are operating for the organization's intended tax exempt purpose, to ensure that political activity is not the organization's primary activity and to determine if they are acting as conduits for major donors advancing their own private interests regarding legislation or political campaigns, or are providing major donors with excess benefits. Baucus instructed Shulman to produce a report for the Committee on the agency's findings as quickly as possible. Baucus' full letter to Commissioner Shulman follows here.

September 28, 2010

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Via Electronic Transmission

Dear Commissioner Shulman:

The Senate Finance Committee has jurisdiction over revenue matters, and the Committee is responsible for conducting oversight of the administration of the federal tax system, including matters involving tax-exempt organizations. The Committee has focused extensively over the past decade on whether tax-exempt groups have been used for lobbying or other financial or political gain.

The central question examined by the Committee has been whether certain charitable or social welfare organizations qualify for the tax-exempt status provided under the Internal Revenue Code.

Recent media reports on various 501(c)(4) organizations engaged in political activity have raised serious questions about whether such organizations are operating in compliance with the Internal Revenue Code.

The law requires that political campaign activity by a 501(c)(4), (c)(5) or (c)(6) entity must not be the primary purpose of the organization.

If it is determined the primary purpose of the 501(c)(4), (c)(5) and (c)(6) organization is political campaign activity the tax exemption for that nonprofit can be terminated.

Even if political campaign activity is not the primary purpose of a 501(c)(4), (c)(5), and (c)(6) organization, it must notify its members of the portion of dues paid due to political activity or pay a proxy tax under Section 6033(e).

Also, tax-exempt organizations and their donors must not engage in private inurement or excess benefit transactions. These rules prevent private individuals or groups from using tax-exempt organizations to benefit their private interests or to profit from the tax-exempt organization's activities.

A September 23 New York Times article entitled "Hidden Under a Tax-Exempt Cloak, Private Dollars Flow" described the activities of the organization Americans for Job Security. An Alaska Public Office Commission investigation revealed that AJS, organized as an entity to promote social welfare under 501(c)(6), fought development in Alaska at the behest of a "local financier who paid for most of the referendum campaign." The Commission report said that "Americans for Job Security has no other purpose other than to cover money trails all over the country." The article also noted that "membership dues and assessments ... plunged to zero before rising to \$12.2 million for the presidential race."

A September 16 Time Magazine article examined the activities of Washington D.C. based 501(c)(4) groups planning a "\$300 million ... spending blitz" in the 2010 elections. The article describes a group transforming itself into a nonprofit under 501(c)(4) of the tax code, ensuring that they would not have to "publically disclose any information about its donors."

These media reports raise a basic question: Is the tax code being used to eliminate transparency in the funding of our elections -- elections that are the constitutional bedrock of our democracy? They also raise concerns about whether the tax benefits of nonprofits are being used to advance private interests.

With hundreds of millions of dollars being spent in election contests by tax-exempt entities, it is time to take a fresh look at current practices and how they comport with the Internal Revenue Code's rules for nonprofits.

I request that you and your agency survey major 501(c)(4), (c)(5) and (c)(6) organizations involved in political campaign activity to examine whether they are operated for the organization's intended tax-exempt purpose and to ensure that political campaign activity is not the organization's primary activity. Specifically you should examine if these political activities reach a primary purpose level -- the standard imposed by the federal tax code -- and if they do not, whether the organization is complying with the notice or proxy tax requirements of Section 6033(e). I also request that you or your agency survey major 501(c)(4), (c)(5), and (c)(6) organizations to determine whether they are acting as conduits for major donors advancing their own private interests regarding legislation or political campaigns, or are providing major donors with excess benefits.

Possible violation of tax laws should be identified as you conduct this study.

Please report back to the Finance Committee as soon as possible with your findings and recommended actions regarding this matter.

Based on your report I plan to ask the Committee to open its own investigation and/or to take appropriate legislative action.

Sincerely,

Max Baucus, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Action Routing Sheet

Issa/Jordan

Request for Signature of Lois G. Lerner	e-trak Control Number 2012 [REDACTED]	Due date 04/25/2012
--	--	------------------------

Subject

EO response to The Honorable Jim Jordan, Chairman, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending.

Reviewing Office	Support Staff Initial / Date	Reviewer Initial / Date	Comment
NaLee Park	<i>NP 4/25/12</i>		
Dawn Marx	<i>DM 4/25/12</i>		
Lois Lerner		<i>LL 4/25/12</i>	

Summary

Prepared By Dawn Marx	Phone number [REDACTED]	Office Location / Building	Return to
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3. Educate the public through advocacy/legislative activities to make America a better place to live.
4. Statements in the case file that are critical of the how the country is being run.

John Shafer
Group Manager
SE:T:EO:RA:D:1:7838

From: Thomas Cindy M
Sent: Thursday, June 02, 2011 12:46 AM
To: Shafer John H
Cc: Esrig Bonnie A; Bowling Steven F
Subject: Tea Party Cases - NEED CRITERIA
Importance: High

John,

Could you send me an email that includes the criteria screeners use to label a case as a "tea party case?" BOLO spreadsheet includes the following:

Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).

Do the applications specify/state "tea party?" If not, how do we know applicant is involved with the tea party movement?

I need to forward to Holly per her request below. Thanks.

From: Melahn Brenda
Sent: Wednesday, June 01, 2011 3:08 PM
To: Paz Holly O; Thomas Cindy M
Subject: RE: group of cases

Holly - we will UPS a copy of the case in #1 below to your attention tomorrow. It should be there Monday. I'm sure Cindy will respond to #2.

Brenda

From: Paz Holly O
Sent: Wednesday, June 01, 2011 2:21 PM
To: Thomas Cindy M

Cc: Melahn Brenda
Subject: group of cases

re: Tea Party cases

Two things re: these cases:

1. Can you please send me a copy of the Crossroads Grassroots Policy Strategies ([REDACTED]) application? Lois wants Judy to take a look at it so she can summarize the issues for Lois.

2. What criteria are being used to label a case a "Tea Party case"? We want to think about whether those criteria are resulting in over-inclusion.

Lois wants a briefing on these cases. We'll take the lead but would like you to participate. We're aiming for the week of 6/27.

Thanks!

Holly

From: Paz Holly O
Sent: Thursday, April 07, 2011 10:33 AM
To: Seto Michael C
Subject: FW: sensitive (c)(3) and (c)(4) applications
FYI

From: Paz Holly O
Sent: Thursday, April 07, 2011 10:26 AM
To: Kindell Judith E; Lerner Lois G
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: RE: sensitive (c)(3) and (c)(4) applications

The last information I have is that there are approx. 40 Tea Party cases in Determs. With so many EOT and Guidance folks tied up with ACA (cases and Guidance) and the possibility looming that we may have to work reinstatement cases up here to prevent a backlog in Determs, I have serious reservations about our ability to work all of the Tea Party cases out of this office.

From: Kindell Judith E
Sent: Thursday, April 07, 2011 10:16 AM
To: Lerner Lois G; Paz Holly O
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: sensitive (c)(3) and (c)(4) applications

I just spoke with Chip Hull and Elizabeth Kastenberg about two cases they have that are related to the Tea Party - one a (c)(3) application and the other a (c)(4) application. I recommended that they develop the private benefit argument further and that they coordinate with Counsel. They also mentioned that there are a number of other (c)(3) and (c)(4) applications of orgs related to the Tea Party that are currently in Cincinnati. Apparently the plan had been to send one of each to DC to develop a position to be applied to the others. Given the sensitivity of the issue and the need (I believe) to coordinate with Counsel, I think it would be beneficial to have the other cases worked in DC as well. I understand that there may be TAS inquiries on some of the cases.

From: Lerner Lois G <[REDACTED]>
Sent: Friday, March 02, 2012 9:20 AM
To: Cook Janine
Subject: RE: Advocacy orgs

If only you could help--we're going to get creamed being able to provide the guidance piece ASAP will be the best--thanks

Lois G. Lerner

Director of Exempt Organizations

From: Cook Janine [REDACTED]
Sent: Friday, March 02, 2012 8:58 AM
To: Lerner Lois G
Subject: FW: Advocacy orgs

Fun all around. (Streckfus email today). We're working diligently on reviewing the advocacy guide. Let us know if you want our assistance on anything else.

1 - House Oversight Chairman Seeks Additional Information from the IRS on Tax-Exempt Sector Compliance, as Reports of IRS Questioning Grassroots Political Groups Raises New Concerns

March 1, 2012

Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Shulman:

On October 6, 2011, I wrote to you requesting information about the status of various IRS compliance efforts involving the tax-exempt sector and issues related to audits of tax-exempt organizations [for this letter, see email update 2011-166]. While awaiting a complete response to that letter, I have since heard the IRS has been questioning new tax-exempt applicants, including grassroots political entities such as Tea Party groups, about their operations and donors [for background, see email update 2012-38]. In addition to the unanswered questions from my October 6, 2011, letter, I have additional questions relating to the IRS' oversight of applications for tax exemption for new organizations.

In particular, I am seeking additional information as it relates to the IRS review of new applications for section 501(c)(3) and (c)(4) tax-exempt status, including answers to the questions detailed below. Please provide your responses no later than March 15, 2012.

1. How many new tax-exempt organizations has the IRS recognized each year since 2008?

2. How many new applications for 501(c)(3) and (c)(4) tax-exempt status have been received by the IRS since 2008? Provide a breakdown by year and type of organization.
3. What is the IRS process for reviewing each tax-exempt status application? Is this process the same for entities applying for section 501(c)(3) and (c)(4) tax-exempt status? Please describe the process for both section 501(c)(3) and (c)(4) applications in detail.
4. Your preliminary response in my October 6, 2011, letter stated that, “if the application is substantially complete, the IRS may retain the application and request additional information as needed.” How does the IRS determine that an application for tax-exempt status is “substantially complete?” Please provide guidelines or any other materials used in this process.
5. Does the IRS have standard procedures or forms it uses to “request additional information as needed” from applicants seeking tax-exempt status? Please provide any forms and related materials used.
6. Does the IRS select applications for “follow-up” on an automated basis or is there an office or individual responsible for selecting incomplete applications? Please explain and provide details on any automated system used for these purposes. If decisions are made on an individual basis, please provide the guidelines and any related materials used.
7. How many tax-exempt applications since 2008 have been selected for “follow-up”? How many entities selected for follow-up were granted tax-exempt status?

Should you have any questions regarding this request, please contact *** or *** at [REDACTED].

Sincerely,

/s/ Charles Boustany, Jr., MD
Chairman
Subcommittee on Oversight
Committee on Ways and Means
House of Representatives
Washington, D.C.

IRS Battling Tea Party Groups Over Tax-Exempt Status

By Alan Fram, *Huff Post Politics*, March 1, 2012

WASHINGTON -- The Internal Revenue Service is embroiled in battles with tea party and other conservative groups who claim the government is purposely frustrating their attempts to gain tax-exempt status. The fight features instances in which the IRS has asked for voluminous details about the groups' postings on social networking sites like Twitter and Facebook, information on donors and key members' relatives, and copies of all literature they have distributed to their members, according to documents provided by some organizations.

While refusing to comment on specific cases, IRS officials said they are merely trying to gather enough information to decide whether groups qualify for the tax exemption. Most organizations are applying under section 501(c)(4) of the federal tax code, which grants tax-exempt status to certain groups as long as they are not primarily involved in activity that could influence an election, a determination that is up to the IRS. The tax agency would seem a natural target for tea party groups, which espouse smaller and less intrusive government and lower taxes. Yet over the years, the IRS has periodically been accused of political vendettas by liberals and conservatives alike, usually without merit, tax experts say.

The latest dispute comes early in an election year in which the IRS is under pressure to monitor tax-exempt groups -- like the Republican-leaning Crossroads GPS and Democratic-leaning Priorities USA -- which can shovel unlimited amounts of money to allies to influence campaigns, even while not being required to disclose their donors.

Conservatives say dozens of groups around the country have recently had similar experiences with the IRS and say its information demands are intrusive and politically motivated. They complain that the sheer size and detail of material the agency wants is designed to prevent them from achieving the tax designations they seek. "It's intimidation," said Tom Zawistowski, president of the Ohio Liberty Council, a coalition of tea party groups in the state. "Stop doing what you're doing, or we'll make your life miserable."

Authorities on the laws governing tax-exempt organizations expressed surprise at some of the IRS's requests, such as the volume of detail it is seeking and the identity of donors. But they said it is the agency's job to learn what it can to help decide whether tax-exempt status is warranted. "These tea party groups, a lot of their material makes them look and sound like a political party," said Marcus S. Owens, a lawyer who advises tax-exempt organizations and who spent a decade heading the IRS division that oversees such groups. "I think the IRS is trying to get behind the rhetoric and figure out whether they are, at their core, a political party," or a group that would qualify for tax-exempt status.

