

## **MINORITY STAFF DISSENTING VIEWS: IRS TARGETING TEA PARTY GROUPS**

### **I. EXECUTIVE SUMMARY**

The Majority staff on the Permanent Subcommittee on Investigations has issued the foregoing report titled *IRS and TIGTA Management Failures Related to 501(c)(4) Applicants Engaged in Campaign Activity*. The primary conclusion of the Majority staff report is that, contrary to common understanding and widespread reporting, the IRS actually exhibited no bias in its review of conservative groups. The Majority staff report claims that the IRS targeted liberal and conservative groups equally and that a Treasury Inspector General for Tax Administration (TIGTA) report on the targeting of conservative groups was fundamentally flawed.

The Subcommittee Minority staff sharply disagrees with the conclusions reached by the Majority staff report. While some liberal groups were examined by the IRS from May 2010 to May 2012, there were far fewer such groups, they were systematically separate from the review of conservative groups, their questioning was far less intrusive, and, in some cases, the liberal groups were affiliates of specific organizations like ACORN that had behaved illegally in the past and could reasonably expect additional scrutiny. The inclusion of a scant few liberal groups by the IRS does not bear comparison to the targeting of conservative groups.

Although the Majority and Minority have profound differences and were unable to come to an agreement in their analysis of this matter, the Subcommittee conducted its investigation through joint interviews and document requests, and continued its tradition of in-depth fact-finding and frequent consultations that are the hallmark of the Subcommittee's oversight work and lead to a deepened understanding of key issues.

#### **A. Question of Political Bias and Disparate Impact**

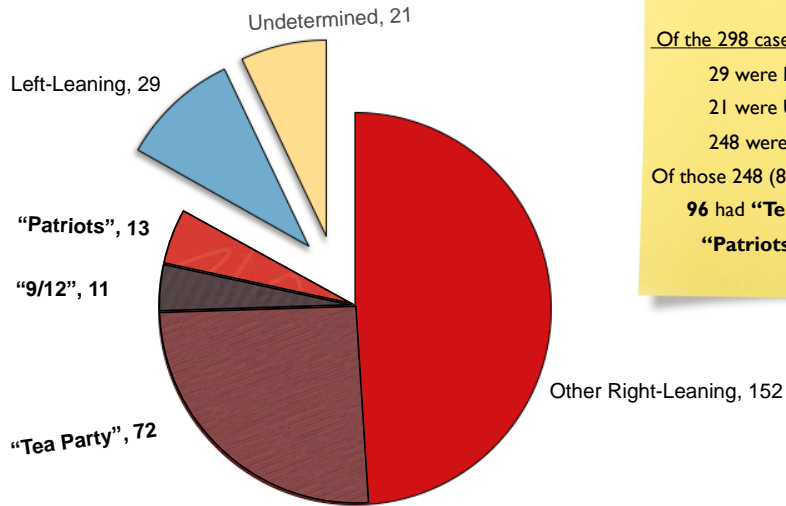
The Majority report asserts that there was no political bias in the way the IRS selected groups for additional scrutiny and that conservative and liberal groups were treated equally. This is simply untrue. The IRS screening resulted in a clearly disparate impact on conservative group applications. Of the groups applying for tax-exempt status that were pulled from normal processing and received additional scrutiny by the IRS, 83% (or 248 out of 298) of the groups were "right leaning" organizations.<sup>1067</sup>

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<sup>1067</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, (Sept. 18, 2013) <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>

### Breakdown 298 of the Political Advocacy Cases

(May 2010 - May 2012)



Of the 298 cases the IRS held for review:

29 were Left-Leaning

21 were Undetermined

248 were Right-Leaning

Of those 248 (83%) Right-Leaning groups,

**96** had "Tea Party", "9/12", or

**"Patriots"** in their name

On July 30, 2014, the House Committee on Ways and Means published a study detailing the number of questions posed to conservative and progressive applicants for tax-exempt status.<sup>1068</sup> The IRS asked conservative groups 1552 questions, an average of 14.9 questions per group. Meanwhile, the 7 progressive groups were asked a mere 33 questions in total, or 4.7 per group.<sup>1069</sup> Conservative groups were asked on average more than triple the number of questions posed to progressive organizations.

<sup>1068</sup> <http://www.npr.org/blogs/itsallpolitics/2013/07/30/207080580/report-irs-scrutiny-worse-for-conservatives>

<sup>1069</sup> *Id.*

**IRS Targeting Statistics of Files Produced by IRS Through July 29, 2013**

Organization Names	Total	Questions Asked	Average Questions Asked	Approved	Approved %	Outstanding or Withdrawn
Conservative	8	100	12.5	3	38%	5
Tea Party	72	1012	14.1	33	46%	39
Patriot, 9/12	24	440	18.3	12	50%	12
Subtotal of Conservative Organizations	104	1552	14.9	48	46%	56
Progressive	7	33	4.7	7	100%	0

\*1 file in the enumerated categories has not been provided by the IRS despite numerous requests.

In addition, the chart above shows that the Progressive groups examined by the IRS were all approved, while less than half of the conservative groups were approved.

The Majority report further attempts to diminish the disparate impact of the IRS targeting on conservative groups by stating that “more conservative than liberal groups filed for 501(c)(4) tax exempt status from 2010 to 2013, underwent IRS scrutiny, and ultimately won tax exempt status.”<sup>1070</sup> The Majority report’s interpretation of the evidence fails, however, to accurately account for the impact of the targeting on conservative groups. The true impact on conservative groups becomes clear when comparing the percentage of liberal and conservative applicants ultimately approved for tax-exempt status. This analysis shows that 70% of liberal group applicants placed on a separate list and scrutinized by the IRS were approved, whereas only 45% of conservative group applicants were granted tax-exempt status.<sup>1071</sup> When the vast disparity in the number of questions asked of and the far lower tax-exempt approval rate for conservative groups are considered, it is clear that conservative and liberal groups were not treated equally. In fact, it plainly evidences that there was a sharp disparate impact on conservative groups as a result of the targeting.

## **B. Unresolved Factual Issues Meriting Further Investigation**

The Majority’s report claims to be able to draw definitive conclusions based on the available evidence. However, although the Subcommittee has spent over a year on this investigation, two major questions have yet to be resolved: whether there was political bias motivating the targeting and to what extent outside actors influenced the IRS’s actions. The Majority’s report purports to answer these questions, but does not take into account the recent release of Lois Lerner’s emails containing disparaging remarks about conservatives. Many

<sup>1070</sup> Majority Report at 31. This assertion is based on the U.S. House Committee on Ways and Means analysis of the 298 cases reviewed by TIGTA.

<sup>1071</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>. The 298 cases represent all cases pulled from the standard screening process and listed on a separate Advocacy List created by IRS employees.

relevant IRS emails are also still missing, key documents have not been produced, and Lois Lerner—the former director of the IRS Office of Exempt Organizations and a key witness—continues to refuse to testify. These factual gaps indicate that this Subcommittee’s investigation is necessarily incomplete.

At the same time, in the Minority’s view, substantial evidence shows political bias was involved in this matter and further investigation is necessary to ascertain the precise extent of it and to find out who besides Lerner was involved in the targeting. Drawing any definitive conclusion before fully resolving all of the factual issues, at this point, is unwise.

**Missing Sources of Information.** The IRS learned in February 2014, that the IRS had lost two years of emails belonging to Lois Lerner and six additional employees. These missing emails were from the time period when the IRS was targeting conservative group applications and would likely prove vital to the investigation. With critical information missing from the relevant time period the targeting occurred and from the head of the division responsible for the inappropriate targeting, the likelihood is more incriminating information will be found. Additionally, very recently produced emails demonstrate the presence of political bias by Lois Lerner. Lerner revealed her animus towards conservatives in one of these recently released email exchanges from November 2012 with an unnamed sender. In the exchange, the sender complained about the “whacko wing of the GOP” and “scary” “right wing radio shows.”<sup>1072</sup> The sender replied that conservative critics as being the reason that the “U.S. is through.”<sup>1073</sup> Lerner responded, “[G]reat. Maybe we are through if there are that many [redacted]holes.” Lerner called

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<sup>1072</sup> [http://waysandmeans.house.gov/uploadedfiles/lerner\\_email\\_a.pdf](http://waysandmeans.house.gov/uploadedfiles/lerner_email_a.pdf)

<sup>1073</sup> [http://waysandmeans.house.gov/uploadedfiles/lerner\\_email\\_a.pdf](http://waysandmeans.house.gov/uploadedfiles/lerner_email_a.pdf)

conservatives “our own crazies” and compared them to “teRrorists [sic].”<sup>1074</sup>

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**From:** Lerner Lois G  
**Sent:** Friday, November 09, 2012 12:04 PM  
**To:** [REDACTED]  
**Subject:** Re: Suspension of Retention

So we don't need to worry about alien teRrorists. It's our own crazies that will take us down.  
 Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

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

**From:** [REDACTED]  
**Sent:** Friday, November 09, 2012 12:19 PM  
**To:** Lerner Lois G  
**Subject:** RE: Suspension of Retention

And I'm talking about the hosts of the shows. The callers are rabid.

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

**From:** Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]  
**Sent:** Friday, November 09, 2012 12:17 PM  
**To:** [REDACTED]  
**Subject:** Re: Suspension of Retention

Great. Maybe we are through if there are that many [REDACTED] holes.  
 Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

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

**From:** [REDACTED]  
**Sent:** Friday, November 09, 2012 12:02 PM  
**To:** Lerner Lois G  
**Subject:** RE: Suspension of Retention

Well, you should hear the whacko wing of the GOP. The US is through; too many foreigners sucking the teat; time to hunker down, buy ammo and food, and prepare for the end. The right wing radio shows are scary to listen to.

The IRS allowed four months to pass before revealing the loss of two years of Lois Lerner’s emails to the House Ways and Means Committee. While the IRS revealed the loss of the Lerner emails on June 13, it took four more days until June 17 to inform the committee about the other missing emails.<sup>1075</sup>

The day before the June 17 Ways and Means announcement, IRS Commissioner John Koskinen met with Senate Finance Committee Chair Wyden and Ranking Member Hatch.<sup>1076</sup> During this meeting Commissioner Koskinen discussed Lerner’s unrecoverable hard drive, but failed to inform them that additional employees’ documents were also lost.<sup>1077</sup> Some of these unrecoverable emails belonged to three Washington, D.C.-based employees directly involved in the management and analysis of the Tea Party cases.<sup>1078</sup> These recent revelations and repeated

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<sup>1074</sup> [http://waysandmeans.house.gov/uploadedfiles/lerner\\_email\\_a.pdf](http://waysandmeans.house.gov/uploadedfiles/lerner_email_a.pdf)

<sup>1075</sup> <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=384708>

<sup>1076</sup> <http://www.finance.senate.gov/newsroom/ranking/release/?id=479df47f-b3cd-4f58-9c64-118f92c254e8>

<sup>1077</sup> <http://www.finance.senate.gov/newsroom/ranking/release/?id=479df47f-b3cd-4f58-9c64-118f92c254e8>; The IRS indicated that Mr. Koskinen’s failure to inform the committee stemmed from the fact that he had not yet been briefed on the issue. This once again shows that the IRS is slow in communicating relevant information to the investigative committees.

<sup>1078</sup> The three D.C.-based employees in which the IRS determined email data was lost are Judy Kindell, Justin Lowe, and Ron Shoemaker. See also <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=384708>.

failures to provide relevant information to congressional committees demonstrate an unacceptable culture of secrecy within the IRS. The investigation of these matters cannot be completed until all the facts about the supposed “lost” emails are uncovered.

The “lost” emails may still be recoverable, yielding important new facts. In mid-2011, Lois Lerner’s computer reportedly crashed and the information stored on her computer’s hard drive was deemed unrecoverable.<sup>1079</sup> The IRS stated that any “email that was only stored on that computer’s hard drive would have been lost,” but some emails may have been stored on the IRS’s central servers.<sup>1080</sup> It might be possible, therefore, to retrieve Ms. Lerner’s emails from the IRS’s network. TIGTA is currently investigating whether Ms. Lerner’s emails can be recovered and produced to the relevant congressional committees.

**Lack of Lerner’s Testimony.** Lois Lerner’s refusal to testify represents a second crucial gap in information. Lerner is the former Director of the IRS Exempt Organizations division and a key figure in the scandal. As Director, Lerner was likely in the best position to know precisely what led to the disparate treatment of conservative groups. Without her testimony, drawing a definitive conclusion is a mistake.

**Ongoing Litigation and Investigations.** Additional relevant information may be made available through ongoing litigation brought by some of the targeted groups. One such group’s case will soon begin the discovery process.<sup>1081</sup> This process may lead to the production of additional documents the IRS has thus far resisted disclosing and may shed further light on other unanswered questions. One such question may involve the frequent trips by former IRS Commissioner Douglas Shulman and then-acting Commissioner Steven Miller to the White House.<sup>1082</sup> Additionally, the Federal Bureau of Investigation and Department of Justice have been conducting investigations with alacrity into the IRS targeting scandal.<sup>1083</sup> Their findings will likely provide further relevant information.

### C. IRS Scrutiny of Liberal Groups Differed in Justification and Extent From Its Scrutiny of Conservative Groups

<sup>1079</sup> <http://www.irs.gov/PUP/newsroom/IRS%20Letter%20to%20Senate%20Finance%20Committee.pdf> at 7.

