

I. EXECUTIVE SUMMARY

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

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

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

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

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

¹ IRS, The Agency, Its Mission and Statutory Authority.

² *Id.*

³ TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review, Audit Report 2013-10-053 (May 14, 2013), Highlights. We commend TIGTA for their thorough audit and report on this issue.

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

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

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

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

⁴ Email from Richard Daly to Sarah Ingram, Joseph Grant and others (June 6, 2010) IRS0000163997-164013 (email attachments containing taxpayer information omitted by Committee staff).

⁵ SFC Interview of Holly Paz (July 26, 2013) p. 71 (emphasis added).

⁶ Email chain between John Shafer, Cindy Thomas, Steve Bowling, and others (June 1-10, 2011) IRS0000066837-40.

⁷ The two liberal organizations that were improperly handled were affiliated with the Occupy movement. As discussed below in Section V(B)(3), the IRS briefly delayed these applications based on a poor decision by EO managers in Cincinnati. The Minority does not allege that these groups were subject to a concerted effort by IRS senior management to delay processing, nor do they allege that these groups were actually harmed by the IRS's actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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