The tea party was first widely emblazoned on the public's mind for their noisy opposition to President Barack Obama's health care overhaul at congressional town hall meetings in the summer of 2009. Support from its activist members has since helped nominate and elect conservative candidates around the country, though group leaders say they are chiefly educational organizations.

They say they mostly do things like invite guests to discuss issues and teach members about the Constitution and how to request government documents under the Freedom of Information Act. Some say they occasionally endorse candidates and seek to register voters. "We're doing nothing more than what the average citizen does in getting involved," said Phil Rapp, executive director of the Richmond Tea Party in Virginia. "We're not supporting candidates; we are supporting what we see as the issues."

One group, the Kentucky 9/12 Project, said it applied for tax-exempt status in December 2010. After getting a prompt IRS acknowledgement of its application, the organization heard nothing until it got an IRS letter two weeks ago requesting more information, said the project's director, Eric Wilson. That letter, which Wilson provided to the AP, asked 30 questions, many with multiple parts, and gave the group until March 6 to respond.

Information requested included "details regarding all of your activity on Facebook and Twitter" and whether top officials' relatives serve in other organizations or plan to run for elective office. The IRS also sought the political affiliation of every person who has provided the group with educational services and minutes of every board meeting "since your creation."

"This is a modern-day witch hunt," said Wilson, whose 9/12 group and others around the country were inspired by conservative activist Glenn Beck. Other conservative organizations described similar experiences.

A January IRS letter to the Richmond Tea Party requests the names of donors, the amounts each contributed and details on how the funds were used. The Ohio Liberty Council received an IRS letter last month seeking the credentials of speakers at the group's public events. In a February letter, the IRS asked the Waco Tea Party of Texas whether its officials have a "close relationship" with any candidates for office or political parties, and was asked for events they plan this year. "The crystal ball I was issued can't predict the future," and future events will depend on factors like what Congress does this year, said Toby Marie Walker, president of the Waco group.

The IRS provided a five-paragraph written response to a reporter's questions about its actions. It noted that the tax code allows tax-exempt status to "social welfare" groups, which are supposed to promote the common good of the community. Groups can engage in some political activities "so long as, in the aggregate, these non-exempt activities are not its primary activities," the IRS statement said. "Career civil servants make all decisions on exemption applications in a fair, impartial manner and do so without regard to political affiliation or ideology," the agency said.

There were 139,000 groups in the U.S. with 501(c)(4) tax-exempt status in 2010, the latest year of available IRS data. More than 1,700 organizations applied for that designation in 2010 while over 1,400 were approved. Such volume means it might take months for the IRS to assign applications to agents, said Lloyd Hitoshi Mayer, a Notre Dame law professor who specializes in election and tax law.

Ever since a 2010 Supreme Court decision allowing outside groups to spend unlimited funds in elections, such organizations have been under scrutiny. Two nonpartisan campaign finance watchdogs called on the IRS last fall to strip some large groups of tax-exempt status, claiming they engage in so much political activity that they don't qualify for the designation. Last month, seven Democratic senators asked the IRS to investigate whether some groups were improperly using tax-exempt status -- they didn't name any organizations -- because those groups are "improperly engaged in a substantial or even a predominant amount of campaign activity."

From: Ruth.Madriral [REDACTED]
Sent: Thursday, June 14, 2012 3:10 PM
To: Judson Victoria A; Cook Janine; Lerner Lois G; Marks Nancy J
Subject: 501(c)(4)s - From the Nonprofit Law Prof Blog

Don't know who in your organizations is keeping tabs on c4s, but since we mentioned potentially addressing them (off-plan) in 2013, I've got my radar up and this seemed interesting...

Bad News for Political 501(c)(4)s: 4th Circuit Upholds "Major Purpose" Test for Political Committees

In a case with potentially major ramifications for politically active section 501(c)(4) organizations, the U.S. Court of Appeals for the Fourth Circuit has upheld the Federal Election Commission's "major purpose" test for determining whether an organization is a political committee or PAC and so subject to extensive disclosure requirements. As described in the opinion, under the major purpose test "the Commission first considers a group's political activities, such as spending on a particular electoral or issue-advocacy campaign, and then it evaluates an organization's 'major purpose,' as revealed by that group's public statements, fundraising appeals, government filings, and organizational documents" (citations omitted). The FEC's summary of the litigation details the challenge made in this case:

A group or association that crosses the \$1,000 contribution or expenditure threshold will only be deemed a political committee if its "major purpose" is to engage in federal campaign activity. [The plaintiff] claims that the FEC set forth an enforcement policy regarding PAC status in a policy statement and that this enforcement policy is "based on an ad hoc, case-by-case, analysis of vague and impermissible factors applied to undefined facts derived through broad-ranging, intrusive, and burdensome investigations . . . that, in themselves, can often shut down an organization, without adequate bright lines to protect issue advocacy in this core First Amendment area." [The plaintiff] asks the court to find this "enforcement policy" unconstitutionally vague and overbroad and in excess of the FEC's statutory authority.

In a unanimous opinion, the court concluded that the FEC's current major purpose test is "a sensible approach to determining whether an organization qualifies for PAC status. And more importantly the Commission's multi-factor major-purpose test is consistent with Supreme Court precedent and does not unlawfully deter protected speech." In doing so, the court chose to apply the less stringent "exacting scrutiny" standard instead of the "strict scrutiny" standard because, in the wake of Citizens United, political committee status only imposes disclosure and organizational requirements but no other restrictions. While the plaintiff here (The Real Truth About Abortion, Inc., formerly known as The Real Truth About Obama, Inc.) is a section 527 organization for federal tax purposes, the same test would apply to other types of politically active organizations, including section 501(c)(4) entities.

Hat Tip: Election Law Blog

LHM

M. Ruth M. Madrigal
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

[REDACTED] (direct)
[REDACTED]

Increase in (c)(3)/(c)(4) Advocacy Org. Applications

Background:

- EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
- EOD Screening identified this type of case as an emerging issue and began sending cases to a specific group if they meet any of the following criteria:
 - “Tea Party,” “Patriots” or “9/12 Project” is referenced in the case file
 - Issues include government spending, government debt or taxes
 - Education of the public by advocacy/lobbying to “make America a better place to live”
 - Statements in the case file criticize how the country is being run
- Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. Before this was identified as an emerging issue, two (c)(4) applications were approved.
- Two sample cases were transferred to EOT, a (c)(3) and a (c)(4).
 - The (c)(4) stated it will conduct advocacy and political intervention, but political intervention will be 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.
 - The (c)(3) stated it will conduct “insubstantial” political intervention and it has ties to politically active (c)(4)s and 527s. A proposed denial is being revised by TLS to incorporate the org.’s response to the most recent development letter.
- EOT is assisting EOD by providing technical advice (limited review of application files and editing of development letters).

EOD Request:

- EOD requests guidance in working these cases in order to promote uniform handling and resolution of issues.

Options for Next Steps:

- Assign cases for full development to EOD agents experienced with cases involving possible political intervention. EOT provides guidance when EOD agents have specific questions.
- EOT composes a list of issues or political/lobbying indicators to look for when investigating potential political intervention and excessive lobbying, such as reviewing website content, getting copies of educational and fundraising materials, and close scrutiny of expenditures.
- Establish a formal process similar to that used in healthcare screening where EOT reviews each application on TEDS and highlights issues for development.
- Transfer cases to EOT to be worked.
- Include pattern paragraphs on the political intervention restrictions in all favorable letters.
- Refer the organizations that were granted exemption to the ROO for follow-up.

Cautions:

- These cases and issues receive significant media and congressional attention.
- The determinations process is representational, therefore it is extremely difficult to establish that an organization will intervene in political campaigns at that stage.

From: Paz Holly O
Sent: Thursday, January 31, 2013 4:15 AM
To: Paterson Troy D TIGTA
Cc: Lerner Lois G
Subject: RE: E-Mail Retention Question

Troy,

I'm sorry we won't get to see you today. We have reached out to determine the appropriate contact regarding your question below and have been told that, if this data request is part of e-Discovery, the coordination needs to go through Chief Counsel. The person to contact regarding e-Discovery requests is Glenn Melcher. His email address is [REDACTED] and his phone number is [REDACTED]

Holly

From: Paterson Troy D TIGTA [REDACTED]
Sent: Thursday, January 24, 2013 8:51 AM
To: Paz Holly O
Subject: E-Mail Retention Question

Holly,

Good morning.

During a recent briefing, I mentioned that we do not have the original e-mail from May 2010 stating that "Tea Party" applications should be forwarded to a specific group for additional review. After thinking it through, I was wondering about the IRS's retention or backup policy regarding e-mails. Do you know who I could contact to find out if this e-mail may have been retained?

Troy
[REDACTED]

From: Paz Holly O
Sent: Wednesday, June 20, 2012 1:14 PM
To: Lerner Lois G
Subject: FW: Additional procedures on cases with advocacy issues - before issuing any favorable or initial denial ruling

FYI

From: Seto Michael C
Sent: Wednesday,

June 20, 2012 2:11 PM

To: McNaughton Mackenzie P; Salins Mary J;

Shoemaker Ronald J; Lieber Theodore R

Cc: Grodnitzky Steven; Megosh

Andy; Giuliano Matthew L; Fish David L; Paz Holly O

Subject:

Additional procedures on cases with advocacy issues - before issuing any favorable or initial denial ruling

Please

inform the reviewers and staff in your groups that before issuing any favorable or initial denial rulings on any cases with advocacy issues, the reviewers must notify me and you via e-mail and get our approval. No favorable or initial denial rulings can be issued without your and my approval. The e-mail notification includes the

name of the case, and a synopsis of facts and denial rationale. I may require a short briefing depending on the facts and circumstances of the particular case.

If you have any questions, please let me know.

Thanks,

Mike

From: Lerner Lois G
Sent: Wednesday, May 02, 2012 9:40 AM
To: Miller Steven T
Subject: A Question

I'm wondering if

you might be able to give me a better sense of your expectations regarding roles and responsibilities for the c4 matters. I understand you have asked Nan to take a deep look at the what is going on and make recommendations. I'm fine with that. Then there was the discussion yesterday about how we plan to approach the issues going forward. That is where the confusion lies. What are your expectations as to who is implementing the plan?

Prior to that

meeting, unbeknownst to me, Cathy had made comments regarding the guidance--which Nan knew about. Nan then directed one of my staff to meet with Cathy and start moving in a new direction. The staff person came to me and I talked to Nan, suggesting before we moved, we needed to hear from you, which is where we are now.

We're all on good

terms and we all want to do the best, but I fear that unless there's a better

understanding of roles, we may step on each others toes without intending to.

**Your thoughts
please. Thanks**

Lais G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Tuesday, May 17, 2011 10:37 AM
To: Urban Joseph J
Subject: Re: BNA - IRS Answers Few Questions Regarding Audits Of Donors Giving to Section 501(c)(4) Groups

The constitutional issue is the big Citizens United issue. I'm guessing no one wants that going forward Lois G. Lerner-----
----- Sent from my BlackBerry Wireless Handheld

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

From: Joseph Urban
To: Lois Call in Number
Subject: RE: BNA - IRS Answers Few Questions Regarding Audits Of Donors Giving to Section 501(c)(4) Groups
Sent: May 17, 2011 10:39 AM

The Counsel function with jurisdiction over the gift tax, Passthroughs and Special Industries, is going to have to come up with a legal position on what type of transfers of money or property to a section 501(c)(4) organization are subject to the gift tax. There is also a constitutional angle that has been raised - whether imposing the tax on a contribution for political purposes is an infringement on donors' First Amendment free speech rights, as well as an attack on section 501(c)(4) organizations engaged in permissible political activities. The PS&I lawyers have called a meeting for Friday with their boss, and perhaps other higher-ups in Counsel. Judy, Justin and I are going. Susan Brown and Don Spellman will be there from TE/GE Counsel, as will Nan Marks. There are some tough issues for the gift tax people to work through, and I am sure they will be running their conclusions past the Chief Counsel, if not Treasury. It would certainly be an interesting result if a self-interested earmarked donation to a (c)(4) for a political campaign would not subject to the gift tax, but a donation for the selfless general support of a (c)(4)s public interest work would be. Stay tuned.

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

From: Lerner Lois G
Sent: Tuesday, May 17, 2011 10:04 AM
To: Urban Joseph J
Subject: Re: BNA - IRS Answers Few Questions Regarding Audits Of Donors Giving to Section 501(c)(4) Groups

So. What's your take on where this will go? Reminds me of Marv's staff draft on governance

Lois G. Lerner-----

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

To: Eldridge Michelle L; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

I will now be speaking somewhere between 11-11:30 depending on when previous speaker finishes. I may or may not be adding some remarks that are being discussed at a higher level. If approved, I have not been told whether those remarks will be in the written speech, or I will simply give them orally. There may be a desire to get the speech up ASAP if the new proposed language is added to the draft--these are Nikole questions. Right now, though, we're simple on hold.