<sup>1080</sup> <http://www.irs.gov/PUP/newsroom/IRS%20Letter%20to%20Senate%20Finance%20Committee.pdf> at 7.

<sup>1081</sup> *Z Street v. Shulman*, Civil Action No. 2012-0401. US District Court for the District of Columbia, Memorandum Opinion, May 21, 2014 at 4 (located at: <http://www.washingtonpost.com/news/volokh-conspiracy/wp-content/uploads/sites/14/2014/05/ZStreet.pdf>); see also IRS Judgment Day: The Untalkative Agency Comes Under Scrutiny from a Federal Judge, Wall Street Journal (May 28, 2014) <http://online.wsj.com/articles/irs-judgment-day-1401318881>.

<sup>1082</sup> See IRS Chief’s 118 White House Visits Must Be Explained, Investor’s Business Daily (May 28, 2013) <http://news.investors.com/ibd-editorials/052813-657927-irs-heads-118-white-house-visits-suspicious.htm?ref=HPLNews>.

<sup>1083</sup> See John D. McKinnon, FBI Launches Probe of IRS: Treatment of Tea-Party Groups Eyed; Internal Review Blames Higher-Ups, Wall Street Journal (May 14, 2013) <http://online.wsj.com/news/articles/SB10001424127887324216004578483203153773048> (“Attorney General Eric Holder said Tuesday the Justice Department has opened a criminal probe of the Internal Revenue Service’s treatment of tea-party groups”).

The Subcommittee Majority claims that the IRS targeted liberal groups and conservative groups equally.<sup>1084</sup> As shown in section A, that claim does not have statistical merit. In addition, liberal groups were targeted by the IRS for different reasons and in a different manner than conservative groups, which were placed on a separate listing for additional scrutiny.

The liberal groups mentioned on the “be-on-the-lookout” (BOLO) spreadsheet were selected for legitimate reasons. The BOLO spreadsheet was an IRS guidance document that alerted agents to potentially problematic types of cases. For example, the BOLO instructed IRS personnel to look out for groups associated with centrally-controlled organizations like ACORN.<sup>1085</sup> These organizations would also naturally be expected to undergo additional scrutiny because of previous controversies associated with their parent organizations.<sup>1086</sup> By contrast, the conservative groups in question were overwhelmingly independent and had no comparable history warranting heavy scrutiny.

The scrutiny endured by conservative groups also differed in kind from the scrutiny accorded to liberal groups. The IRS selected conservative groups out of normal processing, placed them on a separate list, stopped work on their applications completely, forced them to answer intrusive questions about their behavior and demeanor at meetings, and delayed their applications for multiple years. Our investigation has uncovered no evidence that liberal groups received the same expansive inappropriate treatment that conservative groups received.

Furthermore, had liberal groups been targeted in a similarly inappropriate manner, they would have likely voiced their concerns to the IRS and Congressional leaders. Instead, we have uncovered no evidence indicating that liberal groups were writing to their members of Congress to complain about targeting by the IRS during the relevant period. All of the known complaints regarding IRS targeting and burdensome treatment came from conservative groups. These concerns spurred the TIGTA audit<sup>1087</sup> and ultimately led to congressional investigations by four committees and subcommittees.<sup>1088</sup>

The assertion that the IRS targeted liberal and conservative groups equally is further undermined by the IRS’s response to the TIGTA audit. The TIGTA audit detailed the pervasive

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<sup>1084</sup> Majority Report, Part I, Executive Summary, at 7 (“From 2010 through 2013, the IRS mismanaged the 501(c)(4) applications process for both conservative and liberal groups engaged in campaign activities, using inappropriate selection criteria to flag applications for heightened review, subjecting applicants to burdensome questions, and delaying disposition of their applications for years.”).

<sup>1085</sup> IRSR0000196739 – 758 (eight Emerge applicants related to national Emerge America organization and denied for private benefit); Matthew Bigg, Scandals Weaken Liberal Group ACORN, Reuters (Feb. 22, 2010) <http://www.reuters.com/article/2010/02/23/us-usa-acorn-idUSTRE61M09L20100223>; ACORN Hopes New Image Can Save Disgraced Advocacy Group, Fox News (Feb. 23, 2010).

<sup>1086</sup> Matthew Bigg, Scandals Weaken Liberal Group ACORN, Reuters (Feb. 22, 2010) <http://www.reuters.com/article/2010/02/23/us-usa-acorn-idUSTRE61M09L20100223>; ACORN Hopes New Image Can Save Disgraced Advocacy Group, Fox News (Feb. 23, 2010).

<sup>1087</sup> TIGTA Report, Memorandum from Michael E. McKenney, Acting Deputy Inspector General for Audit, at 1 (May 14, 2013) (“This audit was initiated based on concerns expressed by members of Congress and reported in the media regarding the IRS’s treatment of organizations applying for tax-exempt status.”).

<sup>1088</sup> The four committees investigating the IRS’s targeting of conservative groups are: 1) The House Committee on Ways and Means, 2) the House Committee on Oversight and Government Reform, 3) the Senate Committee on Finance, and 4) the Senate Permanent Subcommittee on Investigations.

use of inappropriate criteria by the IRS that led to the targeting of conservative groups' applications. Prior to releasing its audit report, TIGTA provided multiple drafts to the IRS for comment. One would expect that, had the IRS been impartially targeting liberal and conservative groups equally, it would have raised that argument in its comments. In its official response, however, the IRS did not assert that it had impartially targeted both conservative and liberal groups. Instead, the IRS responded by accepting seven of the nine TIGTA recommendations.<sup>1089</sup> The IRS's tacit admission to targeting only conservative groups suggests that the liberal groups were not targeted in a similar manner.

To support its conjecture that the IRS targeted liberal groups, the Subcommittee Majority staff report offers the IRS's BOLO spreadsheet as evidence. Because the BOLO spreadsheet lists liberal groups such as ACORN, Progressive and Occupy as well as "Tea Party" cases, the Majority staff report concludes that liberal and conservative groups were targeted equally. However, the liberal organizations were grouped in different parts of the BOLO spreadsheet, meaning that the agents responsible for screening were supposed to treat them differently than they did the "Tea Party" cases.

The criteria flagging "Tea Party" groups were included on the spreadsheet tab labeled "Emerging Issues." The Emerging Issues Tab was the only spreadsheet on the BOLO associated with an actual, separate list of cases referred from the BOLO. IRS screeners pulled cases based on the criteria described and placed these applications on the Advocacy Case List. These applications were then referred to a specialist for additional scrutiny.

It was the "Emerging Issues" tab, and not any other BOLO tab, that IRS agents utilized to target tax-exempt applications for additional scrutiny; even though the BOLO spreadsheet had other criteria contained in different tabs.

Other BOLO entries, like those on the Watch List tab, included criteria for identifying ACORN successors. The BOLO Watch List tab contained recommendations for processing applications, not yet received, which might present concerns. ACORN successor cases were placed on the "Watch List" because of reports that ACORN successors (i.e., groups that had once been ACORN-affiliates and had spun off after the central organization closed in 2010) might file for 501(c)(3) or (c)(4) status following the breakup of the parent organization due to fraud and misconduct.<sup>1090</sup> That past conduct suggested a need to continue monitoring affiliates applying for tax-exempt status to prevent a fraudulent scheme. The reference to ACORN on the "Watch

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<sup>1089</sup> See generally, TIGTA Report. The IRS agreed that it should: implement the memorandum requiring the Direct of Rulings and Agreements to approve all BOLO entries and changes prior to formalization; Develop training on proper identification of political activity in applications; develop a process for Determinations to formally request assistance from the Technical and Guidance Units; Provide oversight to ensure expedient approval or denial of political cases; Have IRS Chief Counsel and Treasury develop guidance on how to measure "primary activity". Two additionally accepted recommendations involved the specifics of what the training on proper identification and handling of political cases should entail.

<sup>1090</sup> IRSR0000410433 ("The officers of the organizations had prior affiliations with Acorn as members of boards on various chapters."); see also Staff Report, Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Mised America about Disparate Treatment, Committee on Oversight and Government Reform, U.S. House of Representatives, at 40-42 (April 7, 2014); ACORN dissolved as a National Structure, Politico (Feb. 22, 2010) [http://www.politico.com/blogs/bensmith/0210/ACORN\\_dissolved\\_as\\_a\\_national\\_structure.html](http://www.politico.com/blogs/bensmith/0210/ACORN_dissolved_as_a_national_structure.html).



List” also considered that organizations would be applying for both 501(c)(3) and 501(c)(4) status. Thus, the IRS needed to monitor incoming ACORN applications to prevent potential tax fraud and abuse.

The “Watch List” also contained a 2012 listing for “Occupy” organizations affiliated with the Occupy Wall Street movement. However, the “Occupy” criteria were not added until almost two years after the initial targeting of “Tea Party” groups began. TIGTA determined that, during the timeframe that was the scope of its audit, no Occupy cases ever made it onto a list of political advocacy cases. TIGTA found no evidence to show that Occupy groups ever received the same treatment or delay that conservative groups received.<sup>1091</sup> Thus, it appears that the inclusion of Occupy organizations on the “Watch List” did not indicate similar targeting by the IRS.

Finally, the BOLO spreadsheet included a “Historical” tab representing types of cases that were no longer active and were thus “[h]istorical” for the purposes of IRS screening. “Progressive” was listed on the “Historical” tab, and the evidence shows that the listing was for 501(c)(3) cases only. While Progressive was still listed on the BOLO, the cases relating to this tab were inactive during the time period of the TIGTA audit.<sup>1092</sup> The greatest likelihood is that the Progressive 501(c)(4) cases were targeted for inclusion in the Advocacy Case List due to potential political activities, not based on the applicant’s name.

Although the IRS was fully aware of the other BOLO tabs, it **specifically directed** TIGTA only to the relevant “Emerging Issues” tab and the corresponding applications during the audit of political targeting. The other BOLO spreadsheet entries did not fit the scope of TIGTA’s audit.<sup>1093</sup>

How IRS employees used the BOLO spreadsheet shows the IRS’s targeting had a disparate impact on conservative groups, and that liberal groups were not targeted in the same manner as conservative groups. Unlike the liberal groups that were selected out for non-political reasons or merely noted as historical, “Tea Party” cases were actively targeted inappropriately using political criteria. As a result, all “Tea Party” cases had their applications flagged for additional scrutiny by the IRS. Based on the directions of the political advocacy entry on the Emerging Issues tab, a few progressive groups were caught up in the predominately conservative list of advocacy cases. However, these progressive cases, unlike their Tea Party counterparts, were not selected for additional scrutiny because of the group’s name.

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<sup>1091</sup> Interview with Tom Seidell (March 29, 2014); Interview with Troy Paterson (March 21, 2014).

<sup>1092</sup> IRS0000001354; Interview with Troy Paterson (March 21, 2014); Interview with Tom Seidell (March 19, 2014). According to the interviews with TIGTA, the Progressive listing on the Historical Tab of the BOLO Spreadsheet was a reference to 501(c)(3) Progressive organizations that had applied for tax-exempt status pre-2010 and were no longer being received. It was determined that all of the Progressive cases listed on the Advocacy Case List were 501(c)(4) organizations and it can be inferred that those cases were selected after the Emerging Issue criteria for political advocacy cases was expanded in June 2011.

<sup>1093</sup> Interview with Troy Paterson (March 21, 2014); Letter from J. Russell George, Treasury Inspector General for Tax Administration to Rep. Sander Levin, at 2 (June 26, 2013) (“Our audit did not find evidence that the IRS used the “Progressives” identifier as selection criteria for potential political cases between May 2010 and May 2012.”).

## D. The TIGTA Audit Accurately Represented the IRS's Mistreatment of Conservative Groups

The Subcommittee Majority staff report claims the TIGTA audit distorted the truth because it exclusively focused on conservative groups, not liberal groups. However, documentary evidence and Subcommittee interviews with TIGTA officials disprove this point. TIGTA officials did not consider the political leanings of the organization when they examined whether groups were inappropriately targeted.<sup>1094</sup> Instead, TIGTA audited the controls and procedures the IRS itself claimed it used when processing applications with political activity for 501(c)(4) tax-exempt status. The impartial audit validated the concerns raised by the media, members of Congress and others that the IRS was using inappropriate criteria and targeting groups by name or policy position. Thus, the Majority report's claim that both liberal and conservative groups experienced the "same mistreatment" is clearly not supported by the evidence. It is incorrect to assert that the TIGTA audit was biased or factually flawed.

TIGTA auditors consulted the IRS to identify which, if any, cases received additional scrutiny through the IRS screening process. When asked by TIGTA if the IRS was tracking any cases separately, the IRS provided a list of applications identified as requiring "further scrutiny." For the purposes of this report, this new Excel spreadsheet will be referred to as the "Advocacy Case List." The Advocacy Case List consisted of applications singled-out according to criteria set out in the corresponding "Emerging Issues" BOLO tab. The scope of the TIGTA audit focused on those applications that the IRS identified as being set aside for further review based on perceived political intervention.<sup>1095</sup> The IRS directed TIGTA auditors only to the "Emerging Issues" tab and the corresponding Advocacy Case List. In doing so, the IRS deliberately declined to direct the auditors to the ACORN successors and "Progressive" references made on other BOLO tabs.<sup>1096</sup>

In their interviews, TIGTA officials Gregory Kutz and Troy Paterson made it clear that they looked at the Advocacy Case List because those were the cases the IRS indicated were relevant to the audit.<sup>1097</sup> Additionally, Mr. Kutz said he did not think adding references to Occupy or ACORN in the report would have changed the outcome of the audit.<sup>1098</sup> Furthermore, the Advocacy Case List included only those cases active during the May 2010-May 2012 time period that TIGTA examined in its audit. The BOLO spreadsheet entry mentioning "Progressive" only referenced cases that were not active during the time period of the TIGTA audit. Thus, the TIGTA audit team concluded that the other BOLO spreadsheets were not relevant to its audit.<sup>1099</sup>

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<sup>1094</sup> Subcommittee Interview of J. Russell George (April 22, 2014).

<sup>1095</sup> TIGTA Report at 10 ("we reviewed all of the applications identified as potential political cases as of May 31, 2012"), *Id.* at 22 ("Detailed Objective, Scope and Methodology").

<sup>1096</sup> Subcommittee Interview of Troy Paterson (March 21, 2014).

<sup>1097</sup> Subcommittee Interview of Greg Kutz (March 26, 2014); Subcommittee Interview of Troy Paterson (March 21, 2014).

<sup>1098</sup> Subcommittee Interview of Greg Kutz (March 26, 2014).

<sup>1099</sup> Subcommittee Interview of Greg Kutz; Subcommittee Interview of Troy Paterson; TIGTA Report, at 6, footnote 16 ("We did not review the use of other named organizations on the BOLO listing to determine if their use was appropriate.").

The Subcommittee Majority places extra emphasis on the fact that the TIGTA audit was initiated at the request of the House Committee on Oversight and Government Reform (OGR). However, the Majority report's assertion fails to present the whole story. While OGR did make a request, this alone did not spur TIGTA to audit the targeting. TIGTA began its audit in response to several media reports, an audit request letter sent by the Landmark Legal Foundation, and the OGR request.<sup>1100</sup> Moreover, the Subcommittee Majority staff report claims that TIGTA auditors only examined the treatment received by Tea Party and other conservative groups. In actuality, TIGTA audited the "actions taken by the EO function in response to the increase in applications" and "whether changes to procedures and controls" led to problems processing political advocacy cases.<sup>1101</sup>

The Subcommittee Majority staff report suggests that TIGTA failed to examine liberal groups' treatment even after the IRS made TIGTA aware of the liberal groups in BOLO listings. The reality is that the IRS had three opportunities to edit the TIGTA report and never urged the inclusion of the liberal groups referenced on the other BOLO listings.<sup>1102</sup> Also, TIGTA reviewed every hard copy application file for the 298 cases on the IRS's Advocacy Case List.<sup>1103</sup>

The Subcommittee Majority report places great weight on the email review conducted by TIGTA's Deputy Inspector General for Investigations, Tim Camus. The review Mr. Camus conducted allegedly showed that IRS personnel were not politically motivated. The email review was a limited search of only five employees' emails designed to find a smoking gun email; it was not a general search for evidence of political bias. Furthermore, the email review did not include a search of *any* emails from *any* DC based employees. Therefore, the email review cannot be cited for the proposition that this very limited investigation proves that there was no political bias on the part of IRS officials. Also, denial of political motivation is not determinative of there being no political motivation. Finally, TIGTA Inspector General J. Russell George and Mr. Kutz have indicated they are conducting a new audit into the entire BOLO spreadsheet to determine if the IRS acted improperly in other respects, too.

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<sup>1100</sup> See TIGTA Report; see also Letter from Landmark Legal Foundation to TIGTA, (March 23, 2012) <http://www.landmarklegal.org/uploads/IRS%20IG%20Letter%20without%20attachments.pdf> (The Landmark letter also requested TIGTA look into whether IRS employees acted at the command of "politically motivated superiors.").

<sup>1101</sup> TIGTA Report at 22.

<sup>1102</sup> Subcommittee Interview of Greg Kutz (March 26, 2014).

<sup>1103</sup> TIGTA Report at 24 ("Obtained and reviewed all 298 application cases identified for processing by the team of specialists").

## II. CONSERVATIVE GROUPS TARGETED SIGNIFICANTLY MORE OFTEN AND PERVASIVELY THAN LIBERAL GROUPS

### A. Conservative Groups on the BOLO Spreadsheet

The IRS, using a Microsoft Excel spreadsheet referred to as the “Be-On-the-Lookout” Spreadsheet (“BOLO”), flagged conservative groups applying for tax-exempt status for additional scrutiny. One of the main mistaken contentions in the Majority’s report is that liberal groups, especially those listed on the BOLO Spreadsheet were treated equally poorly as Tea Party and conservative groups.<sup>1104</sup> In order to support this assertion, the Subcommittee Majority report attempts to draw tenuous comparisons between the different BOLO tabs. The evidence, however, strongly contradicts this finding. Instead, the evidence indicates that the systematic targeting of Tea Party and other conservative groups by the IRS was substantially different from the IRS’s treatment of liberal groups. The IRS’s treatment of Tea Party cases cannot be boiled down to an apples-to-apples comparison to liberal groups. Only one tab, labeled “Emerging Issues,” dealt with political advocacy groups under then-current review by the IRS for tax-exempt status. The other tabs with liberal groups listed were intended to alert IRS screeners only to watch out in the event they receive any tax-exempt status requests from groups like ACORN successors, Progressive or Occupy.

The Subcommittee Minority analyzed the way the IRS utilized the BOLO and found that groups in the “Emerging Issues” BOLO spreadsheet tab – most notably Tea Party groups – were treated differently than groups listed in other BOLO spreadsheet tabs.

In August 2010, IRS employees in Cincinnati created the BOLO spreadsheet to alert employees to certain cases.<sup>1105</sup> The BOLO spreadsheet had five sheets or tabs. The sheets or tabs of the spreadsheet varied over time. The original five tabs were: “TAG,” “TAG Historical,” “Emerging Issues,” “Coordinated Processing,” and “BOLO List.”<sup>1106</sup> TAG stands for “Touch-and-Go” and the cases referenced on the “TAG” tab indicated potential fraud, terrorism or other sensitive issues.<sup>1107</sup> “TAG Historical” referenced cases that were no longer active in the IRS’s system and had similar indications of fraud, terrorism or other sensitive issues.<sup>1108</sup> Later versions of the BOLO spreadsheet replaced “TAG” with “potential abusive” and “TAG Historical” with “potential abusive historical.”<sup>1109</sup> The “BOLO list” tab was a precursor to the “Watch List” tab. The “Watch List” tab was designed to draw attention to cases not yet received by the IRS that

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<sup>1104</sup> See Majority Report, at 69 (“liberal groups encountered many of the same IRS processing problems as conservative groups”).

<sup>1105</sup> IRS0000002503-2515.

<sup>1106</sup> IRS0000002503-2515.

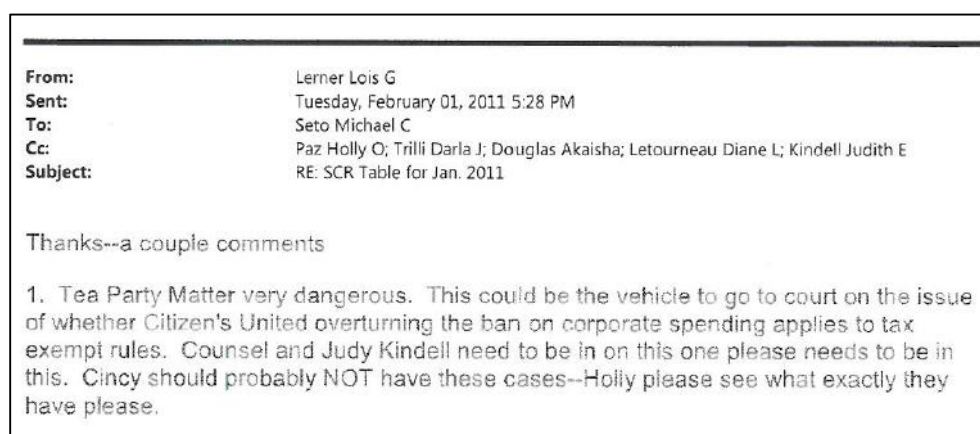
<sup>1107</sup> IRSR0000006659

<sup>1108</sup> Subcommittee Interview of Gary Muthert (1/15/2014); see also Letter from J. Russell George, Treasury Inspector General for Tax Administration to Rep. Sander Levin, at 1 (June 26, 2013) (“The “Progressives” criteria appeared on a section. . . labeled ‘Historical,’ and, unlike other BOLO entries, did not include instruction on how to refer cases that met the criteria.” Also, TIGTA “found no indication in any of these materials that ‘Progressives’ was a term used to refer cases for scrutiny for political campaign intervention.”).

<sup>1109</sup> IRS0000001500-1511.

agents should be watching for.<sup>1110</sup> The “Emerging Issues” tab was used to flag newly received cases on which there was no precedent.<sup>1111</sup>

The “Emerging Issues” tab explicitly referred to the “Tea Party” movement. The tab contained no mention of any other political organization.<sup>1112</sup> In August 2010, the entry on the BOLO Spreadsheet for Tea Party read: “Tea Party: These case[s] involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).”<sup>1113</sup> The specific Tea Party reference was an umbrella term for conservative groups, designed to draw attention to a national movement that more often than not included organizations with Tea Party, Patriots, and 9/12 in the group name. On February 1, 2011, head of IRS Exempt Organizations, Lois Lerner emailed several of her employees and stated that the “Tea Party Matter [is] very dangerous.”<sup>1114</sup>



The Tea Party description contained in the “Emerging Issues” tab was used by the IRS to flag cases from August 2010 until July 2011. In July 2011, the description of cases to flag was altered to state the following: “Advocacy Orgs: Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).”<sup>1115</sup> This change was requested by Lois Lerner, the Washington, D.C.-based Director of Exempt Organizations, in an attempt to broaden the criteria and prevent the inappropriate selection of cases based on their name only.<sup>1116</sup> Even after this effort, the IRS continued to target **all** Tea Party cases for heightened scrutiny.<sup>1117</sup> The “Emerging Issues” tab relating to political advocacy cases changed again in January 2012. The description was altered to read: “Current Political Issues: Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights,

<sup>1110</sup> IRSR0000006667 (“Typically Applications Not Yet Received”).

<sup>1111</sup> IRSR0000006660.

<sup>1112</sup> IRS0000002509.

<sup>1113</sup> IRS0000002509.

<sup>1114</sup> IRSR0000156541.

<sup>1115</sup> IRS0000001494 (it goes on to read: “Note: advocacy action type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet this criteria.”).

<sup>1116</sup> TIGTA Report at 35 (“During the briefing, the Director, EO, raised concerns over the language of the BOLO listing criteria. The Director, EO, instructed that the criteria be immediately revised.”).

<sup>1117</sup> PSI-IRS-37-000004-14 (In an assessment of all cases with Tea Party in the name received by June 5, 2012, every case was forwarded to the Advocacy Case List for additional scrutiny).

Social [*sic*] economic reform/movement.”<sup>1118</sup> The January 2012 change was initiated because IRS employees in the Cincinnati office found that the July 2011 broad criteria caused too many cases unrelated to political activity to be sent to the advocacy group for processing. Finally, in May 2012, the Emerging Issues tab entry was changed for a fourth time, back to a broader, more-inclusive set of criteria by IRS management in Washington, D.C.<sup>1119</sup>

The active targeting of Tea Party applications began in February 2010.<sup>1120</sup> At that time, revenue agents screening applications began forwarding *every* Tea Party application to a specialist group handling the Emerging Issue cases. The informal criteria created and used by revenue agents in Cincinnati screening applications related to the Tea Party Emerging Issue entry included:

- 1) “Tea Party, Patriots or 9/12 Project is referenced in the case file
- 2) Issues include government spending, government debt or taxes
- 3) Education of the public by advocacy/lobbying to ‘make America a better place to life’
- 4) Statement in the case file criticize how the country is being run”<sup>1121</sup>

It is clear that all of these criteria were designed to scrutinize conservative applicants, especially considering the political climate of the time. Any application that fit these criteria was sent to the specialist group in Cincinnati handling Emerging Issues cases. Upon receipt of the first few Tea Party cases by the specialist group, a revenue agent created an entirely new Microsoft Excel spreadsheet to track progress on the applications. The spreadsheet, called the Advocacy Case List, recorded the organization’s name, the date the IRS received the application, the IRS assigned tracking number, whether it was a 501(c)(3) or (4) application and other information about the case.<sup>1122</sup> The Advocacy Case List was separate and distinct from the BOLO Spreadsheet. Whereas the BOLO contained criteria for flagging applications, the Advocacy Case List consisted of the actual cases being scrutinized by the IRS as a result of its political targeting. Between May 2010 and May 2012, the IRS accumulated 298 applications for tax-exemption, all of which were placed on the Advocacy Case List.<sup>1123</sup> This list of 298 cases was identified by the IRS as the cases the IRS itself had selected for further scrutiny and provided to TIGTA for its audit.<sup>1124</sup>

Although IRS employees in Cincinnati developed the Advocacy Case List, it was not the only IRS office ultimately involved. In March 2010, senior management in Washington, D.C. put the Tea Party cases on hold, while two Tea Party test cases were reviewed by the Washington, D.C. office. These cases were reviewed by the EO Technical department, which was overseen by

<sup>1118</sup> IRS0000001507 (it goes on to read: “Note: typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above”).