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, April 23, 2013 9:55 AM
To: Lerner Lois G; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

I'm sorry--I've lost track. What time is your speech? Given timing of other stuff that day--we may be looking at posting both in the afternoon. I'm sure this will continue to be discussed...as I hear more details, I will pass it along. Please let me know what you are hearing as well. Thanks. --Michelle

From: Lerner Lois G
Sent: Monday, April 22, 2013 6:49 PM
To: Zarin Roberta B; Lemons Terry L; Eldridge Michelle L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown
Importance: High

Hmm--I was thinking the speech would go up right after I speak and the report would go up later in the afternoon. Will that work?

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Monday, April 22, 2013 1:32 PM
To: Lemons Terry L; Eldridge Michelle L; Burke Anthony
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

Thanks, but Melaney deserves credit for that one! We are planning to post Lois' speech, along with the report, Thursday afternoon

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

From: Lemons Terry L
Sent: Monday, April 22, 2013 1:10 PM
To: Zarin Roberta B; Eldridge Michelle L; Burke Anthony
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

Bobby – good catch on the news release. Think we should try doing a short one since we did the interim one. Think text should track what we did before (below.) Anthony Burke will be reaching out to you. Think we need text by mid-day Tuesday so we can get through clearance channels on third floor and Treasury.

Also possible we may post text of Thursday speech on IRS.gov.

Thanks.

From: Zarin Roberta B
Sent: Monday, April 22, 2013 11:09 AM
To: Lemons Terry L; Eldridge Michelle L
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: FW: Georgetown

Fun for the week:

Do you know if we have language Lois can use re: the furlough? (see below.) I'm sure other IRS speakers are facing the same issue.

Also, as you know, she'll be announcing that the College and University Report that afternoon. We never discussed a press release (you did one for the interim report), and it may be too late now, but should it be considered?

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

From: Flax Nikole C
Sent: Friday, April 19, 2013 11:44 AM
To: Lerner Lois G; Lemons Terry L
Cc: Grant Joseph H; Zarin Roberta B
Subject: Re: Georgetown

We will pull something together - can you let me know when/if you are open later today to discuss other topics?

From: Lerner Lois G
Sent: Friday, April 19, 2013 11:37 AM Eastern Standard Time
To: Flax Nikole C; Lemons Terry L
Cc: Grant Joseph H; Zarin Roberta B
Subject: Georgetown

We have numerous speakers over 2 days at the conference, starting on Wed. I am sure we will be asked about the furloughs. There is already press out there on the NTEU issue, so I don't

think we can avoid saying something. I'm thinking it would be best for me to lead off with some statement at the beginning before I get into my formal written speech to respond before the question comes. That way, all that follow me can either say exactly what I say or refer the questioner back to my earlier remarks. Otherwise I fear we may have someone get nervous and say more than we planned. Does that sound like a plan? If so, can we get parameters of what my statement should look like? Sorry, but this isn't one we can skate by. Thanks

Lais J. Lerner

Director of Exempt Organizations

From: Kall Jason C
Sent: Tuesday, January 10, 2012 9:09 PM
To: Lerner Lois G
Cc: Ghougasian Laurice A; Fish David L; Paz Holly O; Downing Nanette M
Subject: Workplan and background on how we started the self declarer project

Lois,

I found the string of e-mails that started us down the path of what has become the c-4, 5, 6 self declarer project. Our curiosity was not from looking at the 990 but rather data on c-4 self declarers.

Jason Kall

Manager, EO Compliance Strategies and Critical Initiatives
[REDACTED]

From: Chasin Cheryl D
Sent: Thursday, September 16, 2010 8:59 AM
To: Lerner Lois G; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

That's correct. These are all status 36 organizations, which means no application was filed.

Cheryl Chasin
[REDACTED]

From: Lerner Lois G
Sent: Thursday, September 16, 2010 9:58 AM
To: Chasin Cheryl D; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: Re: EO Tax Journal 2010-130

Ok guys. We need to have a plan. We need to be cautious so it isn't a per se political project. More a c4 project that will look at levels of lobbying and pol. activity along with exempt activity. Cheryl- I assume none of those came in with a 1024?
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Chasin Cheryl D
To: Lerner Lois G; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Sent: Wed Sep 15 14:54:38 2010
Subject: RE: EO Tax Journal 2010-130

It's definitely happening. Here are a few organizations (501(c)(4), status 36) that sure sound to me like they are engaging in political activity:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I've also found (so far) 94 homeowners and condominium associations, a VEBA, and legal defense funds set up to benefit specific individuals.

Cheryl Chasin
[REDACTED]
[REDACTED]

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 1:51 PM
To: Kindell Judith E; Chasin Cheryl D; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

I'm not saying this is correct--but there is a perception out there that that is what is happening. My guess is most who conduct political activity never pay the tax on the activity and we surely should be looking at that. Wouldn't that be a surprising turn of events. My object is not to look for political activity--more to see whether self-declared c4s are really acting like c4s. Then we'll move on to c5,c6,c7--it will fill up the work plan forever!

Lois G. Lerner
Director, Exempt Organizations

From: Kindell Judith E
Sent: Wednesday, September 15, 2010 1:03 PM
To: Lerner Lois G; Chasin Cheryl D; Ghougasian Laurice A
Cc: Lehman Sue
Subject: RE: EO Tax Journal 2010-130

My big concern is the statement "some (c)(4)s are being set up to engage in political activity" - if they are being set up to engage in political campaign activity they are not (c)(4)s. I think that Cindy's people are keeping an eye out for (c)(4)s set up to influence political campaigns, but we might want to remind them. I also agree that it is about time to start looking at some of those organizations that file Form 990 without applying for recognition -whether or not they are involved in politics.

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 12:27 PM

To: Chasin Cheryl D; Ghougasian Laurice A; Kindell Judith E
Cc: Lehman Sue
Subject: FW: EO Tax Journal 2010-130

Not sure you guys get this directly. I'm really thinking we do need a c4 project next year

Lois J. Lerner

Director, Exempt Organizations

From: paul streckfus [REDACTED]
Sent: Wednesday, September 15, 2010 12:20 PM
To: paul streckfus
Subject: EO Tax Journal 2010-130

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

Email Update 2010-130 (Wednesday, September 15, 2010)
Copyright 2010 Paul Streckfus

Yesterday, I asked, "Is 501(c)(4) Status Being Abused?" I can hardly keep up with the questions and comments this query has generated. As noted yesterday, some (c)(4)s are being set up to engage in political activity, and donors like them because they remain anonymous. Some commenters are saying, "Why should we care?", others say these organizations come and go with such rapidity that the IRS would be wasting its time to track them down, others say (c)(3) filing requirements should be imposed on (c)(4)s, and so it goes.

Former IRSer Conrad Rosenberg seems to be taking a leave them alone view:

"I have come, sadly, to the conclusion that attempts at revocation of these blatantly political organizations accomplish little, if anything, other than perhaps a bit of *in terrorem* effect on some other (usually much smaller) organizations that may be contemplating similar behavior. The big ones are like balloons -- squeeze them in one place, and they just pop out somewhere else, largely unscathed and undaunted. The government expends enormous effort to win one of these cases (on very rare occasion), with little real-world consequence. The skein of interlocking 'educational' organizations woven by the fabulously rich and hugely influential Koch brothers to foster their own financial interests by political means ought to be Exhibit One. Their creations operate with complete impunity, and I doubt that potential revocation of tax exemption enters into their calculations at all. That's particularly true where deductibility of contributions, as with (c)(4)s, is not an issue. Bust one, if you dare, and they'll just finance another with a different name. I feel for the IRS's dilemma, especially in this wildly polarized election year."

A number of individuals said the requirements for (c)(4)s to file the Form 1024 or the Form 990 are a bit of a muddle. My understanding is that (c)(4)s need not file a Form 1024, but generally the IRS won't accept a Form 990 without a Form 1024 being filed. The result is that attorneys can create new (c)(4)s every year to exist for a short time and never file a 1024 or 990. However, the IRS can claim the organization is subject to tax (assuming it becomes aware of its existence) and then the organization must prove it is exempt (by essentially filing the information required by Form 1024 and maybe 990). Not being sure of the correctness of my understanding, I went to the only person who may know more about EO tax law than Bruce Hopkins, and got this response from Marc Owens:

"You are sort of close. It's not quite accurate to state that a (c)(4) 'need not file a Form 1024.' A (c)(4) is not subject to IRC 508, hence it is not required to file an application for tax-exempt status within a particular period of time after its formation. Such an organization is subject, however, to Treas. Reg. Section 1.501(a)-1(a)(2) and (3) which set forth the general requirement that in order to be exempt, an organization must file an application, but for which no particular time period is specified. Once a would-be (c)(4) is formed and it has completed one fiscal year of life, and assuming that it had revenue during the fiscal year, it is required to file a tax return.

“There is no exemption from the return filing requirement for would-be (c)(4)s and failing to file anything is flirting with serious issues. Obviously, few, if any, organizations elect to file a Form 1120 and so file a Form 990 as an alternative and because it comports with the intended tax-exempt status. When such a Form 990 arrives in Ogden, it goes ‘unpostable,’ i.e., there is no pre-existing master file account to which to ‘post’ receipt of the return.

“Master file accounts for tax exempts are created by Cincinnati when an application is filed, hence no prior application, no master file account and no place for Ogden to record receipt of the subsequent 990. Such unpostable returns are kicked out of the processing system and sent to a resolution unit that analyzes the problem (there are many reasons a return might be unpostable, such as a typo in an EIN). The processing unit might create a ‘dummy’ master file account to which to post the return, it might correspond with the filing organization to ascertain the correct return to be filed, or it might refer the matter to TE/GE where it would be assigned to an agent to analyze, essentially instigating the process you describe.”

My query today: So where are we? Should the IRS ignore the whole mess? Or should the IRS be concerned with the integrity of the tax exemption system?

I think the IRS needs to keep track of new (c)(4)s as they appear. I’m assuming most political ads identify who is bringing them to you. That’s true of the ones I’ve seen. When the IRS can not identify on its master file a new organization engaged in politicking, it should send a letter of inquiry, saying “Who are you? What is your claimed tax status?” In other words, what I’m saying is that the IRS needs to be more pro-active, and not await the filing of a Form 1024 or 990. I recognize that most of these (c)(4)s may have little income if they spend what they take in, but the EO function has never been about generating revenue. If (c)(4) status is being abused, the IRS needs to take action. If the IRS does not have the tools to get at the problems, then we need for Congress to step in and strengthen the filing requirements.

My biggest concern is that these political (c)(4)s are operating in tandem with (c)(3)s so that donors can claim 170 deductions. Here the IRS needs to have an aggressive audit program in coordination with the Income Tax Division so that 170 deductions are disallowed if a (c)(3) is being used as a conduit to a (c)(4).

I’ve probably raised new issues, and I’ve said nothing about section 527. Anyone who wants to fill in some of the blanks, please do so.

From: Marks Nancy J
Sent: Monday, April 01, 2013 12:16 PM
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: Re: HMMMM?

Well we'd all like to see some good solid light of day court resolution so hope so

Sent using BlackBerry

From: Lerner Lois G
Sent: Monday, April 01, 2013 12:34 PM Eastern Standard Time
To: Marks Nancy J; Paz Holly O; Fish David L
Subject: RE: HMMMM?

It's the one that will be next that is "the one."

Lois G. Lerner

Director of Exempt Organizations

From: Marks Nancy J
Sent: Monday, April 01, 2013 12:21 PM
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: Re: HMMMM?

Some not all would be my guess

Sent using BlackBerry

From: Lerner Lois G
Sent: Monday, April 01, 2013 09:55 AM Eastern Standard Time
To: Marks Nancy J; Paz Holly O; Fish David L
Subject: Re: HMMMM?

Sorry. These guys are itching for a Constitutional challenge. Not you father's EO
Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Marks Nancy J
Sent: Friday, March 29, 2013 05:55 PM Eastern Standard Time
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: Re: HMMMM?

I guess I'd never assume that. Court is an expensive crap shoot with the potential for a public record the org might not want. This changes the odds some not sure it is a lot (unless most have no liability)

Sent using BlackBerry

From: Lerner Lois G
Sent: Friday, March 29, 2013 05:43 PM Eastern Standard Time
To: Marks Nancy J; Paz Holly O; Fish David L
Subject: RE: HMMMM?