<sup>1119</sup> IRS0000001494 (“Current Political Issues: 501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit”).

<sup>1120</sup> Subcommittee Interview of Elizabeth Hofacre, IRS (10/25/2013); PSI-IRS-37-000013-14.

<sup>1121</sup> TIGTA Report, at 6, figure 3. *See also*, Lerner Briefing Document (June 2011).

<sup>1122</sup> IRSR0000006585.

<sup>1123</sup> TIGTA Report at 24.

<sup>1124</sup> TIGTA Report, at 10.

Holly Paz at the time.<sup>1125</sup> Both of these test cases were Tea Party groups.<sup>1126</sup> While a total of 6 cases from the 298 on the Advocacy Case List were approved between May 2010 and May 2012, not a single one of the approved cases had Tea Party in their name.<sup>1127</sup> The remaining 292 groups either withdrew their applications due to the lengthy delays or continued to await either an approval or denial.<sup>1128</sup> By being kept in limbo, these groups were severely hampered in their ability to raise funds. The IRS's failure to provide decisions on the 292 remaining applications also functionally denied these groups the right to appeal their treatment in federal court.

## **B. Liberal Groups on the BOLO Spreadsheet**

The Subcommittee's primary focus should be on the burdensome treatment of groups targeted via the Tea Party entry on the BOLO spreadsheet's "Emerging Issues" tab. The Majority report, however, attempts to draw attention away from the "Emerging Issues" tab by directing it toward unrelated tabs. It then attempts to draw tenuous similarities in the treatment of liberal organizations such as Progressive, ACORN, Occupy and Emerge to conservative groups by the IRS.<sup>1129</sup> Based on evidence discovered during this investigation the Majority's assertion is completely unsubstantiated. The treatment of these four liberal groups was dramatically and fundamentally different from that of Tea Party, Patriot and 9/12 groups applying for tax-exempt status. Furthermore, the disparate impact on conservative groups far outweighed any impact that the IRS treatment may have had on liberal groups. The comparison chart below shows that the Tea Party groups were systematically selected-out by name by utilizing the Tea Party entry on the BOLO spreadsheet. After being selected-out, the cases were assigned to the Tea Party Coordinator to manage processing and placed on a separate Advocacy Case List. Additionally, during the period of review, two Tea Party test cases were singled out and sent to Washington, D.C. for review. These two cases were also eventually reviewed by the IRS legal counsel's office. Based on these test cases, a sensitive case report was developed to inform senior IRS management of the cases. As is shown below, these actions all happened to Tea Party groups while only sporadically occurring to liberal groups.

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<sup>1125</sup> PSI-IRS-09-000040; Subcommittee Interview of Holly Paz October 30, 2013).

<sup>1126</sup> IRSR0000430436; *see also* Staff Report, Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Misled America about Disparate Treatment, Committee on Oversight and Government Reform, U.S. House of Representatives, at 4 (April 7, 2014) ("The IRS's 'test' cases transferred from Cincinnati to Washington were exclusively filed by Tea Party applicants: the Prescott Tea Party, the American Junto, and the Albuquerque Tea Party."). There were actually three cases used for the test cases, one of the original two cases was closed for failure to respond, so a third was selected.

<sup>1127</sup> TIGTA Report at 14 ("Prior to the hands-on training and independent review, the team of specialists only approved six (2 percent) of 298 applications."); Gregory Korte, IRS Approved Liberal Groups While Tea Party in Limbo, USA Today (May 15, 2013) ("There wouldn't be another Tea Party application approved for 27 months" starting in March 2010.).

<sup>1128</sup> TIGTA Report at 14 (Of the 298 applications, TIGTA determined that 28 groups withdrew the application and 160 continued to wait).

<sup>1129</sup> Majority Report, at 1, 2.

**Comparison Chart of Tea Party Group Treatment versus  
Occupy, Emerge, ACORN successors, and Progressive/Progress**

	Tea Party (incl. 9-12 and Patriot)	Occupy	Emerge	ACORN Successors	Progressive BOLO (c3s)	Progressive/ Progress c4s
Listed on the BOLO Spreadsheet	X	X		X	X	
Sensitive Case Report	X		X			
Test Cases sent to Washington	X		X	X		
IRS's office of Legal Counsel's review	X					
Listed on the Advocacy Case List	X			?*		X
Assigned a specific Coordinator (i.e. Tea Party Coordinator)	X					
Development Letters	X		X			X

\* Due to 6103 restrictions on releasing individual taxpayer information, TIGTA officials were unable to confirm or deny the addition of a single ACORN group on the Advocacy Case List.

### (1) Progressive and Progress Groups

In the original BOLO Spreadsheet, on the TAG Historical tab, there was an entry that read:

“Progressive: Political Activities: Common thread is the word ‘progressive’. Activities appear to lean toward a new political party. Activities are partisan and appear as anti-republican. You see references to ‘blue’ as being ‘progressive.’”<sup>1130</sup>

According to our interviews with TIGTA employees, this entry refers to the IRS’s previous handling only of 501(c)(3) applications for tax-exempt status from groups with Progressive in their name.<sup>1131</sup> As a result, it is highly unlikely that this entry was used to select progressive 501(c)(4) groups for review. Instead, 501(c)(4) cases that contained the name progressive or progress were included in the Advocacy Case List only because they fit the expanded criteria for scrutiny articulated by Lois Lerner in June 2011.

The fact that the Progressive cases referenced on the Historical tab of the BOLO Spreadsheet related only to 501(c)(3) cases is an important distinction to the Tea Party entry on the BOLO that referenced 501(c)(3) and (4) cases. Applicants applying for 501(c)(3) charity status are held to a stricter standard under the law than 501(c)(4) groups. That status requires 501(c)(3) charity organizations to *exclusively* conduct themselves for their stated charitable

<sup>1130</sup> IRS0000001354.

<sup>1131</sup> Subcommittee Interview of Tom Seidell (March 19, 2014). *See also* Subcommittee Interview of Elizabeth Hofacre (October 25, 2013) (Ms. Hofacre informed Subcommittee staff that EO technical had instructed her to send along 501(c)(3) applications and not (c)(4), as well as the fact that progressive cases were handled in a different manner than Tea party cases once flagged.)



purpose.<sup>1132</sup> On the other hand under IRS regulations, 501(c)(4) organizations must *primarily* operate for their social welfare purpose. The difference between *exclusively* and *primarily* allows 501(c)(4) organizations to participate in some political advocacy activities.<sup>1133</sup> As such, the IRS must carefully examine **all** groups, including explicitly partisan groups, applying for 501(c)(3) status to determine if its activities are at all related to improper political advocacy. However, based on the evidence available, taken together, these facts indicate, and the Subcommittee’s interviews confirm, there were no active cases relating to the Historical tab of the BOLO Spreadsheet Progressive entry at the time TIGTA completed its review.

According to the House Committee on Ways and Means, there were only seven applications with Progress or Progressive in the name included on the Advocacy Case List. This Subcommittee’s investigation determined that of the seven groups, four groups included “progress” in the name and three groups included Progressive in the name. All seven were groups applying for 501(c)(4) tax-exempt status and all seven were eventually approved.<sup>1134</sup> No Progressive 501(c)(3) cases ever made it onto the Advocacy Case List. There were also 14 organizations with Progressive or Progress in their name that were not sent to the Advocacy Case List.<sup>1135</sup> Unlike the Progress or Progressive groups, *all* Tea Party cases filed between February 2010 and March 2012 were scrutinized and delayed.<sup>1136</sup> Progressive cases were not identified specifically by name in the Emerging Issues tab of the BOLO Spreadsheets used by revenue agents. Further, it is unlikely that progressive cases appeared on the Advocacy Case List until after the Tea Party BOLO was expanded in July 2011. Fewer than 38 percent of applicants with Progress or Progressive in their name were sent to the Advocacy Case List.<sup>1137</sup>

The Subcommittee Majority report utilizes the existence of the seven total 501(c)(4) applications with either Progress or Progressive in the name to show that liberal groups were targeted and placed on the Advocacy Case List. The seven Progress or Progressive 501(c)(4) applications did not relate to the Progressive BOLO spreadsheet entry because they are not 501(c)(3) organizations. Also, all seven of these groups were likely not targeted for inclusion in the Advocacy Case List based on the applicant’s name, but rather due to their potential political

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<sup>1132</sup> See 26 C.F.R. § 1.501(c)(3)-1(c)(1).

<sup>1133</sup> See 26 C.F.R. § 1.501(c)(4).

<sup>1134</sup> The House Committee on Ways and Means has statutory authority to view individual taxpayer information under 26 U.S.C. § 6103. With the ability to view and analyze this information, it was able to make statistical determinations by reviewing individual applications for tax-exempt status. See Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, (Sept. 18, 2013) <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126> (“One hundred percent of the groups with ‘Progressive’ in their name were approved”); PSI-IRS-37-000004-14 (Of the cases with the word Progress or Progressive in the applicant’s name, seven cases were on the Advocacy Case List by May 2012 when TIGTA completed its analysis); see also Staff Report, Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Mised America about Disparate Treatment, Committee on Oversight and Government Reform, U.S. House of Representatives, at 34 (April 7, 2014).

<sup>1135</sup> PSI-IRS-37-000004-14.

<sup>1136</sup> PSI-IRS-37-000004-14 (In an assessment of all cases with Tea Party in the name received by June 5, 2012, every case was forwarded to the Advocacy Case List for additional scrutiny).

<sup>1137</sup> PSI-IRS-37-000004-14 (Of the cases with the word Progress or Progressive in the applicant’s name, seven cases were on the Advocacy Case List by May 2012 when TIGTA completed its analysis. Two additional Progress or Progressive cases were added to the December 2012 Advocacy Case List. Of the total 24 Progress or Progressive cases, 9 eventually ended up on the Advocacy Case List. Thus, 15 Progress or Progressive cases were not included on the Advocacy Case List.

activities. Only Tea Party, 9/12 and Patriot groups were specifically targeted based on the applicant's name. Publicly available information released in a *USA Today* article revealed that the earliest a Progress or Progressive application was listed on the Advocacy Case List was *after* March 2011. Therefore, it very likely the case was not actually added to the Advocacy Case List until after the criteria were broadened to include all advocacy groups in July 2011, not just the Tea Party. While at least 33 "Tea Party", six "9/12", and 13 "Patriot" cases languished on the Advocacy Case List, nearly 18 months passed before a single "Progress" or "Progressive" case was added to the list.

Notes taken during a July 28, 2010 screening workshop held in the IRS EO Determinations unit in Cincinnati further underscore the distinction between the Tea Party cases and Progressive cases.<sup>1138</sup> The workshop notes explicitly state Elizabeth Hofacre's role as the senior IRS revenue agent assigned the title Tea Party Coordinator/Reviewer, was only to process Tea Party groups. The notes even go so far as to explicitly exclude progressive groups from her jurisdiction.<sup>1139</sup>

**Current/Political Activities: Gary Muthert**

- Discussion focused on the political activities of Tea Parties and the like—regardless of the type of application.
- If in doubt Err on the Side of Caution and transfer to 7822.
- Indicated the following names and/or titles were of interest and should be flagged for review:
  - 9/12 Project,
  - Emerge,
  - Progressive
  - We The People,
  - Rally Patriots, and
  - Pink-Slip Program.
- Elizabeth Hofacre **Tea Party Coordinator/Reviewer**
  - Re-empathize that applications with Key Names and/or Subjects should be transferred to 7822 for Secondary Screening. Activities must be primary.
  - **"Progressive" applications are not considered "Tea Parties"**

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The Subcommittee has identified *no* evidence to suggest the treatment and handling of Progressive cases was the same as the Tea Party cases. Unlike Tea Party cases, Progressive cases were not identified by name in the "Emerging Issue" criteria used by revenue agents nor were they likely to have appeared on the Advocacy Case List until July 2011. Finally, every single one of the mere seven cases with Progress or Progressive in their name was approved.<sup>1141</sup>

<sup>1138</sup> IRSR0000168721-3.

<sup>1139</sup> IRSR0000168722 ("Progressive" applications are not considered "Tea Parties").

<sup>1140</sup> IRSR0000168722 (emphasis added by Subcommittee Minority).

<sup>1141</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, (Sept. 18, 2013) <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126> ("One hundred percent of the groups with 'Progressive' in their name were approved"); Staff Report, Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Misled America about Disparate Treatment, Committee on Oversight and Government Reform, U.S. House of Representatives, at 34. (April 7, 2014).