When we were talking, we were thinking they would all want to go to court--so we figured, why not get there sooner and save Appeals some time--they will be dying with these cases. We were thinking c3 rules. As to taxes owed--if IRS hasn't assessed, it's hard to get to court without paying yourself and making a claim

Lois G. Lerner
Director of Exempt Organizations

From: Marks Nancy J
Sent: Friday, March 29, 2013 5:37 PM
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: RE: HMMMM?

I may be missing something. Designating them would not guarantee litigation because no one can force the taxpayer into court but assuming they have some tax liability resulting from the loss of exempt status litigation is certainly possible and the designation would have cut off appeals time right? (I'll admit I have not looked at designation procedures in some time). I agree release of denials is unlikely to create a public record because of redaction; there will probably be some record arising from taxpayers self disclosing but that issue is no different here than in many places.

From: Lerner Lois G
Sent: Friday, March 29, 2013 5:16 PM
To: Marks Nancy J; Paz Holly O; Fish David L
Subject: HMMMM?

I was talking to Tom Miller about the redaction process in an effort to give Nikole a feel for how long it takes form a proposed denial to something being public with regard to the denial--a long time. As we talked I had been thinking of ways to shorten things up--such as designating the case for litigation and cutting out the Appeals time. It occurred to me though, that these are c4s, not c3s, so they have no right to go to court unless they owe tax. Without an exam, we can't tell whether they owe tax, and once we deny them, we don't have any ability to examine them--they are on the other side of the IRS. If they want to go to court, I guess they could file and pay taxes for previous years and then claim a refund(maybe?)

Bottom line, am I right that designating a c4 for court doesn't work and that we probably won't see any of these denials publicly other than the redacted copies of the denials when the process is complete? That really won't be helpful as I'm guessing many of these will have to be redacted so heavily that they won't have much information left once that is done.

Am I correct?

Lois G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Friday, May 03, 2013 9:30 AM
To: Flax Nikole C
Subject: RE: Aba

It's just the plain vanilla "what's new from the IRS?" with Ruth and Janine---ordinarily, I'd give snippets of several topics--status of auto-rev, the 2 questionnaire projects, the interactive 1023--stuff we talked about at Georgetown. May 10, 9-10--immediately followed by me on a panel re C & U Report with Lorry Spitzer and someone else--maybe Suzie McDowell.

Lois G. Lerner
Director of Exempt Organizations

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

From: Flax Nikole C
Sent: Friday, May 03, 2013 9:42 AM
To: Lerner Lois G
Subject: Aba

What time is your panel friday and what are the topics?

From: Flax Nikole C
Sent: Tuesday, April 23, 2013 11:59 AM
To: Lerner Lois G
Subject: FW: Draft remarks
Attachments: draft c4 comments 4-22-13.doc

see what you think.

Recent section 501(c)(4) activity
PRELIMINARY DRAFT 4-22-13

So I think it's important to bring up a matter that came up over the last year or so concerning our determination letter process, some section 501(c)(4) organizations and their political activity. Some of this has been discussed publicly already. But I thought it would make sense to do just a couple of minutes on what we did, what we didn't do, and where we are today on the grouping of advocacy organizations in our determination letter inventory.

I will start with a summary. As you know, the number of c4 applications increased significantly starting after 2010. In particular, we saw a large increase in the volume of applications from organizations that appeared to be engaged or planning to engage in advocacy activities. At that time, we did not have good enough procedures or guidance in place to effectively work these cases. We also have the factual difficulty of separating politics from education in these cases -- it's not always clear. Complicating matters is the sensitivity of these cases. Before I get into more detail, let me say that the IRS should have done a better job of handling the review of the c4 applications. We made mistakes, for which we apologize. But these mistakes were not due to any political or partisan reason. They were made because of missteps in our process and insufficient sensitivity to the implications of some of our decisions. We believe we have fixed these issues, and our entire team will do a much better job going forward in this area. And I want to stress that our team - all career civil servants -- will continue to do their work in a fair, non-partisan manner.

So let me start again and provide more detail. Centralizing advocacy cases for review in the determination letter process made sense. Some of the ways we centralized did not make sense. But we have taken actions to fix the errors. What we did here, along with other mistakes that were made along the way, resulted in some cases being in inventory far longer than they should have.

Our front-line people in Cincinnati -- who do the reviews -- took steps to coordinate the handling of the uptick in cases to ensure consistency. We take this approach in areas where we want to promote consistency. Cases involving credit counseling are the best example of this sort of situation.

Here's where a problem occurred. In centralizing the cases in Cincinnati, my review team placed too much reliance on the particular name of an organization; in this case, relying on names in organization titles like "tea party" or "patriot," rather than looking deeper into the facts to determine the level of activity under the c4 guidelines. Our Inspector General is looking at this situation, but I believe and the IRS leadership team believe this to be an error -- not a political vendetta. The error was of a mistaken desire for too much efficiency on the applications without sufficient sensitivity to the situation.

We also made some errors in our development letters, asking for more than was needed. You may recall the publicity around donor lists. That resulted from insufficient

guidance being provided to our people working these cases. There was also an issue about whether we could do a guidesheet for these cases, an effort that took too long before we realized the diversity of the cases prevented success on such a document.

Now, we have remedied this situation -- both systemically for the IRS and for the taxpayers who were impacted. I think we have done a good job of turning the situation around to help prevent this from occurring again.

Let me walk you through the steps we have taken.

Systemically, decisions with respect to the centralized collection of cases must be made at a higher level. So what happened here will not happen again.

With respect to the specific c4 cases in inventory, we took a number of steps to move things along. First, we had a team review the cases to determine the necessary scope of our review. Now make no mistake, some need that review, some have or had endorsements in public materials, for example. But many did not.

We worked to move the inventory. We closed those cases that were clear and are working on those that are less certain.

With respect to what we agree may have been overbroad requests for information, we engaged in a process of an active back and forth with the taxpayer. With respect to donor names, we informed organizations that if they could provide information requested in an alternative manner, we would work with them. In cases in which the donor names were not used in making the determination, the donor information was expunged from the file.

We now have a process where each revenue agent assigned these cases works in coordination with a specific technical expert.

And we have made significant progress on these cases. Of the nearly 300 c4 advocacy cases, we have approved more than 120 to date. We have had more than 30 (?) withdrawals. And obviously some cases take longer than others depending on the issues raised, including the level of political activity compared with social welfare activity. Let me make another important point that shouldn't be lost in all of this. We remain committed to making sure that we properly review determinations where there are questions. We hope to wrap the remaining cases up relatively soon.

So I wanted to raise this situation today with you. You and I know the IRS does make mistakes. And I also think you agree that our track record shows that our decisions are based on the law -- not political affiliation. When we do make mistakes, we need to acknowledge it and work toward a better result. We also need to put in place safeguards to ensure the errors do not happen again. I think we have tried to do that here.

These cases will help us, along with the self-declarer questionnaire, to better understand the state of play on political activities in today's environment, the gaps in

guidance, and where we need to head into the future.

DRAFT

From: Lerner Lois G
Sent: Wednesday, March 27, 2013 12:39 PM
To: Flax Nikole C; Sinno Suzanne; Barre Catherine M; Landes Scott S; Amato Amy; Vozne Jennifer L
Subject: RE: UPDATE - FW: Hearing

As I mentioned yesterday--there are several groups of folks from the FEC world that are pushing tax fraud prosecution for c4s who report they are not conducting political activity when they are(or these folks think they are). One is my ex-boss Larry Noble(former General Counsel at the FEC), who is now president of Americans for Campaign Reform. This is their latest push to shut these down. One IRS prosecution would make an impact and they wouldn't feel so comfortable doing the stuff.

So, don't be fooled about how this is being articulated--it is ALL about 501(c)(4) orgs and political activity

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Wednesday, March 27, 2013 1:31 PM
To: Sinno Suzanne; Lerner Lois G; Barre Catherine M; Landes Scott S; Amato Amy; Vozne Jennifer L
Subject: RE: UPDATE - FW: Hearing

thanks - this is helpful. Can we regroup internally before we get back to the Hill?

So sounds like their interest in 7206 is not 501c4 specific?

From: Sinno Suzanne
Sent: Wednesday, March 27, 2013 1:19 PM
To: Flax Nikole C; Lerner Lois G; Barre Catherine M; Landes Scott S; Amato Amy
Subject: UPDATE - FW: Hearing

I just spoke with Ayo. He told me that DOJ said the IRS does the initial investigations into violations of IRC section 7206 (fraud and false statements) and DOJ prosecutes IRS referrals. DOJ said they have not gotten any referrals from the IRS.

The Subcommittee is interested in an IRS witness to testify on:

- the process of an investigation before a case is turned over to DOJ
- how a determination is made
- how different elements of the offense are interpreted under IRC section 7206

Please let me know your thoughts.

Thanks,
Suzie

From: Sinno Suzanne
Sent: Wednesday, March 27, 2013 12:51 PM
To: Griffin, Ayo (Judiciary-Dem)
Subject: RE: Hearing

Ayo,

I do remember meeting with you on 501(c)(4)s last July and I hope you are well too.

Regarding the hearing, this is very short notice and I am not sure that we can properly prepare a witness in time and clear testimony. I will need to check with the subject matter experts and get back to you.

What would be most helpful is if you can tell me specifically what the Subcommittee wants the IRS to address, as we cannot comment on any specific cases/taxpayers. Are there questions that DOJ cannot answer that you want the IRS to answer instead?

Feel free to call me directly at [REDACTED] if you would like to discuss over the phone.

Thank you,
Suzie

Suzanne R. Sinno, J.D., LL.M. (Tax)
Legislative Counsel
Office of Legislative Affairs
Internal Revenue Service
[REDACTED]
[REDACTED] (fax)
[REDACTED]

From: Griffin, Ayo (Judiciary-Dem) [REDACTED]
Sent: Tuesday, March 26, 2013 7:44 PM
To: Sinno Suzanne
Subject: Hearing

Hi Suzanne,

I hope you're well. You may recall we met last summer during a couple of very helpful IRS briefings that you put together for staff for several Senators relating to political spending by 501(c)(4) groups.

I wanted to get in touch because Sen. Whitehouse is convening a hearing in the Judiciary Subcommittee on Crime and Terrorism on criminal enforcement of campaign finance law on April 9, which I think you may have already have heard about from Bill Erb at DoJ. One of the topics actually involves enforcement of tax law. Specifically, Sen. Whitehouse is interested in the investigation and prosecution of material false statements to the IRS regarding political activity by 501(c)(4) groups on forms 990 and 1024 under 26 U.S.C. § 7206.

Sen. Whitehouse would like to invite an IRS witness to testify on these issues. Could you please let me know if it would be possible for you to provide a witness?

I sincerely apologize for the late notice. We had been hoping that a DoJ witness could discuss all of the topics that Sen. Whitehouse was interested in covering at this hearing, but we were recently informed that they would not be able to speak about enforcement of § 7206 in this context.

I have attached an official invitation in case you require one two weeks prior to the hearing date (as DoJ does).

Perhaps we can discuss all of this on the phone tomorrow if you have time.

Thanks very much,

Ayo

Ayo Griffin
Counsel
Subcommittee on Crime and Terrorism
Senator Sheldon Whitehouse, Chair
U.S. Senate Committee on the Judiciary
[REDACTED]

From: Lerner Lois G
Sent: Wednesday, October 17, 2012 9:28 AM
To: Lowe Justin; Zarin Roberta B; Paz Holly O; Partner Melaney J
Subject: RE: Politico Article on the IRS, Disclosure, and (c)(4)s

I never understand why they don't go after Congress to change the law!

Lois G. Lerner

Director of Exempt Organizations

From: Lowe Justin
Sent: Wednesday, October 17, 2012 10:21 AM
To: Zarin Roberta B; Lerner Lois G; Paz Holly O; Partner Melaney J
Subject: Politico Article on the IRS, Disclosure, and (c)(4)s

A fairly critical article from Politico on Monday, touching on (c)(4)s, responses to information requests, and application processing: <http://www.politico.com/news/stories/1012/82387.html>

From: Lerner Lois G
Sent: Wednesday, July 25, 2012 7:47 PM
To: Miller Steven T
Subject: Re: thank you

Glad it turned out to be far more boring than it might have. Happy to be able to help.
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Miller Steven T
Sent: Wednesday, July 25, 2012 11:16 AM
To: Lowe Justin; Urban Joseph J; Mistr Christine R; Flax Nikole C; Barre Catherine M; Norton William G Jr; Richardson Virginia G; Daly Richard M; Lerner Lois G; Paz Holly O
Subject: thank you

**For all the help on
the hearing. Please thank others who were involved in what I know was a
time consuming effort to quench my thirst for details.**

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 10:40 AM
To: Paz Holly O; Megosh Andy; Fish David L; Park Nalee; Williams Melinda G
Cc: Flax Nikole C
Subject: C4

I know you all have received messages independently, but I wanted all to hear same message at same time. Regardless whether language has previously been approved, NO responses related to c4 stuff go out without an affirmative message, in writing from Nikole. Thanks Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 10:36 AM
To: Flax Nikole C
Subject: Re: c4 letters

That is why I told them every letter had to go thru you. Don't know why this didn't, but have now told all involved, I hope! Sorry for all the noise. It is just stupid, but not welcome, I'm sure.

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Tuesday, July 24, 2012 11:13 AM
To: Lerner Lois G
Subject: RE: c4 letters

I know it is the same language, but this one has created a ton of issues including from Treasury and timing not ideal.

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 11:07 AM
To: Flax Nikole C
Subject: Re: c4 letters

Sorry for that. I previously told the\$sm everything on c4 had to go to you first for approval.

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Tuesday, July 24, 2012 10:08 AM
To: Lerner Lois G; Paz Holly O; Megosh Andy; Park Nalee; Urban Joseph J
Subject: c4 letters

We need to hold up on sending any more responses to any public/congressional letters until we all talk. Thanks

From: Kindell Judith E
Sent: Wednesday, July 18, 2012 10:54 AM
To: Lerner Lois G
Cc: Light Sharon P
Subject: Bucketed cases

Of the 84 (c)(3)

cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

Of the 199 (c)(4)

cases, approximately 3/4 appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on the name.

The remainder do not obviously lean to either side of the political spectrum.

From: Lerner Lois G
Sent: Tuesday, July 10, 2012 9:31 AM
To: Light Sharon P
Subject: Re: this morning on NPR

Perhaps the FEC will save the day
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Light Sharon P
Sent: Tuesday, July 10, 2012 08:44 AM
To: Paz Holly O; Lerner Lois G
Subject: this morning on NPR

Democrats Say Anonymous Donors Unfairly Influencing Senate Races

Karen Bleier /AFP/Getty Images

In Senate races, Democrats are fighting to preserve their thin majority. Their party campaign committee wants the Federal Election Commission to crack down on some of the Republicans' wealthiest allies — outside money groups that are using anonymous contributions to finance a multimillion-dollar onslaught of attack ads.

At the Democratic Senatorial Campaign Committee, Director Matt Canter says the pro-Republican groups aren't playing by the rules. The committee plans to file [a complaint](#) with the FEC accusing a trio of "social welfare" groups of actually being political committees, abusing the rules to hide the identities of their donors.

"These are organizations that are allowing right-wing billionaires and corporations to essentially get special treatment," says Canter.

Democrats don't have high-roller groups like these. Canter says that while ordinary donors in politics have to disclose their contributions, "these right-wing billionaires and corporations that are likely behind the ads that these organizations are running don't have to adhere to any of those laws."

The complaint cites Crossroads GPS, co-founded by Republican strategist Karl Rove; Americans For Prosperity, supported by the billionaire industrialists David and Charles Koch; and 60 Plus, which bills itself as the senior citizens' conservative alternative to AARP.

The three groups have all told the IRS they are social welfare organizations, just like thousands of local civic groups and definitely not political committees.

Canter said they've collectively spent about \$22 million attacking Democrats in Senate races this cycle.

The Obama campaign [filed a similar complaint](#) against Crossroads GPS last month. Watchdog groups have also repeatedly complained to the FEC and IRS.

At Crossroads GPS, spokesman Jonathan Collegio said their ads talk about things like unemployment and government overspending. "Those are all issues and advertising that's protected by the First Amendment, and it would ... be de facto censorship for the government to stop that type of advocacy from taking place," says Collegio.

And on Fox News recently, Rove said the Crossroads organization is prepared to defend itself and its donors' anonymity.

"We have some of the best lawyers in the country, both on the tax side and on the political side, political election law, to make certain that we never get close to the line that would push us into making GPS a political group as opposed to a social welfare organization," says Rove.

But it's possible that the legal ground may be shifting slowly beneath the social welfare organizations.

They've been a political vehicle of choice for big donors who want to stay private, especially as the Supreme Court loosened the rules for unlimited money.

But last month, a federal appeals court in Richmond, Va., said the FEC has the power to tell a social welfare organization that it's advertising like a political committee and it has to play by those rules.

Campaign finance lawyer Larry Noble used to be the FEC's chief counsel. He says that court ruling won't put anyone out of business this year.

"But it will have a chilling effect on these groups of billionaire-raised contributions, because it will call into question whether or not they're really going to be able to keep their donors confidential," says Noble.

The first obstacle to that kind of enforcement is the FEC itself, a place where controversial issues routinely end in a partisan deadlock.

From: Lerner Lois G
Sent: Monday, June 25, 2012 5:00 PM
To: Daly Richard M; Ingram Sarah H; Marx Dawn R; Urban Joseph J; Marks Nancy J
Cc: Paz Holly O; Fish David L
Subject: RE: 201210022 Engagement Letter

It is what it is. Although the original story isn't as pretty as we'd like, once we learned this were off track, we have done what we can to change the process, better educate our staff and move the cases. So, we will get dinged, but we took steps before the "dinging" to make things better and we have written procedures. So, it is what what it is.

Lois G.

Lerner

Director of Exempt Organizations

From: Daly Richard M
Sent: Friday,
June 22, 2012 5:10 PM
To: Ingram Sarah H; Lerner Lois G; Marx Dawn R;

Urban Joseph J; Marks Nancy J
Subject: FW: 201210022 Engagement

Letter
Importance: High

TIGTA is going to look at how we deal with the applications from (c)(4)s. Among other things they will look at our consistency, and whether we had a reasonable basis for asking for information from the applicants. The engagement letter bears a close reading. To my mind, it has a more skeptical tone than usual.

Among the documents they want to look at are the following:

-

All documents and correspondence (including e-mail) concerning the Exempt Organizations function's response to and decision-making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.

TIGTA expects to issue its report in the spring.

From: Rutstein Joel S
Sent: Friday, June 22, 2012 3:01 PM
To: Daly Richard M
Subject: FW:

201210022 Engagement Letter
Importance: High

Mike, please see below and attached. Given that
TIGTA sent this to Joseph Grant and cc'ed Lois and Moises, do you still need me
to circulate this under a cover memo and distribute it to all my liaisons
including you? Thanks, Joel

Joel S. Rutstein, Esq.

Program Manager,
GAO/TIGTA Audits
Legislation and
Reports Branch
Office of
Legislative Affairs

[REDACTED]

[REDACTED]

[REDACTED]

(fax)

Email: [REDACTED]

Web: <http://irweb.irs.gov/AboutIRS/bu/cl/la/laqt/default.aspx>

From: Price Emma W TIGTA

[REDACTED]

Sent: Friday, June 22, 2012 2:56

PM

To: Grant Joseph H

Cc: Davis Jonathan M (Wash DC); Miller

Steven T; Medina Moises C; Lerner Lois G; Rutstein Joel S; Holmgren R David

TIGTA; Denton Murray B TIGTA; Coleman Amy L TIGTA; McKenney Michael E TIGTA;

Stephens Dorothy A TIGTA

Subject: 201210022 Engagement

Letter

Importance: High

FYI – Engagement Letter – *Consistency in Identifying and*

Reviewing Applications for Tax-Exempt Status Involving Political Advocacy

Issues.

Thanks,

Emma Price

From: Lerner Lois G
Sent: Wednesday, June 13, 2012 12:48 PM
To: Downing Nanette M
Subject: FW: Mother Jones on (c)(4)s

6103

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Wednesday, June 13, 2012 8:34 AM
To: Lerner Lois G; Urban Joseph J; Kindell Judith E; Medina Moises C; Grant Joseph H; Ingram Sarah H; Partner Melaney J; Paz Holly O; Fish David L; Marks Nancy J
Cc: Marx Dawn R
Subject: FW: Mother Jones on (c)(4)s

very interesting reading.

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

From: Burke Anthony
Sent: Wednesday, June 13, 2012 7:35 AM
To: Zarin Roberta B
Cc: Lemons Terry L
Subject: Mother Jones on (c)(4)s

I don't think we'll include this in the clips, but I thought you might be interested:

Mother Jones

How Dark-Money Groups Sneak By the Taxman

Gavin Aronsen

June 13, 2012

Here at Mother Jones we talk about "dark money" to broadly describe the flood of unlimited spending behind this year's election. But the truly dark money in 2012 is being raised and spent by tax-exempt groups that aren't required to disclose their financial backers even as they funnel anonymous cash to super-PACs and run election ads.

By Internal Revenue Service rules, these 501(c)(4)s exist as nonpartisan "social welfare" organizations. They can engage in political activity so long as that's not their primary purpose, but skirt that rule by running issue-based "electioneering communications" that can mention candidates so long as they don't directly tell you to vote for or against them (wink, wink), or by giving grants to other politically active 501(c)(4)s. (Super-PACs, on the other hand, can spend all their money endorsing or attacking candidates, but must disclose their donors.)

Some overtly partisan dark-money groups are better at dancing around these rules than others. Last month, the IRS stripped an organization called Emerge America of its 501(c)(4) status. As it informed the group, which explicitly works to elect Democratic women, "You are not operated primarily to promote social welfare because your activities are conducted primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole." Sure enough, Emerge America's mission statement on its 2010 tax form made no attempt to hide this fact: "By providing women across America with a top-notch training and a powerful, political network, we are getting more Democrats into office and changing the leadership-and politics-of America." D'oh!

Emerge America certainly isn't the only 501(c)(4) to walk the line between promoting social welfare and promoting a political party. It just wasn't savvy or subtle enough to not get busted. Other dark-money groups tend to describe their missions in broad terms that are unlikely to raise an auditor's eyebrows. But how they spend their money suggests their actual agendas. A few examples:

American Action Network

What it is: Conservative dark-money group cofounded by former Sen. Norm Coleman (R-Minn.).

Mission statement (as stated on tax forms): "The American Action Network is a 501(c)(4) 'action tank' that will create, encourage, and promote center-right policies based on the principles of freedom, limited government, American exceptionalism, and strong national policy."

How it walks the line: AAN spent \$20 million in the 2010 election cycle targeting Democrats, including producing ads that were pulled from local airwaves for making "unsubstantiated" claims, but \$15 million of that went toward issue ads. Last week, Citizens for Responsibility and Ethics in Washington claimed that from July 2009 through June 2011 AAN spent 66.8 percent of its budget on political activity, an apparent violation of its tax-exempt status. CREW is calling for an investigation, suggesting that "significant financial penalties might prod AAN to learn the math."

Crossroads GPS

What it is: The 501(c)(4) of Karl Rove's American Crossroads super-PAC

Mission statement: "Crossroads Grassroots Policy Strategies is a non-profit public policy advocacy organization that is dedicated to educating, equipping, and engaging American citizens to take action on important economic and legislative issues that will shape our nation's future. The vision of Crossroads GPS is to empower private citizens to determine the direction of government policymaking rather than being the disenfranchised victims of it. Through issue research, public communications, events with policymakers, and outreach to interested citizens, Crossroads GPS seeks to elevate understanding of consequential national policy issues, and to build grassroots support for legislative and policy changes that promote private sector economic growth, reduce needless government regulations, impose stronger financial discipline and accountability on government, and strengthen America's national security."

How it walks the line: The campaign-finance reform group Democracy 21 has called Crossroad GPS' tax-exempt status a "farce," pointing to \$10 million anonymously donated to finance GPS' anti-Obama ads. Likewise, the Campaign Legal Center wants the IRS to audit GPS. According to its tax filings, between June 2010 and December 2011 GPS spent \$17.1 million on "direct political spending"-just 15 percent of its total spending. Yet it also spent another 42 percent of its total spending, or \$27.1 million, on "grassroots issue advocacy," which included issue ads.

Americans for Prosperity

What it is: Dark-money group of the Americans for Prosperity Foundation (which was founded by David Koch).

Mission statement: "Educate U.S. citizens about the impact of sound economic policy on the nation's economy and social structure, and mobilize citizens to be involved in fiscal matters."

How it walks the line: Since 2010, Americans for Prosperity has officially spent about \$1.4 million on election ads. However, the group's 2010 tax filing shows that \$11.2 million of its \$24 million in expenses went toward "communications, ads, [and] media." In May, an anonymous donor gave AFP \$6.1 million to spend on an issue ad attacking the president's energy policy. Just before Wisconsin's recent recall election, AFP sponsored a bus tour to rally conservative voters. But its state director said the tour had nothing to do the recall: "We're not dealing with any candidates, political parties, or ongoing races. We're just educating folks on the importance of [Gov. Scott Walker's] reforms."