## (2) ACORN Successors

The BOLO spreadsheet also contained an entry referencing “ACORN successors” that appeared on the “Watch List” tab.<sup>1142</sup> The listing has been partially redacted by the IRS for 26 U.S.C. § 6103 protection, but it states “ACORN Successors: Following the breakup of ACORN [Redacted Information].”<sup>1143</sup>

Unlike Tea Party groups, ACORN successor organizations were properly on the BOLO Spreadsheet because ACORN itself had been involved in a number of fraudulent transactions assisting tax evasion.<sup>1144</sup> After a series of scandals, which led to Congress revoking its funding of the organization, the national ACORN organization disbanded.<sup>1145</sup> The ACORN groups were thus not flagged simply for their political activities, but also because of a specific association to a group known to have legal problems.<sup>1146</sup> That rationale bears no relation to the Tea Party cases, which appear to have been singled out and targeted based solely on their name or political beliefs.

Based on the information available to the Subcommittee during its review, the IRS’s concern about potential ACORN successors never materialized.<sup>1147</sup> Documents show that of the initial four cases identified, the applications possibly came from only two groups applying for both 501(c)(3) and (c)(4) status.<sup>1148</sup> This further indicates the focus of IRS agents was on whether new entities would attempt to succeed ACORN after the national organization disbanded and not the organization’s name or policy positions.

## (3) “Occupy” Groups

A third group, “Occupy”, was only listed on the BOLO spreadsheet late in the processing of the Tea Party and Advocacy cases and related to the Occupy Wall Street movement.<sup>1149</sup> “Occupy” was listed on the “Watch List” tab of the BOLO spreadsheet beginning on February 8, 2012.<sup>1150</sup> IRS agents listed Occupy because media reports suggested this possible national

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<sup>1142</sup> IRS0000002513.

<sup>1143</sup> IRS0000002513.

<sup>1144</sup> Matthew Bigg, Scandals Weaken Liberal Group ACORN, Reuters (Feb. 22, 2010)

<http://www.reuters.com/article/2010/02/23/us-usa-acorn-idUSTRE61M09L20100223>; ACORN Hopes New Image Can Save Disgraced Advocacy Group, Fox News (Feb. 23, 2010).

<sup>1145</sup> Matthew Bigg, Scandals Weaken Liberal Group ACORN, Reuters (Feb. 22, 2010)

<http://www.reuters.com/article/2010/02/23/us-usa-acorn-idUSTRE61M09L20100223>; ACORN Hopes New Image Can Save Disgraced Advocacy Group, Fox News (Feb. 23, 2010); Sarah Wheaton, Acorn Sues Over Video as I.R.S. Severs Ties, New York Times (Sept. 23, 2009) [http://www.nytimes.com/2009/09/24/us/politics/24acorn.html?\\_r=0](http://www.nytimes.com/2009/09/24/us/politics/24acorn.html?_r=0) (ACORN “has faced a deluge of criticism after a series of videos from hidden cameras caught staff members giving advice about **tax evasion**, human smuggling and child prostitution”).

<sup>1146</sup> See Interview with Troy Paterson; Staff Report, Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Misled America about Disparate Treatment, Committee on Oversight and Government Reform, U.S. House of Representatives, at 42.

<sup>1147</sup> The IRS revenue agents seemed more worried about the fact the applicants applying for 501(c)(3) status were the same as an applicant applying for 501(c)(4) status because they shared an address. See IRSR0000410433.

<sup>1148</sup> IRSR0000410433.

<sup>1149</sup> IRSR0000006710.

<sup>1150</sup> IRSR0000006710.

movement might lead to applications by groups from various cities.<sup>1151</sup> At no point between May 2010 and May 2012 did the “Occupy” cases make it onto the Advocacy Case List. There is also no evidence suggesting that these cases were subjected to the same level of severe scrutiny as the Tea Party cases.<sup>1152</sup>

The first Occupy case was received in 2012, two years after the targeting of Tea Party groups had begun. The Occupy listing on the Watch List tab read as follows:

“Occupy Organizations: Involve organizations occupying public space protesting in various cities, call people to assemble (people’s assemblies) claiming social injustices due to ‘big money’ influence, claim the democratic process is controlled by was street/banks/multinational corporations, could be linked globally. Claim to represent the 99% of the public that are interested in separating money from politics and improving the infrastructure to fix everything from healthcare to the economy.”<sup>1153</sup>

The Occupy listing is substantially different than the Tea Party listing for a number of reasons. First, Occupy was listed on the “Watch List” entry, which meant that it served as an advance notification in the event a possible application came in. The listing was not used by IRS employees to screen and select out applications from a known “emerging issue.”<sup>1154</sup> Also, unlike the then purely theoretical Occupy applications, the Tea Party cases were clearly already active. Although two Occupy groups eventually did apply for tax-exempt status, it was not until 2012; roughly two years after the Tea Party targeting began.<sup>1155</sup>

#### (4) Emerge

The final group cited by the Majority in support of the assertion that liberal groups were targeted by the IRS is “Emerge.”<sup>1156</sup> Emerge America is a national organization dedicated to the election of Democrat women with affiliate state-based organizations.<sup>1157</sup> The organization was explicitly a campaign organization for the private benefit of the Democratic Party.<sup>1158</sup> Emerge groups therefore clearly and blatantly did not qualify for tax-exempt status. As a result, all eight applications filed by Emerge affiliates were ultimately and properly denied tax-exempt status. Three of the eight Emerge cases were denied after review by EO Technical in Washington, D.C. because of their clear participation in political campaigns to benefit the Democratic Party.<sup>1159</sup>

<sup>1151</sup> Subcommittee Interview of Tom Seidell (March 19, 2014).

<sup>1152</sup> See Subcommittee Interviews with TIGTA employees.

<sup>1153</sup> IRSR0000006710.

<sup>1154</sup> IRSR000000669 (Watch List was for “World Events that Could Result in an Influx of Applications” (emphasis in original)).

<sup>1155</sup> See IRSR0000014173 – 174; IRSR0000014175 – 189.

<sup>1156</sup> Majority Report, at 82.

<sup>1157</sup> <http://www.emergeamerica.org/>.

<sup>1158</sup> IRSR0000012211-21, at 19 (“Based on the information you submitted with your application, you are not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code because your activities primarily serve private interests.”); see also Staff Report, Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Mised America about Disparate Treatment, Committee on Oversight and Government Reform, U.S. House of Representatives, at 32-33.

<sup>1159</sup> IRSR0000196739 – 758.

The other five cases were initially approved, but later had their tax-exempt status revoked by the IRS for the same reasons the other three groups were denied.<sup>1160</sup>

When the Emerge cases were received by the IRS, the cases were sent to the Washington office and IRS agents created a Sensitive Case Report (SCR) on the Emerge groups, similar to the SCR for Tea Party cases.<sup>1161</sup> That, however, is where the similarities end. Unlike the Tea Party groups, Emerge was never added to the BOLO Spreadsheet and it did not have a separate list in Cincinnati that held Emerge cases. On top of this, it was clear that all of the Emerge cases did not meet the requirement to primarily engage in the group's social welfare activity.

Any attempt to compare the severe scrutiny of conservative groups seeking tax-exempt status to these few liberal groups is untenable. Conservative groups were systematically targeted by the IRS, listed on a separate spreadsheet than the BOLO Spreadsheet, had their applications put on hold by IRS management, and asked obtrusive questions to a significantly greater degree.

### C. Disparate Impact on Conservative Groups

TIGTA's report on the IRS's processing of advocacy cases provides an illuminating look at the extent of the IRS's disparate impact on conservative groups. According to TIGTA's analysis, between May 2010 and May 2012, the IRS removed a total of 298 applications from normal processing and placed them on a special Advocacy Case List for additional scrutiny.<sup>1162</sup> Of the 298 groups, 72 had Tea Party in their name, 11 had 9/12 in their name and 13 had Patriots in their name.<sup>1163</sup> Thus, out of the 298 groups, 96 applications contained Tea Party, 9/12, or Patriot in their names and were placed on the Advocacy Case List as a result.<sup>1164</sup> Of the 298 cases, TIGTA auditors looked at the entire, hard-copy application file for 296 applications because 2 cases were incomplete and could not be reviewed.<sup>1165</sup>

Although Subcommittee does not have authority to view individual taxpayer data under 26 U.S.C. § 6103, the House Committee on Ways and Means does. It reviewed the 298 applications the IRS provided to TIGTA.<sup>1166</sup> According to the Committee's analysis, 83 percent – 248 of the 298 groups – were “right leaning.”<sup>1167</sup> In the same analysis, the Committee found that only 29 of the 298 groups, or 10 percent, were “left leaning.”<sup>1168</sup>

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<sup>1160</sup> IRSR0000468978 -980.

<sup>1161</sup> IRSR0000141809 – 811.

<sup>1162</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, [www.Waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126](http://www.Waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126)

<sup>1163</sup> TIGTA Report at 8.

<sup>1164</sup> TIGTA Report, at 8.

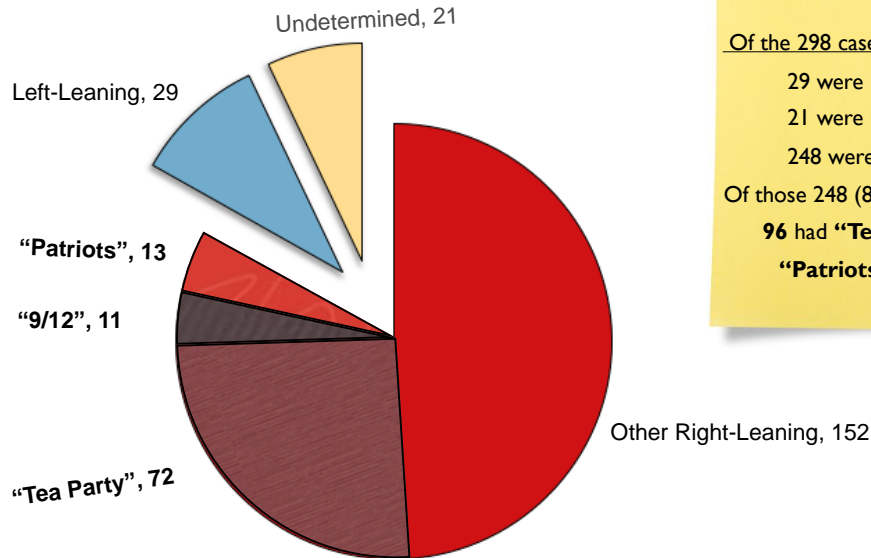
<sup>1165</sup> TIGTA Report, at 10.

<sup>1166</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>

<sup>1167</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>

<sup>1168</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>

**Breakdown 298 of the Political Advocacy  
Cases**  
(May 2010 - May 2012)



Of the 298 cases the IRS held for review:

29 were Left-Leaning

21 were Undetermined

248 were Right-Leaning

Of those 248 (83%) Right-Leaning groups,

**96** had **"Tea Party"**, **"9/12"**, or  
**"Patriots"** in the their name

The full story becomes even clearer when the percentage of approvals is considered. The Committee on Ways and Means found that 45 percent, or 111 applications, of the 248 right-leaning groups were eventually approved.<sup>1169</sup> Liberal groups, on the other hand, enjoyed a 70 percent approval rate. Thus, of 29 left-leaning groups, 20 groups were approved while 9 groups withdrew their application or the application is still pending.<sup>1170</sup>

Additionally, according to TIGTA's audit, only six cases from the Advocacy Case List were approved in the span of two years.<sup>1171</sup> Amazingly, after TIGTA initiated its audit, 102 applications were approved from May to December 2012.<sup>1172</sup>

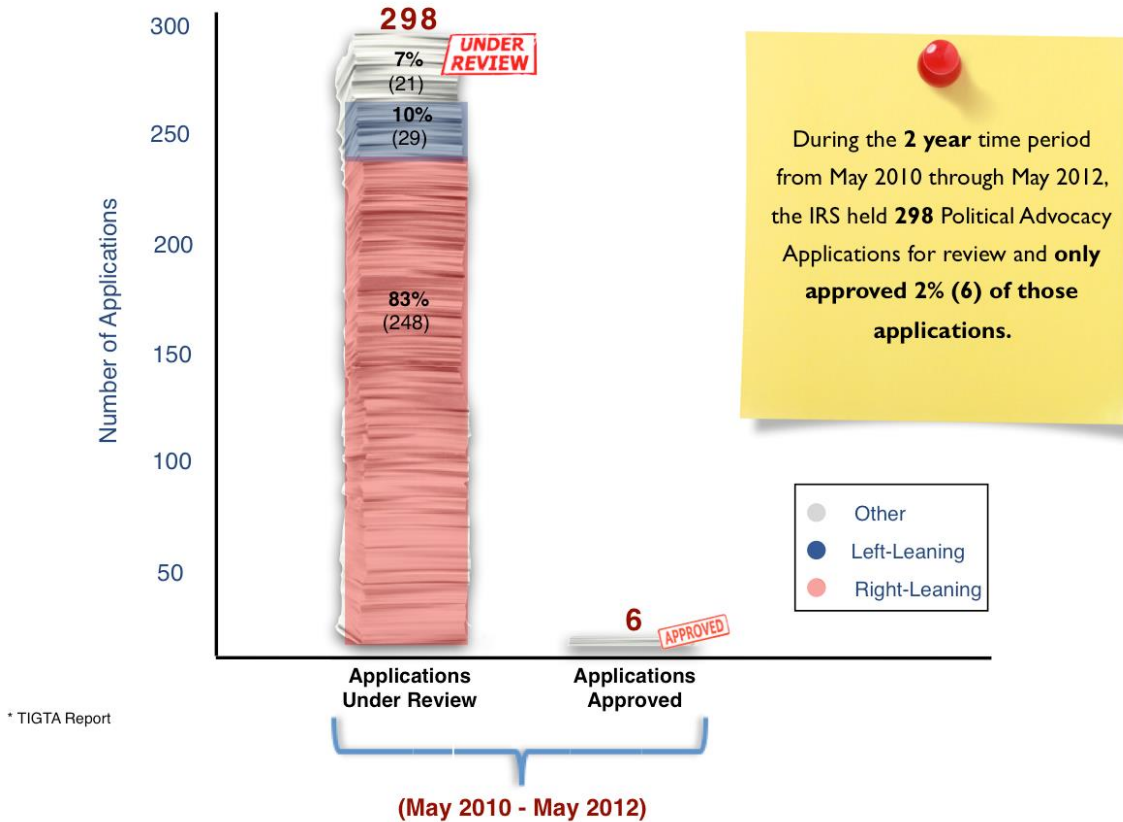
<sup>1169</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>

<sup>1170</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>

<sup>1171</sup> TIGTA Report at 14.