FreedomWorks

What it is: Dark-money arm of former House Majority Leader Dick Armey's Tea Party-aligned super-PAC of the same name

Mission statement: "Public policy, advocacy, and educational organization that focuses on fiscal on economic issues."

How it walks the line: FreedomWorks' 501(c)(4) hasn't spent any money on electioneering this election, but it has funneled \$1.7 million into its super-PAC, which has spent \$2.4 million supporting Republican campaigns. FreedomWorks has focused its past efforts on organizing anti-Obama Tea Party protests and encouraging conservatives to disrupt Democratic town hall meetings to protest the party's health care and renewable energy policies.

Citizens United

What it is: Conservative nonprofit that sued the Federal Election Commission in 2008, resulting in the Supreme Court's infamous Citizens United ruling.

Mission statement: "Citizens United is dedicated to restoring our government to citizens [sic] control. Through a combination of education, advocacy, and grass roots organization, the organization seeks to reassert the traditional American values of limited government, freedom of enterprises, strong families, and national sovereignty and security. The organization's goal is to restore the founding fathers [sic] vision of a free nation, guided by honesty, common sense, and goodwill of its citizens."

How it walks the line: Since its formation in 1988, the nonprofit has released 19 right-wing political documentaries, including films narrated by Newt Gingrich and Mike Huckabee, a rebuttal to Michael Moore's Fahrenheit 9/11, and a pro-Ronald Reagan production (plus the upcoming Occupy Unmasked). On its 2010 tax filing, Citizens United reported spending more than half of its \$15.2 million budget on "publications and film" and "advertising and promotion."

From: Seto Michael C
Sent: Wednesday, February 02, 2011 12:39 PM
To: Lieber Theodore R; Salins Mary J; Seto Michael C; Shoemaker Ronald J; Smith Danny D
Subject: FW: SCR Table for Jan. 2011 & SCR items
Attachments: SCR table Jan 2011.doc; SCR Jan 2011 [REDACTED] MD.doc; SCR Jan 2011 [REDACTED] MD.doc; SCR Jan 2011 [REDACTED] MD.doc; SCR Jan 2011 [REDACTED].doc; SCR Jan 2011 [REDACTED] MD.doc; SCR Jan 2011 Newspaper Cases Update MD.DOC; SCR Jan 2011 [REDACTED] MD.DOC; SCR Jan 2011 Medical Marijuana.doc; SCR Jan 2011 Mortgage Foreclosure.doc; SCR Jan 2011 Foreign Lobby Cases.doc; SCR Jan 2011 [REDACTED].doc; SCR Jan 2011 [REDACTED].doc

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

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

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

Thanks,

Mike

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

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

I'll get with Nan Marks on the [REDACTED] piece.

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

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

I hear you about you and Mike keeping track, but I would like a running history. that's the only way I can speak to what we're doing and progress in a larger way. Plus we've learned from Exam--if they know I'm looking, they don't want to have to explain--so they

move things along. the 'clean" sheet doesn't give me any sense unless I go back to previous SCR's.

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

Lois G. Lerner

Director, Exempt Organizations

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

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

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

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

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

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

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

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

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

Thanks--a couple comments

1. Tea Party Matter very dangerous. This could be the vehicle to go to court on the issue of whether Citizen's United overturning the ban on corporate spending applies to tax exempt rules. Counsel and Judy Kindell need to be in on this one please needs to be in this. Cincy should probably NOT have these cases--Holly please see what exactly they have please.
2. We need to push for the next Counsel meeting re: the HMO case Justin has. Reach out and see if we can set it up.
3. ██████--has that gone to Nan Marks? It says Counsel, but we'll need her on board. In all cases where it says Counsel, I need to know at what level please.
4. I assume the proposed denial of the religious or will go to Counsel before it goes out and I will be briefed?
5. I think no should be yes on the elevated to TEGE Commissioner slot for the Jon Waddel case that's in litigation--she is well aware.
6. Case involving healthcare reconciliation Act needs to be briefed up to my level please.
7. SAME WITH THE NEWSPAPER CASES--NO GOING OUT WITHOUT BRIEFING UP PLEASE.
8. The 3 cases involving ██████████ should be briefed up also.
9. ██████ case--why "yes-for this month only" in TEGE Commissioner block?

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

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

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

Here is the Jan. SCR summary.

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, February 28, 2012 3:26 PM
To: Lerner Lois G
Subject: RE: 501c4 response for AP

please hold off. Steve had some suggestions on that. I am in a meeting, but can get back to you soon.

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 3:04 PM
To: Flax Nikole C; Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Thanks--I want to use it to respond to the Congressional/TAS inquiry so I will-

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, February 28, 2012 3:01 PM
To: Eldridge Michelle L; Lerner Lois G; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

The change is fine, but I don't think we need to update the response just for the one addition. Just include it next time we use it.

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

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

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

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

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

Lois G. Lerner

Director of Exempt Organizations

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

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

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

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

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

Lois G. Lerner

Director of Exempt Organizations

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

Subject: FW: 501c4 response for AP

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

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

The promotion of social welfare does not include any unrelated business activities or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, the law allows a section 501(c)(4) social welfare organization to engage in some political activities and some business activities, so long as, in the aggregate, these non-exempt activities are not its primary activities. Even where the non-exempt activities are not the primary activities, they may be taxed. Unrelated business income may be subject to tax under section 511-514, and expenditures for political activities may be subject to tax under section 527(f). For further information regarding political campaign intervention by section 501(c) organizations, see Election Year Issues, Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations, and Revenue Ruling 2004-6.

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

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

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

From: Cook Janine
Sent: Tuesday, July 19, 2011 3:06 PM
To: Spellmann Don R
Cc: Griffin Kenneth M
Subject: RE: Advocacy orgs

Categories: NUUU

T thanks Don. Can you get updates on these 2 cases just so we know where we are on them before we meet with Lois and Holly? Thanks

From: Spellmann Don R
Sent: Tuesday, July 19, 2011 4:05 PM
To: Cook Janine
Subject: RE: Advocacy orgs

I believe Amy (with Ken and David) have the 2 cases, [REDACTED] 6103 and [REDACTED] 6103.

From: Cook Janine
Sent: Tuesday, July 19, 2011 3:53 PM
To: Paz Holly O
Cc: Marks Nancy J; Spellmann Don R
Subject: RE: Advocacy orgs

Thanks Holly. Do you know who in counsel has the one (c)(4) below? (Or if you give me TP name, I'll check on our end).

From: Paz Holly O [REDACTED]
Sent: Tuesday, July 19, 2011 10:25 AM
To: Cook Janine
Cc: Marks Nancy J
Subject: RE: Advocacy orgs

Below is some background on what we are seeing:

Background:

- EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
 - Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. Before this was identified as an emerging issue, two (c)(4) applications were approved.
- Two sample cases were transferred to EOT, a (c)(3) and a (c)(4).
 - The (c)(4) stated it will conduct advocacy and political intervention, but political intervention will be 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.

1 The (c)(3) stated it will conduct "insubstantial" political intervention and it has ties to politically active (c)(4)s and 527s. A proposed denial is being revised by TLS to incorporate the org.'s response to the most recent development letter.

Lois would like to discuss our planned approach for dealing with these cases. We suspect we will have to approve the majority of the c4 applications. Given the volume of applications and the fact that this is not a new issue (just an increase in frequency of the issue), we plan to EO Determinations work the cases. However, we plan to have EO Technical compose some informal guidance re: development of these cases (e.g., review websites, check to see whether org is registered with FEC, get representations re: the amount of political activity, etc.). EO Technical will also designate point people for Determs to consult with questions. We will also refer these organizations to the Review of operations for follow-up in a later year.

From: Cook Janine [REDACTED]
Sent: Monday, July 18, 2011 3:08 PM
To: Paz Holly O
Subject: Advocacy orgs

Holly,

Do you have any additional background for meeting next week with Lois and Nan about increase in exemption requests from advocacy orgs? Thanks!

Janine

From: Lerner Lois G
Sent: Wednesday, February 03, 2010 11:25 AM
To: [REDACTED]@fec.gov'
Cc: Fish David L
Subject: Your request

Per your request, we have checked our records and there are no additional filings at this time. [REDACTED]
[REDACTED] Hope that helps.

6103

Lois G. Lerner
Director, Exempt Organizations

From: Thomas Cindy M
Sent: Monday, April 05, 2010 12:26 PM
To: Muthert Gary A
Cc: Shafer John H; Camarillo Sharon L; Shoemaker Ronald J; Grodnitzky Steven
Subject: Tea Party Cases -- ACTION
Importance: High

Gary,

Since you are acting for John and I believe the tea party cases are being held in your group, would you be able to gather information, as requested in the email below, and provide it to Ron Shoemaker so that EO Technical can prepare a Sensitive Case Report for these cases? Thanks in advance.

From: Grodnitzky Steven
Sent: Monday, April 05, 2010 12:14 PM
To: Thomas Cindy M
Cc: Shoemaker Ronald J; Shafer John H
Subject: RE: two cases

Cindy,

Information would be the number of cases and the code sections in which they filed under. Also, if there is anything that makes one stand out over the other, like a high profile Board member, etc., then that would be helpful. Really thinking about possible media attention on a particular case. Just want to make sure that Lois and Rob are aware that there are other cases out there, etc.....

I think once the cases are assigned here in EOT and we have drafted a development letter, we should coordinate with you guys so that you can at least start developing them. However, we would still need to let Rob know before we resolve any of these cases as this is a potential high media area and we are including them on an SCR.

Ron-- once you assign the cases and we have drafted a development letter, please let me know so that we can coordinate with Cindy's folks.

Thanks.

Steve

From: Thomas Cindy M
Sent: Monday, April 05, 2010 11:59 AM
To: Grodnitzky Steven
Cc: Shoemaker Ronald J; Shafer John H
Subject: RE: two cases

What information would you like? We are "holding" the cases pending guidance from EO Technical because Holly Paz didn't want all of the cases sent to D.C.

From: Grodnitzky Steven
Sent: Monday, April 05, 2010 11:56 AM
To: Shoemaker Ronald J; Thomas Cindy M
Subject: RE: two cases

Thanks. Can you assign the cases to one person and start an SCR for this month on the cases? Also, need to coordinate with Cincy as they have a number of Tea Party cases as well.

Cindy -- Could someone provide information on the Tea Party cases in Cincy to Ron so that he can include in the SCR each month? Thanks.

From: Shoemaker Ronald J
Sent: Monday, April 05, 2010 11:30 AM
To: Elliot-Moore Donna; Grodnitzky Steven
Subject: RE: two cases

One is a c4 and one is a c3.

From: Elliot-Moore Donna
Sent: Friday, April 02, 2010 8:38 AM
To: Grodnitzky Steven; Shoemaker Ronald J
Subject: RE: two cases

The Tea Party movement is covered in the Post almost daily. I expect to see more applications.

From: Grodnitzky Steven
Sent: Thursday, April 01, 2010 4:04 PM
To: Elliot-Moore Donna; Shoemaker Ronald J
Subject: RE: two cases

These are high profile cases as they deal with the Tea Party so there may be media attention. May need to do an SCR on them.

From: Elliot-Moore Donna
Sent: Thursday, April 01, 2010 7:43 AM
To: Grodnitzky Steven; Shoemaker Ronald J
Subject: RE: two cases

I looked briefly and it looks more educational but with a republican slant obviously. Since they're applying under (c)(4) they may qualify.

From: Grodnitzky Steven
Sent: Wednesday, March 31, 2010 5:30 PM
To: Elliot-Moore Donna; Shoemaker Ronald J
Subject: RE: two cases

Thanks. Just want to be clear -- what are the specific activities of these organizations? Are they engaging in political activities, education, or what?

Ron -- can you let me know who is getting these cases?

From: Elliot-Moore Donna
Sent: Wednesday, March 31, 2010 10:30 AM
To: Grodnitzky Steven
Subject: two cases

Steve:

From: Thomas Cindy M
Sent: Friday, May 10, 2013 12:59 PM
To: Lerner Lois G
Cc: Paz Holly O
Subject: Low-Level Workers thrown under the Bus

As you can imagine, employees and managers in EO Determinations are furious. I've been receiving comments about the use of your words from all parts of TEGE and from IRS employees outside of TEGE (as far away as Seattle, WA).

I wasn't at the conference and obviously don't know what was stated and what wasn't. I realize that sometimes words are taken out of context. However, based on what is in print in the articles, it appears as though all the blame is being placed on Cincinnati. Joseph Grant and others who came to Cincinnati last year specially told the low-level workers in Cincinnati that no one would be "thrown under the bus." Based on the articles, Cincinnati wasn't publicly "thrown under the bus" instead was hit by a convoy of mack trucks.

Was it also communicated at that conference in Washington that the low-level workers in Cincinnati asked the Washington Office for assistance and the Washington Office took no action to provide guidance to the low-level workers?

One of the low-level workers in Cincinnati received a voice mail message this morning from the POA for one of his advocacy cases asking if the status would be changing per "Lois Lerner's comments." What would you like for us to tell the POA?

How am I supposed to keep the low-level workers motivated when the public believes they are nothing more than low-level and now will have no respect for how they are working cases? The attitude/morale of employees is the lowest it has ever been. We have employees leaving for the day and making comments to managers that "this low-level worker is leaving for the day." Other employees are making sarcastic comments about not being thrown under the bus. And still other employees are upset about how their family and friends are going to react to these comments and how it portrays the quality of their work.

The past year and a half has been miserable enough because of all of the auto revocation issues and the lack of insight from Executives to see a need for strategic planning that included having anyone from EO Determinations involved in the upfront planning of this work. Now, our leader is publicly referring to employees who are the ones producing all of this work with fewer resources than ever as low-level workers!

If reference to low-level workers wasn't made and/or blame wasn't placed on Cincinnati, please let me know ASAP and indicate what exactly was stated so that I can communicate that message to employees.

http://www.washingtonpost.com/business/irs-apologizes-for-inappropriately-targeting-conservative-political-groups-in-2012-election/2013/05/10/5afe7b8-b980-11e2-b568-6912f6ac6d9d_story.html?wpisrc=al_comboPNE_p

<http://www.usatoday.com/story/news/politics/2013/05/10/irs-apology-conservative-groups-2012-election/2149939/>

<http://www.wjvt.com/news/local-news/cincinnati/irs-cincinnati-workers-singled-out-conservative-groups-for-review-13549970/20096270/-/xpuiae/-/index.html>

From: Lerner Lois G
Sent: Monday, January 28, 2013 10:06 AM
To: Klein Richard T
Subject: RE: personnel info

OK--questions already. I see at the bottom what my CSRS repayment amount would be should I decide to repay. It looks like the calculation at the tops assumes I am repaying--is that correct? Can I see what the numbers look like if I decide not to repay? Also, how do I go about repaying, if I choose to? Where would I find that information? Would you mind running a calculation for a retirement date of October 1, 2013? Also, the definition of monthly social security offset seems to say that at age 62(which I am) my monthly annuity will be offset by social security even if I don't apply. First--what the heck does that mean? Second, I don't see an offset on the chart--please explain. Thank you.

Lois G. Lerner

Director of Exempt Organizations

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

Here are your reports you requested.....set your sick leave at 1360 for the first report and bumped it up to 1700 for the second.....redeposit amount and hi three used are shown on the bottom right.....call or email if you need any thing else please.

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

Richard T. Klein
Benefits Specialist



TOD 6:30 am to 3:15 EST

Address:

IRS Cincinnati BeST



Cincinnati, OH 45202

From: Cook Janine
Sent: Monday, October 10, 2011 2:58 PM
To: Judson Victoria (Vicki)
Subject: Letter illustrating 501(c)(4) issue and elections

Vicki, you have probably heard of this very hot button issue floating around.
I Wanted to share the recent letter to Commissioner and Lois, copied below. I haven't gotten it formally.

The only things pending here with us in counsel is being on standby to assist EO as they work through background of c4s and gift tax issue and general exempt status AND helping them come up with uniform questions/guidance for the determinations function in processing the uptick in c4 and c3 applications tied to election season.

Joe Urban in EO is key technician on these issues and I just checked in with him for updates and will let you know if any interesting developments
Sent by my Blackberry

From: paul streckfus [REDACTED]
To: paul streckfus [REDACTED]
Sent: Mon Oct 03 04:32:00 2011
Subject: EO Tax Journal 2011-163

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

Email Update 2011-163 (Monday, October 3, 2011)
Copyright 2011 Paul Streckfus

1 - IRS Phone Numbers

Please toss last Thursday's list of IRS phone numbers for the enclosed list. A number of the Office of Chief Counsel phone numbers were incorrect, as that office has combined its two former EO branches into one. Now they all have the same phone number, so you can't possible dial the wrong number!

2 - Section 501(c)(4) Status of Groups Questioned

Will the persistence of Democracy 21 and the Campaign Legal Center pay off? (See their latest letter, reprinted *infra*.) Will the IRS even look at these suspect 501(c)(4) organizations? Did the regulations make a grievous error in redefining "exclusively" to mean "primarily"? (My answers: probably not, probably not, yes)

Rick Cohen, in *The Nonprofit Quarterly Newswire*, asks: "Do you think that Karl Rove is operating his organization Crossroads GPS 'primarily to further the common good and general welfare' rather than as a way to collect and spend money to help elect his favorite politicians? Do you believe that Bill Burton and the other former Obama aides who created Priorities USA are engaged only secondarily in political activities while its primary program is devoted to 'civic betterment and social improvements'? If so, are you up for buying a bridge that spans the East River in New York City between Brooklyn and Manhattan? ... Why are these organizations choosing to organize as 501(c)(4)s instead of as political organizations under section 527? The most likely explanation is because 527s have to disclose their donors, while 'social welfare' 501(c)(4)s, like 501(c)(3) public charities, can keep the sources of their money secret.... Do you think that Rove's Crossroads GPS has some sort of hidden social welfare purpose beyond what every sentient person knows is its first and foremost purpose: to elect candidates that Rove supports (and to oppose candidates Rove opposes)? The same goes for Burton's Priorities USA. The [Democracy 21] letter to the IRS isn't news. What is news is why the IRS and the Federal Elections Commission haven't been more diligent about going after these (c)(4)s that camouflage their intensely political activity behind some inchoate definition of 'social welfare.' The skilled nonprofit lawyers for these (c)(4)s will surely gin up some folderol about their social welfare activities. They'll say that they don't specifically endorse candidates. They'll work in some arcane calculation to show that their political activities are 'insubstantial' (defined as comprising no more than 49 percent of their activities).

Testimony of Michael Seto
Manager of EO Technical Unit
July 11, 2013

A. She sent me email saying that when these cases need to go through multi-tier review and they will eventually have to go to Miss Kindell and the chief counsel's office.

Q. Miss Lerner told you this in an email?

A. That's my recollection.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Have you ever sent a case to Ms. Kindell before?

A. Not to my knowledge.

Q. This is the only case you remember?

A. Uh-huh.

Q. Correct?

A. This is the only case I remember sending directly to Judy.

Q. And did you send her the whole case file as well?

A. Yes.

Q. Did Ms. Kindell indicate to you whether she agreed with your recommendations?

A. She did not say whether she agreed or not. She said it should go to Chief Counsel.

Q. The IRS Chief Counsel?

A. The IRS Chief Counsel.

Testimony of Elizabeth Hofacre
Revenue Agent in EO Determinations Unit
May 31, 2013

Q. Okay. Do you always need to go through EO Technical to get assistance on how to draft these kind of letters?

A. No, it was demeaning.

Q. What do you mean by “demeaning”?

A. Well, I might be jumping ahead of myself, but essentially -- typically, no. As a grade 13, one of the criteria is to work independently and do research and make decisions based on your experience and education, whereas in this case, I had no autonomy at all through the process.

Q. So it was unusual for you to have to go through EO Technical to get these letters?

A. Exactly. I mean, exactly, because once he provided me with his letters I used his letters and his questions as a basis for my letters. I didn't cut and paste or cookie cut. So then once I developed my letters from the information in the application, I would email him the letters. And at the same time he instructed me to fax copies of the 1024 so he could review my letters to make sure that they were consistent with the 1024 application.

Q. Was that practice consistent with any other Emerging Issue?

A. I never have done that before or since then.

Q. So even for other Emerging Issues or difficult or challenging applications, you would still have discretion in terms of how to handle them?

A. Yes. Typically, yes.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Sir, as you sit here today, do you know the status of those two test cases?

A. Only from hearsay, sir.

Q. What do you know?

A. That the (c)(3) dropped, they decided they didn't want to go any further, and the (c)(4) is still open.

Q. Still open as far as today?

A. As far as I know. I do not know for certain.

Q. So for 3 years since they filed application?

A. Yes, sir.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. What did you understand the meeting to be about when you were invited to the meeting?

A. The one thing I remember was Lois Lerner saying someone mentioned Tea Party, and she said no, we are not referring to Tea Parties anymore. They are all now advocacy organizations.

Q. Who called them Tea Party cases?

A. I'm not sure who mentioned Tea Party, but at that point Lois I remember breaking in and saying no, no, we don't refer to those as Tea Parties anymore. They are advocacy organizations.

Q. And what was her tone when saying that?

A. Very firm.

Q. Did she explain why she wanted to change the reference?

A. She said that the Tea Party was just too pejorative.

Q. So she felt the term Tea Party was a pejorative term?

A. Yes. Let me put it this way: I may be – the way she didn't say that's a pejorative term that should not be used. She said no, we will use advocacy organizations. But pejorative is more my word than hers.

Testimony of Lucinda Thomas
Manager of EO Determinations Unit
June 28, 2013

Q. Do you think Lois Lerner is a political person?

A. Is she apolitical person?

Q. A, space, political person?

A. I believe that she cares about power and that it's important to her maybe to be more involved with what's going on politically and to me we should be focusing on working the determination cases and closing the cases and it shouldn't matter what type of organization it is. We should be looking at the merits of that case. And it's my understanding that the Washington office has made comments like they would like for – Cincinnati is not as politically sensitive as they would like us to be, and frankly I think that maybe they need to be not so politically sensitive and focus on the cases that we have and working a case based on the merits of those cases.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Did you meet with Ms. Franklin about the cases?

A. We met after she had made her determinations.

Q. After she reviewed the case files?

A. Yes.

Q. And when was this meeting, do you recall?

A. No, I am not sure.

Q. Was it still in 2010?

A. Probably in 2011.

Q. Okay. At some point in 2011?

A. Yes.

Q. Do you recall if it was early 2011, mid-2011?

A. Early-mid.

Q. Okay.

A. Maybe in July.

Q. Of 2011.

A. Of 2011. July or August.

- Q. Okay. And was this meeting just with you and Ms. Franklin?
- A. No, there were other people present.
- Q. Others in the counsel's office?
- A. Two others from the counsel's office.
- Q. Anyone else present?
- A. Ms. Kastenberg was there. I believe Ms. Goehausen was there. I think there was another TLS there –
- Q. I am sorry, another –
- A. Another tax law specialist.
- Q. Okay.
- A. And I can't recall other people that may have been there.
- Q. Lois Lerner?
- A. I don't think Lois was there.
- Q. Holly Paz?
- A. I don't think Holly was there. I think Judy was there.
- Q. Judy Kindell.
- A. Yes.
- Q. Do you recall who the two others were from the Chief Counsel's office?
- A. One was a manager of Ms. Franklin, and the other guy had been there for years and I keep forgetting his name. I don't know why. I

have a block against his name. . . . Yes, he was there. There was another tax law specialist there, Justin Lowe.

Q. Justin Lowe. He is in EO Technical?

A. He was representing the Commissioner, Assistant Commissioner.

Q. Who was at the time Mr. Miller?

A. I think it was Mr. Grant.

Q. Joseph Grant.

A. Yes.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Do you know how long the Chief Counsel's office had the case before it made its recommendation?

A. I am not sure of the timeframe at this point.

Q. Okay. Did they give you any feedback on these two cases?

A. Yes, they did.

Q. What did they say?

A. I needed more information. I needed more current information.

Q. What do you mean, more current information?

A. They had it for a while and the information wasn't as current as it should be. They wanted more current information.

Q. So because the cases had been going up this chain for the last year, they needed more current information?

A. Yes, sir.

Q. And what does that mean practically for you?

A. That means that probably I should send out another development letter.

Q. A second development letter?

A. A second development letter. I think also at that time there was a discussion of having a template made up so that all the cases could be worked in the same manner. And my reviewer and I both said a template makes absolutely no difference because these organizations, all of them are different. A template would not work.

Q. You and Ms. Kastenbergr agreed that a template wouldn't help?

A. But Mr. Justin Lowe said he would prepare it, along with Don Spellman and whoever else was from Chief Counsel. I never saw it.

Testimony of Steven Miller
Acting Commissioner
November 13, 2013

Q. So, sir, just to get the timeline right, you had a meeting with Ms. Lerner and her staff in or around February 2012?

A. One or more meetings.

Q. One or more meetings. Thank you. And then in mid-March you sit down with your staff and decide that something more needs to be done?

A. Wanted to find out why the cases were there and what was going on.

Q. And did you bat around ideas with your staff about how to find out that information?

A. Yeah, we talked about, okay, who should go out, and the suggestions were, you know, they could have been from the deputy's staff, they could have been from Joseph's staff, they could have been from Lois' staff, and how would we do that.