<sup>1172</sup> TIGTA Report at 14-15.

**# of Political Advocacy Applications  
Under Review/Approved by the IRS  
(from May 2010 - May 2012)**



Of these “hastily approved applications,” Ways and Means determined that many “were flagged for IRS surveillance by Washington, D.C.”<sup>1173</sup> As is consistent with the IRS’s treatment of conservative groups, “[o]f those flagged, more than eighty percent of the groups were right leaning.”<sup>1174</sup> Moreover, Ways and Means determined that of the organizations sent to the IRS Exempt Organizations Examinations unit, 94 percent were right-leaning. That 94 percent of flagged groups being found to be right-leaning is certainly telling, but Ways and Means’ other discovery demonstrates the disparate impact on conservative groups even further. The Committee found that “of the organizations referred for audit from this process, 100 percent were right leaning.”<sup>1175</sup>

<sup>1173</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>.

<sup>1174</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126> (“The IRS surveillance program, called the “Review of Operations,” is conducted by the EO Examinations unit in Dallas and involves the monitoring of a group’s activity. The consequence of being in the program is that surveillance can lead to an audit.”).

<sup>1175</sup> Analysis by U.S. House Committee on Ways and Means staff of 298 cases analyzed by TIGTA, <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>.



As it reviewed each of the applications, TIGTA attempted to discern whether an application had “indications of significant political campaign intervention,” the qualifier the IRS identified as the reason a case would need additional scrutiny.<sup>1176</sup> TIGTA auditors determined that 91 applications, or 31%, of the 296 applications reviewed did not have “indications of significant political campaign intervention.”<sup>1177</sup> This means that the auditors could not find any activities in the case file that suggested the group would participate in campaign-related events that may have disqualified them from 501(c)(4) status.<sup>1178</sup>

During the course of the audit, TIGTA determined that a number of groups received intrusive questions by the IRS in the form of development letters.<sup>1179</sup> A development letter is drafted by the revenue agent processing the application to obtain additional information from the group prior to its approval or denial of tax-exempt status. According to the TIGTA report, 170 organizations in the Advocacy Case List received a development letter.<sup>1180</sup> Of those 170, TIGTA found that 98 organizations, or 58 percent, received burdensome and unnecessary questions.<sup>1181</sup>

One inappropriate question the IRS asked related to requesting an applicant’s list of donors. In all, 27 applicants received that request,<sup>1182</sup> of which TIGTA determined that “13 had Tea Party, Patriots, or 9/12 in their names.”<sup>1183</sup> Thus, 48% of organizations receiving inappropriate donor questions had been selected solely on the basis of having Tea Party, Patriot, or 9/12 in their name. The donor list questions are particularly disturbing because after a 501(c)(4) group is approved, it does not need to publicly disclose its donor list. The approved tax-exempt organization only needs to privately provide the IRS with this information in its tax returns and the IRS is obligated not to make this public. However, the IRS is required to make information that is part of an approved tax-exempt application publicly available.<sup>1184</sup> As result, if a group submits its donor list and the IRS relies on this information to grant 501(c) status, then that otherwise nonpublic donor list is required to be publicly released.<sup>1185</sup> Thus, the request for donor lists from these conservative groups could be used as an indirect means to force the release of the donor lists of these organizations to the public.

The IRS provided to the Subcommittee a document showing that all Tea Party applications submitted from February 2010 to June 2012, experienced delays in processing, were

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<sup>1176</sup> TIGTA Report, at 10.

<sup>1177</sup> TIGTA Report, at 10.

<sup>1178</sup> See Subcommittee Interview of Tom Seidell (March 19, 2014).

<sup>1179</sup> TIGTA Report, at 18.

<sup>1180</sup> TIGTA Report, at 18.

<sup>1181</sup> TIGTA Report, at 18.

<sup>1182</sup> TIGTA Report, at 18.

<sup>1183</sup> TIGTA Report, at 18, fn. 43.

<sup>1184</sup> <http://www.irs.gov/Charities-&-Non-Profits/Public-Disclosure-and-Availability-of-Exempt-Organizations>Returns-and-Applications:Public-Disclosure-Requirements-in-General>. See also, <http://www.irs.gov/Charities-&-Non-Profits/Public-Disclosure-and-Availability-of-Exempt-Organizations>Returns-and-Applications:Documents-Subject-to-Public-Disclosure> (describing the tax exempt application as including all supporting documents and any letter issued by the IRS.).

<sup>1185</sup> TIGTA Report, at 18. According to the IRS, the requirement to disclose all information used to approve a tax-exempt organization’s application has changed. The new, current position is that the IRS has discretion to withhold sensitive information such as donor lists or social security numbers.



placed on the special Advocacy Case List for further scrutiny, and forced to linger in limbo.<sup>1186</sup> By contrast, 24 applications with the word “Progressive” or “Progress” were filed with the IRS during the same time period, but only seven of those were added to the advocacy listing.<sup>1187</sup>

In September 2013, *USA Today* published the 2011 list of applications that IRS employees sent to advocacy specialists for additional scrutiny.<sup>1188</sup> The *USA Today* analysis determined that beginning in March 2010, the IRS failed to approve any organizations with “Tea Party” in their name for 27 months.<sup>1189</sup> Left-leaning groups, however, continued to gain tax-exempt status approvals during that time.<sup>1190</sup>

According to the Majority staff report’s analysis of the *USA Today* list, 11 of the 162 organizations listed are likely liberal groups.<sup>1191</sup> This fact is cited to suggest that liberal groups were also treated poorly by the IRS and thus no political bias could have occurred. However, even if 11 liberal groups were included on the list published by *USA Today*, it would still fail to show equal treatment by the IRS of conservative groups and liberal organizations. This is clearly shown by comparing the *USA Today* document to the tax news website, *Tax Analysts*, report of the 170 cases approved by the IRS between 2010 and 2013.<sup>1192</sup> This analysis showed that all of the liberal groups listed by the Majority were ultimately approved by the IRS for tax-exempt status. Further, that the number of “likely” liberal groups on the list represents just slightly more than 6% of the listed organizations only serves to further underline the disparate impact of the targeting on conservative groups.

In addition to using inappropriate criteria to identify Tea Party cases for increased review, the IRS also subjected these groups to invasive, unnecessary, and irrelevant questions. In fact, some groups preferred to remove their applications from consideration rather than comply with the burdensome requests for additional facts.<sup>1193</sup> As has been detailed in the *Ways and Means* analysis, 89 percent of the groups that were asked donor questions were “right leaning.”<sup>1194</sup> One particularly inappropriate and invasive set of questions was directed to a pro-life group.<sup>1195</sup> That group was asked to “please explain [if]...activities, including the prayer meetings held outside of Planned Parenthood, are considered educational,” as well as to explain the “activities at these prayer meetings” and to estimate the “percentage of time spent on prayer meetings as compared with other activities of the organization.”<sup>1196</sup>

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<sup>1186</sup> PSI-IRS-37-000004-14.

<sup>1187</sup> PSI-IRS-37-000004-14. Based on interviews with TIGTA staff, the Subcommittee has determined that of the seven applications with Progressive or Progress in their name, four cases had the word “Progress” in the name and 3 cases had the word “Progressive in the name.”

<sup>1188</sup> <http://www.usatoday.com/story/news/politics/2013/09/17/irs-tea-party-target-list-document/2827925/>.

<sup>1189</sup> <http://www.usatoday.com/story/news/politics/2013/05/14/irs-tea-party-progressive-groups/2158831/>.

<sup>1190</sup> <http://www.usatoday.com/story/news/politics/2013/05/14/irs-tea-party-progressive-groups/2158831/>.

<sup>1191</sup> Majority Report, at 68.

<sup>1192</sup> See Martin A. Sullivan, News Analysis: Substantial Minority of Scrutinized Eos were Not Conservative, *Tax Analysts* (May 30, 2013).

<sup>1193</sup> <http://www.newsmax.com/Newsfront/irs-targeting-tea-party/2014/02/06/id/551274/>

<sup>1194</sup> <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=350126>

<sup>1195</sup> <https://news.yahoo.com/blogs/the-ticket/irs-conservative-group-2009-members-pray-193833144.html>

<sup>1196</sup> <https://news.yahoo.com/blogs/the-ticket/irs-conservative-group-2009-members-pray-193833144.html>

The treatment of Catherine Engelbrecht, by multiple agencies in response to her founding a tax-exempt organization, represents a specific example of an individual being subjected to excess enforcement and targeting. According to a *Forbes* article, Ms. Engelbrecht has seen:

“[t]he organization [she founded] has been questioned by the FBI on numerous occasions; she has had her personal tax returns audited by the IRS; and has also had her small manufacturing business tax returns audited by the IRS. In addition, her business has been subjected to two unscheduled audits by the U.S. Bureau of Alcohol, and Tobacco and Firearms (BATF) and has undergone another unscheduled business audit by the Occupational Safety and Health Administration (OSHA).”<sup>1197</sup>

In another example of IRS overreach, Ms. Lerner, head of the Exempt Organizations division, took it upon herself to review referrals sent to the IRS by non-profit watchdog group, Democracy 21.<sup>1198</sup> These referrals urged the IRS to examine a conservative group’s 501(c)(4) status.<sup>1199</sup> After reviewing the Democracy 21 referral, she found that “the allegations in the documents [against the conservative group] were really damning, so [she] wondered why [the IRS] hadn’t done something with the org.”<sup>1200</sup>

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<sup>1197</sup> <http://www.forbes.com/sites/larrybell/2013/05/30/why-you-should-care-that-the-u-s-government-has-targeted-catherine-engelbrecht-and-her-organizations/>.

<sup>1198</sup> Democracy 21 is a nonprofit organization and its stated mission seeks to “eliminate the undue influence of big money in American politics, prevent government corruption, empower citizens in the political process and ensure the integrity and fairness of government decisions and elections.” See <http://www.democracy21.org/our-mission/>.

<sup>1199</sup> IRSR0000122549-51; see also Letter from Chairman Dave Camp to Attorney General Eric Holder, at 2-6 (April 9, 2014).

<sup>1200</sup> IRSR0000122549-51 (The IRS has the ability to take referrals from outside groups and process them through its Referral Committee to determine if an IRS examination of a 501(c)(4) group is necessary. In the instance described, an organization was looked at by the referral committee twice, but the committee twice voted unanimously to not recommend the group for examination.).



National Public Radio (NPR), on July 30, 2014, published a House Committee on Ways and Means study detailing the disparity in the number of questions posed to conservative applicants for tax exempt status versus the number posed to progressive organizations.<sup>1205</sup> What the House Committee found perfectly highlights the disparate impact that the IRS targeting had on conservative organizations. The analysis determined conservative groups were asked 1552 questions, an average of 14.9 questions per group. Meanwhile, the 7 progressive groups were asked a mere 33 questions in total or 4.7 per group.<sup>1206</sup> This means that conservative groups were asked on average more than 3 times the number of questions posed to progressive organizations. This tremendous discrepancy in the number of question posed to conservative and progressive groups emphasizes the difference in treatment that liberal and conservative groups' received at the hands of the IRS.

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<sup>1205</sup> <http://www.npr.org/blogs/itsallpolitics/2013/07/30/207080580/report-irs-scrutiny-worse-for-conservatives>; *see also* <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=344485>.

<sup>1206</sup> *Id.*

### III. TIGTA AUDIT

#### A. Scope of the Audit

The Subcommittee Majority staff report raises concern that the scope of the TIGTA audit was inadequate. The Majority report asserts that the audit should have been broadened to include additional information, especially information related to the purported targeting of liberal groups.<sup>1207</sup> Based on its review, the Subcommittee Minority finds that the scope of the audit adequately covered the relevant material and the TIGTA findings are valid. The IRS raised no objection to the underlying scope of the audit,<sup>1208</sup> including accepting seven of the nine recommendations TIGTA made.<sup>1209</sup> Additionally, the audit followed standard auditing principles<sup>1210</sup> and all members of the TIGTA audit team have stood by the accuracy of its findings.<sup>1211</sup>

TIGTA initiated the IRS targeting audit for three reasons: (1) concerns articulated by members of Congress and the House Committee on Oversight and Government Reform (OGR);<sup>1212</sup> (2) media reports alleging unfair treatment of certain organizations applying for tax-exempt status;<sup>1213</sup> and (3) receipt of a letter from the Landmark Legal Foundation requesting an investigation to determine whether IRS employees acted inappropriately in their assessment of applications applying for tax-exempt status.<sup>1214</sup>

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<sup>1207</sup>Majority Report, at 185 (“By excluding information about how the IRS handled 501(c)(4) applications filed by liberal groups, the TIGTA audit report presented a distorted analysis of how the IRS processed 501(c)(4) applications.”).