Q. I see. And who were the candidates to go out there and do the investigation?

A. Really, it came down to Nan Marks, who I had tremendous respect and comfort with. She was – she had been my lawyer in TEGE Counsel, and she knew the area well. She had a wonderful way with talking to people, and she was a natural. And she was out of Joseph's shop, and we thought that it should be outside of Lois' shop, and Nan was the perfect person to lead that.

Q. And, sir, why did you think it should be outside of Ms. Lerner's shop?

A. Just in terms of perception. I didn't think she would whitewash it, but I didn't want any thought that that could happen.

Q. So you wanted to have someone more independent –

A. Right.

Q. – to do the review?

A. Right.

Q. When you say you didn't want any thought that that would happen, who were you worried would think that it was –

A. It doesn't matter. It's just the way we operated.

Testimony of Ruth Madrigal
Attorney Advisor in Treasury Department
February 3, 2014

Q. And ma'am, you wrote, "potentially addressing them." Do you know what you meant by, quote, "potentially addressing them?"

A. Well, at this time, we would have gotten the request to do guidance of general applicability relating to (c)(4)s. And while I can't – I don't know exactly what was in my mind at the time I wrote this, the "them" seems to refer back to the (c)(4)s. And the communications between our offices would have had to do with guidance of general applicability.

Q. So, sitting here today, you take the phrase, "potentially addressing them" to mean issuing guidance of general applicability of 501(c)(4)s?

A. I don't know exactly what was in my head at the time when I wrote this, but to the extent that my office collaborates with the IRS, it's on guidance of general applicability.

Q. And the recipients of this email, Ms. Judson and Ms. Cook are in the Chief Counsel's Office, is that correct?

A. That's correct.

Q. And Ms. Lerner and Ms. Marks are from the Commissioner side of the IRS?

A. At the time of this email, I believe that Nan Marks was on the Commissioner's side, and Ms. Lerner would have been as well, yes.

Q. So those are the two entities involved in rulemaking process or the guidance process for tax exempt organizations, is that right?

A. Correct.

Q. Did you review this document in preparation for appearing here today?

- A. I reviewed it briefly, yes.
- Q. What did the term “off plan” mean in your email?
- A. Again, I don’t have a recollection of doing – of writing this email at the time. I can’t say with certainty what was meant at the time.
- Q. Sitting here today, what do you take the term “off plan” to mean?
- A. Generally speaking, off plan would refer to guidance that is not on – or the plan that is mentioned there would refer to the priority guidance plan. And so off plan would be not on the priority guidance plan.
- Q. And had you had discussions with the IRS about issuing guidance on 501(c)(4)s that was not placed on the priority guidance plan?
- A. In 2012, we – yes, in 2012, there were conversations between my office, Office of Tax Policy, and the IRS regarding guidance relating to qualifications for tax exemption under (c)(4).
- Q. And this guidance was in response to requests from outside parties to issue guidance?
- A. Yes. Generally speaking, our priority guidance plan process starts with – includes gathering suggestions from the public and evaluating suggestions from the public regarding guidance, potential guidance topics, and by this point, to the best of my recollection, we had had requests to do guidance on this topic.

Testimony of Janine Cook
Deputy Division Counsel/Deputy Associate Chief Counsel
August 23, 2013

- Q. I think part of my question comes to the fact that by reading the face of the email, it doesn't appear that it's actually an explicit email about having a conversation about it being on plan or off plan. It just looks like it's a conversation where someone says since we mentioned potentially addressing this, and then in parentheses off plan, because it at that time would have been off plan in 2013, I have got my radar up and look at this. Am I misunderstanding that? Is that accurate or –
- A. I think in fairness, again, to understand the term, when it says off plan, it means working it. Working on it, but not listing it on the plan. It doesn't mean that we are not in a plan – you are looking at a timing question I think. That's not what the term means. The term – I mean it's a loose term, obviously, it's a coined term, the term means the idea of spending some resources on working it, getting legal issues together, things like that, but not listing it on the published plan as an item we are working. That's what the term off plan means. It's not a timing of the conversation.

Testimony of Victoria Ann Judson
Division Counsel/ Associate Chief Counsel
August 29, 2013

Q. You mentioned a little while ago the Treasury Department. Could you explain the relationship between your position and the Treasury Department?

A. I don't understand that question.

Q. I believe you mentioned that you work with Treasury on guidance, guidance projects?

A. Yes, we do.

Q. Could you explain how that working relationship –

A. Well, when we are working on guidance, first, there is often work at the beginning of each plan year to develop a guidance plan, in which you help decide what your priorities are and what projects you would like to work on during the year. Unfortunately, there is a lot more that we need to do than we can possibly accomplish in a year, so we try to prioritize and talk about what items would be useful to work on and most needed.

We also have items we work on that are off-plan, and there are reasons we don't want to solicit comments. For example, if they might relate to a desire to stop behavior that we feel is inappropriate under the tax law, we might not want to publicize that we are working on that before we come out with the guidance.

So we have a plan, and in developing that plan we will reach out to the field to see if there is guidance they think we need. We solicit comments from practitioners. We talk amongst ourselves and with Treasury. And then we have long lists and everyone goes through them and analyzes them, and then we have meetings to discuss which ones to have on. And often we have meetings with our colleagues at Treasury to do that and then come up with a guidance plan.

When we have items, we then formulate working groups to work on the guidance. And so then we will have staff attorneys from different offices, from the Treasury Department, from my office, with my team, and from people on the Commissioner's side, as well. And they will work together on the guidance. They will discuss issues, hypotheticals, how to structure it.

If they find questions that they think are particularly challenging or they need a call on how to go in their different directions, they will often formulate a briefing paper. Or, in the qualified plan area, we have a weekly time slot set for what we call large group. And in health care, we also have a large group meeting set. And so the staff can present those issues to the large group, often with papers identifying issues and calls that need to be made.

And then individuals, executives from the different areas, both Treasury, the Commissioner's side, and Chief Counsel, will all attend those meetings. We will discuss the issues, often hear a presentation from the working group, and talk about the issues, and decide on the calls or decide that we need more information or analysis, ask questions. So sometimes a decision will be made at that meeting, and sometimes a decision will be made for the working group to do more work and come back again at a subsequent meeting.

Testimony of Nikole Flax
Chief of Staff to Steven Miller
October 22, 2013

Q. And you said before that Mr. Grant wasn't the best witness for that hearing. Was there any discussion about having Ms. Lerner be a witness for that hearing?

A. No.

Q. Why not?

A. Lois is unpredictable. She's emotional. I have trouble talking negative about someone. I think in terms of a hearing witness, she's not the ideal selection.

Testimony of Lucinda Thomas
Manager of EO Determinations Unit
June 28, 2013

Q. And what was your reaction to hearing the news?

A. I was really, really mad.

Q. Why?

A. I feel as though Cincinnati employees and EO Determinations was basically thrown under a bus and that the Washington office wasn't taking any responsibility for knowing about these applications, having been involved in them and being the ones to basically delay processing of the cases.

Q. And that's why you took Ms. Lerner to say at that panel event?

A. When, well, my understanding was that she referred to Cincinnati employees as low level workers and that really makes me mad. It's not the first time that she has used derogatory comments about the employees working determination cases and she has done it before. It really makes me mad because the employees in Cincinnati – first of all we haven't gotten that many other, 2009 was our basic last year of hiring any revenue agents except for I believe it was 2012 we were given five revenue agents. And over 400 some thousand organizations have had their exemption revoked and we were given – have been given five revenue agents and we have received I think it's like over 40,000 applications coming in as a result of the audit revocation. There's no way five people are going to be able to handle that, and that's not to mention all of the employees that we've lost because of attrition.

Q. Sure.

A. So we are given no employees to work this. Our employees in EO Determinations are, they are so flexible in doing what is asked of them and working cases and being flexible and moving and doing whatever they're asked to do to try to get more cases closed with no

additional resources and not getting guidance. And it makes me really mad that she would refer to our employees as low level workers.

And also when the folks from D.C. have been in Cincinnati in April of 2012 and when the team met with our folks involved and they were basically reassured that there were mistakes that were made, yes, there were mistakes that were made by folks in Cincinnati as well D.C. but the D.C. office is the one who delayed the processing of the cases. And so they said we're a team, we're in this together. Nobody is going to be thrown under the bus because there were mistakes at all different angles. And then Joseph Grant had a town hall meeting on I believe it was May the 1st or May the 2nd with all of the determinations employees and then he met with a managers and again reassuring everybody that we're not, we're not using any scapegoats here, we're not throwing anybody under the bus, we're a team, there were mistakes made by a lot of different folks.

And then when this information came out on May the 10th, it's like, you weren't going to throw us under the bus?

Testimony of Lucinda Thomas
Manager of EO Determinations Unit
June 28, 2013

Q. And you said that this was not the first time that you had heard Ms. Lerner use derogatory terms to refer to Cincinnati employees, is that correct?

A. Yes.

Q. Can you tell us about the other times that she referred to Cincinnati employees in a derogatory manner?

A. I know she referred to us as backwater before. I don't remember when that was. But it's like, there is information when she speaks, there is an individual who writes to EO Issues and puts information in an EO tax journal, it's like a daily release that comes out, and so all of our specialists have access to that. So when she goes out and speaks and then that information is sent through email to all of our employees then people in the office start getting all worked up over these comments.

And here I have employees trying to you know do what they can to help our operation to move forward, and I've got somebody referring to workers in that way when they're trying really hard to close cases, and it's frustrating like how am I supposed to keep them motivated when our so-called leader is referring to people in that direction.

She also makes comments like, well, you're not a lawyer. And excuse me, I'm not a lawyer but that doesn't mean that I don't have something to bring to the table. I know a lot more about IRS operations than she ever will. And just because I'm not a lawyer doesn't mean I'm any less of a person or not as good a worker.



COMMISSIONER

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

November 19, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

Attention: Katy Rother

Dear Mr. Chairman:

I am responding to your letter dated September 30, 2013. You asked about our plans to evaluate our policy on IRS employee use of non-official email accounts to conduct official business. You also requested a briefing and asked for specific documents.

While the Privacy Act ordinarily protects from disclosure some of the information we are providing in this letter, we are providing you with the requested information under Title 5 of the United States Code section 552a(b)(9). This provision authorizes disclosures of Privacy Act protected information to either house of the Congress or a congressional committee or subcommittee acting under its oversight authority. The enclosed information covers the period of January 1, 2009, through present. Due to employee safety and security concerns, we would appreciate it if you would withhold employee names and, for sensitive positions, position descriptions, if you distribute this information further. We are happy to work with your staff on appropriate redactions if you decide to distribute the information.

Regarding the use of email accounts, the IRS prohibits using non-official email accounts for any government or official purposes (See relevant portions of the enclosed Internal Revenue Manual (IRM) 10.8.1 and 1.10.3, Enclosure 1a and 1b). We teach and reinforce this policy in new employee orientation, core training classes, annual mandatory briefings for managers and employees, and continual service wide communications (see Enclosures 1e, 1f, 1g, 1h for policies and training information). We do not permit IRS officials to send taxpayer information to their personal email addresses. **An IRS employee should not send taxpayer information to his or her personal email address in any form, including redacted.**

IRS employees use their agency email accounts to transmit sensitive but unclassified (SBU) and they use the IRS Secure Messaging (SM) system to encrypt such emails.

(See IRM 11.3.1.14.2, Enclosure 1c). SBU information includes taxpayer data, Privacy Act protected information, some law enforcement information, and other information protected by statute or regulation.

If an employee violates the policy prohibiting the use of non-official email accounts for any government or official purpose, the penalty ranges from a written reprimand to a 5-day suspension on first offense and up to removal depending on prior offenses. (See *IRS Manager's Guide to Penalty Determinations: Failure to observe written regulations, orders, rules, or IRS procedures* and *Misuse/abuse/loss or damage to government property or vehicle*, Enclosure 1d). We identified three past disciplinary actions involving employee misuse of personal email to conduct official business. (See Enclosures 2a, 2b, and 2c.)

You also discuss use of non-official email accounts by four senior IRS officials. The IRS Accountability Review Board, charged with determining potential personnel action based on employee conduct, continues to research potential misuse of personal email by those still employed at the IRS.

The IRS is working diligently to respond to requests for documents for your ongoing investigation. As we have come across official documents sent to non-official email accounts, we have produced them to you and will continue to do so. Additionally, we are happy to arrange a briefing on this subject if you have further questions.

I hope this information is helpful. I am also writing Congressman Jordan. If you have any questions, please contact me, or a member of your staff may contact Scott Landes, Acting Director, Legislative Affairs, at (202) 622-3720.

Sincerely,



Daniel I. Werfel
Acting Commissioner

Enclosures (11)