<sup>1208</sup>The IRS reviewed three drafts of the TIGTA report and never once raised the issue of scope. Additionally, the Subcommittee interviewed multiple witnesses from both the IRS and TIGTA and they all stated they did not have a problem with the audit’s scope. *See Subcommittee interview of Troy Paterson (March 21, 2014), Subcommittee interview of Gregory Kutz (March 26, 2014).*

<sup>1209</sup>TIGTA Report, Highlights page; Note: In May 2013, President Obama directed Treasury Secretary Lew to make sure the IRS carried out all of TIGTA’s recommendations. *See* <http://www.whitehouse.gov/the-press-office/2013/05/14/statement-president>.

<sup>1210</sup>Government auditing standards “require that [TIGTA] plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on [their] audit objective.” *See* TIGTA Report, at 4.

<sup>1211</sup>Subcommittee Interview of Troy Paterson (March 21, 2014); Subcommittee Interview of Thomas Seidell (March 19, 2014); Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1212</sup>PSI-TIGTA-03-001404: Letter from House Committee on Oversight and Government Reform to J. Russell George, Treasury Inspector General for Tax Administration (June 28, 2012) (“On March 8, 2012, Committee staff and [TIGTA] staff discussed potential problems with IRS’s recent effort to increase scrutiny of organizations operating under 501(c)(4) status. We understand that...TIGTA is conducting ongoing work to better understand this IRS initiative. We would greatly appreciate if you provided Committee staff periodic updates and a copy of TIGTA’s final report on this matter.”).

<sup>1213</sup>Written testimony of J. Russell George for The House Committee on Ways and Means (May 17, 2013), The House Committee on Oversight and Government Reform (May 22, 2013), and The House Appropriations Subcommittee on Financial Services and General Government (June 3, 2013), at 3; TIGTA Report, at 3; *See e.g.* Pat Holmes, *Agency Questions Tea Party group calls IRS intrusive*, THE COLUMBUS DISPATCH (Feb. 16, 2012) <http://www.dispatch.com/content/stories/local/2012/02/16/tea-party-group-calls-irs-intrusive.html>.

<sup>1214</sup>Letter from Landmark Legal Foundation to TIGTA, (March 23, 2012) <http://www.landmarklegal.org/uploads/IRS%20IG%20Letter%20without%20attachments.pdf> (The Landmark letter

The scope of the audit focused on the internal controls the IRS used to review applications from organizations “potentially involved in political campaign intervention.”<sup>1215</sup> With this focus in mind, the auditors requested all information from the IRS relating to the matter.<sup>1216</sup> J. Russell George, Inspector General for TIGTA, stated in his testimony to multiple Congressional Committees, “[w]e focused our efforts on reviewing the processing of applications for tax exempt status and determining whether allegations made against the IRS were founded.”<sup>1217</sup> TIGTA did not, as it has been suggested, look only at how “Tea Party” cases were treated.<sup>1218</sup> In actuality, TIGTA looked at the entire group of cases the IRS selected for special review from the Emerging Issues tab and put on the Advocacy Case List.

The audit specifically focused on the IRS’s own criteria, which it directed TIGTA to use, that singled out “Tea Party,” “9/12,” and “Patriot” groups for special scrutiny.<sup>1219</sup> TIGTA reviewed both open<sup>1220</sup> and closed<sup>1221</sup> cases from the period of May 2010 through May 2012. TIGTA did so because this was the time period in which the IRS developed and implemented the “inappropriate criteria,” which “focused narrowly on the names and policy position of organizations.”<sup>1222</sup> The criteria were modified from July 2011 to January 2012 and again in May 2012 to look at an organization’s political activities and not their names or policy positions.<sup>1223</sup>

While the Subcommittee Majority staff report criticized TIGTA for only evaluating the “Emerging Issues” tab on the BOLO spreadsheet and not the other tabs such as “Watch List” or “TAG Historical,”<sup>1224</sup> the Subcommittee Minority has found that TIGTA’s actions were appropriate. Auditors reviewed the “Emerging Issues” tab on the BOLO spreadsheet because the IRS stated this was the only tab used to identify potential political cases for additional scrutiny.<sup>1225</sup> The Subcommittee Majority staff report points to an email from Lois Lerner to

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also requested TIGTA look into whether IRS employees acted at the command of “politically motivated superiors.”)

<sup>1215</sup> TIGTA Report, at 22.

<sup>1216</sup> Subcommittee Interview of Thomas Seidell (March 19, 2014); Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1217</sup> Written testimony of J. Russell George for The House Committee on Ways and Means (May 17, 2013), The House Committee on Oversight and Government Reform (May 22, 2013), and The House Committee on Appropriations Subcommittee on Financial Services and General Government (June 3, 2013), at 3.

<sup>1218</sup> Letter from J. Russell George, Treasury Inspector General for Tax Administration to Rep. Sander Levin (June 26, 2013).

<sup>1219</sup> Subcommittee Interview of J. Russell George (April 22, 2014); Subcommittee Interview of Troy Paterson (March 21, 2014).

<sup>1220</sup> “Open cases” refer to cases in which their tax exempt status had not yet been determined.

<sup>1221</sup> “Closed cases” refer to cases in which their tax exempt status had been determined.

<sup>1222</sup> TIGTA Report, at 6-7 & 22; Written testimony of J. Russell George for The House Committee on Ways and Means (May 17, 2013), The House Committee on Oversight and Government Reform (May 22, 2013), and The House Committee on Appropriations Subcommittee on Financial Services and General Government (June 3, 2013), at 4-5.

<sup>1223</sup> TIGTA Report, at 6-7 & 22; Written testimony of J. Russell George for The House Committee on Ways and Means (May 17, 2013), The House Committee on Oversight and Government Reform (May 22, 2013), and The House Committee on Appropriations Subcommittee on Financial Services and General Government (June 3, 2013), at 4-5. In January 2012, the criteria was altered to again focus on organizations policy positions and remained in place until May 2012. *See* TIGTA Report, at 7.

<sup>1224</sup> Majority Report, at 185.

<sup>1225</sup> Subcommittee Interview of Gregory Kutz (March 26, 2014); Subcommittee Interview of Mike McCarthy (April 30, 2014).



TIGTA officials, asserting that “the IRS again brought its treatment of liberal groups to the attention of senior TIGTA personnel.”<sup>1226</sup> The email, however, shows that Ms. Lerner did not feel that there is any political motivation and shows her misunderstanding of the purpose of the audit. In addition, the Majority conflates being on the BOLO list with being selected for additional scrutiny.<sup>1227</sup> The BOLO list itself does not signal any additional attention paid to a particular group.

The Lerner email referenced also shows that Lois Lerner *believed* TIGTA’s audit related to the question whether the IRS was politically motivated, and that was her focus. TIGTA auditors attempted to persuade her that the audit was about whether certain groups were *targeted* by the IRS. Ms. Lerner ignored this and instilled her own view of the audit’s purpose into the conversation when the auditors explicitly stated they were not attempting to determine if groups were liberal or conservative.

The Subcommittee Majority staff report indicates that the TIGTA audit was done solely at the behest of the House Oversight and Government Reform Committee to look into whether the IRS was specifically targeting “Tea Party” groups.<sup>1228</sup> That allegation is unfounded. Staffers from OGR met in early 2012 with TIGTA to discuss concerns raised by constituent “Tea Party” groups.<sup>1229</sup> Around the same time, the media aired multiple reports regarding the same issue.<sup>1230</sup> TIGTA then completed its standard preliminary review to determine the need for an audit and concluded it would begin a full audit into the IRS’s handling of political cases.<sup>1231</sup> During

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<sup>1226</sup> Majority Report, at 162 (quoting Lerner’s email “I told them my understanding is that the audit was to determine whether the IRS was acting in a politically motivated manner – not whether the earlier articulation of the criteria looked bad. However, that doesn’t seem to be the focus. They have said they aren’t looking at whether the organizations are conservative or liberal because that is too difficult to figure out. They have also acknowledged that there are both conservative and liberal organizations on the list of advocacy cases. So, I’m not sure how they are looking at whether we were politically motivated, or what they are looking for with regard to targeting. They didn’t seem to understand the difference between IRS acting in a politically motivated manner and front line staff people using less than stellar judgment.”).

<sup>1227</sup> Majority Report, at 185-186.

<sup>1228</sup> Majority Report, at 5 (“TIGTA’s Office of Audit undertook the audit at the request of the House of Representatives Committee on Oversight and Government Reform.”).

<sup>1229</sup> Subcommittee Interview of Gregory Kutz (March 26, 2014); Subcommittee Interview of J. Russell George (April 22, 2014).

<sup>1230</sup> Republican Senators expressed concern that the IRS targeted conservative groups. See Christopher Santarelli, *GOP Senators Call on IRS to Explain Tea Party Bullying*, THE BLAZE (March 14, 2012) <http://www.theblaze.com/stories/2012/03/14/gop-senators-call-on-irs-to-explain-tea-party-treatment/>; Mike Zapler, *GOP senators to IRS: Don’t pick on Tea Party groups*, POLITICO (March 14, 2012) <http://www.politico.com/blogs/on-congress/2012/03/gop-senators-to-irs-dont-pick-on-tea-party-groups-117460.html>. Tea party and other conservative groups claim the IRS is preventing them from gaining tax-exempt status. See Alan Fram, *IRS Battling Tea Party Groups Over Tax-Exempt Status*, THE HUFFINGTON POST (March 1, 2012) [http://www.huffingtonpost.com/2012/03/01/irs-tea-party-tax-exempt\\_n\\_1314488.html](http://www.huffingtonpost.com/2012/03/01/irs-tea-party-tax-exempt_n_1314488.html); 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-non-profit-status/>. IRS sends Tea Party groups extensive questionnaires. See Janie Lorber, *IRS Oversight Reignites Tea Party Ire*, ROLL CALL (March 8, 2012) [http://www.rollcall.com/issues/57\\_106/IRS-Oversight-Reignites-Tea-Party-Ire-212969-1.html](http://www.rollcall.com/issues/57_106/IRS-Oversight-Reignites-Tea-Party-Ire-212969-1.html); David Martosko, *Congressional investigations sought over IRS ‘assault’ on Tea Party groups*, THE DAILY CALLER (Feb. 22, 2012) <http://dailycaller.com/2012/02/22/congressional-investigations-sought-over-irs-assault-on-tea-party-groups/>.

<sup>1231</sup> Subcommittee Interview of Timothy Camus (April 7, 2014).

interviews with Subcommittee staff, every TIGTA employee stated that at no time was the audit done for, or at the directive of, OGR Chairman Issa, nor did he or his staff influence the audit process. During his interview, the Audit Director, Troy Paterson consistently rejected the idea that TIGTA's audit narrowly focused on processing of Tea Party groups.<sup>1232</sup> Instead, Mr. Paterson stated that TIGTA's audit looked at the full history of the Tea Party/Advocacy Organization case listing.<sup>1233</sup> At no point during the audit process did TIGTA brief any congressional members or staffers as to the progress of the audit, including those staffers with the Oversight Committee.<sup>1234</sup>

Multiple TIGTA officials confirmed the audit was completed and only released earlier than planned due to Lois Lerner's statement and apology at an American Bar Association conference on May 10, 2013.<sup>1235</sup> It was *not* due to pressure from OGR and Congressional Representatives.<sup>1236</sup> TIGTA has verified that the audit was complete and the report in the final editing stages for release in the next week or two.<sup>1237</sup> Moreover, prior to the report's release, TIGTA gave the IRS three opportunities to comment on the draft report to ensure its accuracy.<sup>1238</sup>

Careful analysis of the TIGTA report proves that it properly found that the IRS's internal controls for processing political applications caused systematic delays and burdensome questioning of groups. The TIGTA audit was pursued based on standard procedures and completed at the time of its release.

## **B. Office of Investigations Email Review**

One primary contention in the Subcommittee Majority report is that TIGTA's Deputy Inspector General for Investigations Timothy Camus's findings and analysis from a limited email review should have been included in the audit report.<sup>1239</sup> The Majority report erroneously believes that including this information would have definitively shown no explicit directive existed and no political bias was present. TIGTA's Assistant Inspector General for Audit

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<sup>1232</sup> Subcommittee Interview of Troy Paterson (March 21, 2014).

<sup>1233</sup> Subcommittee Interview of Troy Paterson (March 21, 2014).

<sup>1234</sup> Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1235</sup> Subcommittee Interview of Troy Paterson (March 21, 2014); Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1236</sup> Subcommittee Interview of Troy Paterson (March 21, 2014); Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1237</sup> Subcommittee Interview of Thomas Seidell (March 19, 2014); Subcommittee Interview of Troy Paterson (March 21, 2014); Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1238</sup> Subcommittee Interview of Thomas Seidell (March 19, 2014); Subcommittee Interview of Troy Paterson (March 21, 2014); Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1239</sup> See Majority Report at 158 ("it is difficult to understand why [the Office of Investigations review] was excluded from the report."). It has been suggested that Mr. Camus's statements are definitively conclusive that there was no political motivation in the selection of applications. The Subcommittee Minority cannot conclude the same as this was a very narrow review of a very few email accounts. Moreover, the Subcommittee Minority believes that if there were a political directive, it is unlikely that it would have been put in an email.



Gregory Kutz and Mr. Camus, however, both agreed that the email search only confirmed the findings in the report and did not add anything new.<sup>1240</sup>

During the audit of the IRS's controls and procedures for processing 501(c)(4) applications, TIGTA's Office of Investigations (OI) played a very minor role. In spite of this, the Subcommittee Majority relies heavily on the Office of Investigation's supposed email search findings. Mr. Kutz stated in an interview with the Subcommittee that at some point during the audit process, an IRS employee told the auditors about an email that could be a "smoking gun" directive to target specific political organizations.<sup>1241</sup> Since the TIGTA auditors had previously requested all relevant emails from IRS employees and could not locate this particular email in the produced documents, Mr. Kutz was concerned his team was not receiving all relevant emails.<sup>1242</sup>

In an attempt to locate the possible "smoking gun" email, Mr. Kutz requested that Mr. Camus use OI's technical capabilities to perform a keyword search of relevant employee emails in order to locate this email.<sup>1243</sup> The request for assistance from the investigative division was necessary because auditors do not have the ability to retrieve emails not voluntarily provided to them by the IRS.<sup>1244</sup> After discussions between Inspector General George, Mr. Camus, and Mr. Kutz, OI pulled the emails from the actual IRS servers for five IRS employees and ran a keyword search to narrow the total number of documents and emails. The review pulled 2,277 emails or documents that had a keyword "hit". These pulled emails were then reviewed by a member of Mr. Camus's team.<sup>1245</sup> No email containing an explicit directive was found.<sup>1246</sup> After the review was completed, Mr. Camus detailed his findings and provided an analysis on the content of the emails.<sup>1247</sup> As mentioned above, Mr. Camus believed the email search results did not add anything new to the TIGTA report and did not require inclusion in the report.

One additional point of concern was the removal of a footnote in the draft report that referenced the referral to OI by the audit team.<sup>1248</sup> According to witness testimony, the footnote was removed at the request of Mr. Camus.<sup>1249</sup> He sought removal because this was not an official investigation request and, typically, it is inappropriate to disclose law enforcement practices.<sup>1250</sup> Overall, the email search that was conducted was a limited search of only four

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<sup>1240</sup> Subcommittee Interview of Timothy Camus (April 7, 2014); Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1241</sup> Subcommittee Interview of Gregory Kutz (March 26, 2014).

<sup>1242</sup> PSI-IRS-37-000002-3.

<sup>1243</sup> Subcommittee Interview of Gregory Kutz (March 26, 2014); Subcommittee Interview of Timothy Camus (April 7, 2014); Subcommittee Interview of J. Russell George (April 22, 2014).

<sup>1244</sup> Subcommittee Interview of Gregory Kutz (March 26, 2014); Subcommittee Interview of Timothy Camus (April 7, 2014); Subcommittee Interview of J. Russell George (April 22, 2014).

<sup>1245</sup> PSI-TIGTA-04-000015 (TIGTA Office of Investigations Email Review results).

<sup>1246</sup> Subcommittee Interview of Gregory Kutz (March 26, 2014); Subcommittee Interview of Timothy Camus (April 7, 2014); Subcommittee Interview of J. Russell George (April 22, 2014).

<sup>1247</sup> PSI-IRS-37-000001.

<sup>1248</sup> IRSR0000014719-69 (Draft TIGTA Report, at 6 n. 15).

<sup>1249</sup> Subcommittee Interview of Timothy Camus (April 7, 2014).

<sup>1250</sup> Subcommittee Interview of Gregory Kutz (March 26, 2014); Subcommittee Interview of Timothy Camus (April 7, 2014); Subcommittee Interview of J. Russell George (April 22, 2014); Subcommittee Interview of Mike McCarthy (April 30, 2014).

keywords and five IRS employee email accounts, none of which were employees in Washington, D.C.<sup>1251</sup> According to former TIGTA chief counsel, Michael McCarthy, the OI email search was not a “definitive statement,” but instead was a very limited review to locate a purported document.<sup>1252</sup> This limited search, combined with recent news of the loss of Lois Lerner emails from 2009 to 2011 and the loss of six other IRS employee hard drives, further underscores the inability to conclude no political bias was involved in the IRS’s targeting of conservative groups.<sup>1253</sup>

### C. Advocacy Case List

According to the Majority Report, “TIGTA failed to analyze IRS treatment of any non-conservative cases.”<sup>1254</sup> This assertion is misleading for a number of reasons. During the audit, TIGTA requested the IRS provide all applications for 501(c)(4) tax-exempt status that the IRS sent off for additional scrutiny for the period in which the improper criteria were in place. In response, the IRS provided TIGTA the list of all “potential political cases” selected for heightened scrutiny from the period of May 2010 to May 2012.<sup>1255</sup> The 298 cases contained in the list, although referred to as “Advocacy Cases” by the time of the audit, had been referred to as “Tea Party Cases” until July 2011.<sup>1256</sup> Of these 298 cases, 72 included “Tea Party” in their name, 11 included “9/12” in their name, and 13 included “Patriots” in their name. The remaining 202 applications were listed as “other” and two applications were incomplete.<sup>1257</sup> The criteria that caused an application to be routed to an IRS specialists group for processing these applications related only to the “Emerging Issues” tab on the BOLO spreadsheet.<sup>1258</sup> Cases identified as using these criteria then went on to receive a heightened review by a team of specialists to determine whether or not the organization was engaged in “significant political campaign intervention.”<sup>1259</sup>

TIGTA first reviewed the hard copy application for every case listed in the Advocacy Case List, a total of 298 applications. TIGTA categorized the 298 applications based on the exact same criteria used by the IRS.<sup>1260</sup> The IRS specifically stated that it looked for the names

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<sup>1251</sup> The OI email review searched the email account of five IRS employees located in the Exempt Organizations Determinations Unit in Cincinnati. The search looked for the keywords: “Tea,” “Patriots,” “9/12,” and “(c)(4).” The email review searched a total 16,691 emails, resulting in 5,617 total “hits” found in 2,277 emails/documents. Jim Jackson reviewed the 2,277 emails to look for a directive to target conservative groups. *See* OI Email Review results PSI-TIGTA-04-000015.

<sup>1252</sup> Subcommittee Interview of Mike McCarthy (April 30, 2014).

<sup>1253</sup> The OI email review searched the email account of five IRS employees located in the Exempt Organizations Determinations Unit in Cincinnati. The search looked for the keywords: “Tea,” “Patriots,” “9/12,” and “(c)(4).” The email review searched a total 16,691 emails, resulting in 5,617 total “hits” found in 2,277 emails/documents. Jim Jackson reviewed the 2,277 emails to look for a directive to target conservative groups. *See* OI Email Review results PSI-TIGTA-04-000015; *See e.g.* Stephanie Condon, IRS Official Says Lois Lerner’s Missing Emails May not be Lost, CBS NEWS (July 22, 2014) <http://www.cbsnews.com/news/irs-official-says-lois-lerners-missing-emails-may-not-be-lost/>

<sup>1254</sup> Majority Report, at 146.

<sup>1255</sup> TIGTA Report, at 10.

<sup>1256</sup> TIGTA Report, at 5 n.13.

<sup>1257</sup> TIGTA Report, at 8.

<sup>1258</sup> TIGTA Report, at 6; Subcommittee Interview of Thomas Seidell (March 19, 2014).

<sup>1259</sup> TIGTA Report, at 5.

<sup>1260</sup> Subcommittee Interviews of TIGTA employees.

“Tea Party,” “9/12,” and “Patriots” to determine whether or not a case was “potentially political.”<sup>1261</sup> The IRS did not explicitly use any other names to select applications for additional scrutiny.<sup>1262</sup> The IRS also used criteria related to an applicant’s policy positions, including: “issues include government spending, government debt or taxes” and “statement in the case file criticize how the country is being run.”<sup>1263</sup> After categorizing the cases using the specific names, TIGTA placed the remaining cases in the “other” category.<sup>1264</sup>

TIGTA did not identify, by name, the 202 “other” cases in the report for good reason.<sup>1265</sup> First, given the IRS criteria, TIGTA would have had to subjectively decide how to potentially list the 202 different names. It opted instead to objectively use only the IRS’s own criteria. Second, 26 U.S.C. § 6103 prevents TIGTA from releasing individual taxpayer information. Thus any group with a name that, if released would violate 6103 protections, TIGTA would have had to redact or withhold.<sup>1266</sup> Third, it was too difficult to break the groups out by policy positions. During interviews with the Subcommittee, TIGTA auditors explained that the IRS revenue agents often failed to indicate why an application was forwarded to the Advocacy Case List.<sup>1267</sup> This made it difficult for TIGTA to objectively provide a further breakdown of the remaining 202 other applications.

The Subcommittee Majority staff report argues that TIGTA did not have the resources to complete a review of all 298 cases.<sup>1268</sup> That conclusion is inconsistent with the available facts. TIGTA was able to and did in fact review all 298 applications that were found on the Advocacy Case List. On top of reviewing the 298 cases, TIGTA reviewed an additional 331 cases to determine if the IRS failed to identify cases for additional review.<sup>1269</sup> Again, TIGTA reviewed the entire application for each of the 298 cases and discussed these cases with the IRS.

#### **D. Conclusion of TIGTA Section: Audit Was Accurate and Proper**

TIGTA’s audit was a focused review of whether “the IRS targeted specific groups applying for tax-exempt status, delayed the processing of targeted groups’ applications, and requested unnecessary information from targeted groups.”<sup>1270</sup> TIGTA’s auditors looked at the IRS’s processing of potential political cases to determine if IRS personnel improperly forwarded cases for review. The auditors found that the IRS used inappropriate criteria to select certain

<sup>1261</sup> Subcommittee Interviews of TIGTA employees.

<sup>1262</sup> Subcommittee Interviews of TIGTA employees.

<sup>1263</sup> TIGTA Report, at 6, figure 3. *See also*, IRSR0000002737 (Lerner Briefing Document (June 2011)).

<sup>1264</sup> Subcommittee Interviews of TIGTA employees.

<sup>1265</sup> *See* TIGTA Report, at 8.

<sup>1266</sup> *A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny: Hearing before the S. Comm. on Finance*, 113<sup>th</sup> Cong. 26-27 (2013) (statement of J. Russell George, Treasury Inspector General for Tax Administration and statement of Steven Miller, Acting Commissioner, Internal Revenue Service); Subcommittee Interview of Troy Paterson (March 21, 2014).

<sup>1267</sup> Subcommittee Interviews of TIGTA employees.

<sup>1268</sup> Majority Report, at 143 (The Subcommittee Majority staff report states that “Mr. Paterson told the Subcommittee that TIGTA concentrated on the cases that were flagged using what looked to be inappropriate selection criteria, and didn’t have the resources to analyze the other 200 cases.”).

<sup>1269</sup> *See* TIGTA Report at 9, 22-23 (The auditors created two statistical samples to review open or closed 501(c)(4) applications from the general inventory of cases the IRS received).

<sup>1270</sup> TIGTA Report, Highlights page.

groups by using a group's name or policy position. In doing so, the IRS improperly forwarded their applications for review. Simply stated, the IRS treated these conservative and Tea Party groups differently from other non-conservative groups.

The Subcommittee Majority draws a false equivalency. The Majority report alleges that had TIGTA looked into the IRS's treatment of liberal groups, TIGTA would have found that liberal groups were treated the same or similarly as conservative groups. The evidence, however, points to the contrary.<sup>1271</sup> Only conservative groups were inappropriately selected for additional scrutiny solely by their name or policy positions. A selection that often occurred irrespective of the activities listed in the group's application. Finally, the ratio of conservative groups to liberal groups selected for scrutiny, plus the absence of complaints by liberal groups to TIGTA and elected officials, demonstrates that these groups were not targeted *en masse* or treated unfairly.<sup>1272</sup>

Overall, Subcommittee staff interviewed eight people from TIGTA regarding the audit and reviewed 20,000 pages of documents produced by TIGTA. It is clear that the TIGTA audit was unbiased, proper and, most importantly, accurate. The audit in this case has withstood all of the criticisms to remain an accurate depiction of the faulty processes used by the IRS.

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<sup>1271</sup> See e.g., Letter from J. Russell George, Treasury Inspector General for Tax Administration to Rep. Sander Levin (June 26, 2013) at 2-3 ("Progressive" was found in TAG Historical section of BOLO and no evidence was found that this section was used as selection criteria between May 2010 and May 2012).

<sup>1272</sup> Subcommittee Interview of J. Russell George (April 22, 2014); Subcommittee Interview of Troy Paterson (March 21, 2014).

## **V. CONCLUSION OF SUBCOMMITTEE MINORITY STAFF REPORT**

Based on the facts identified in the Subcommittee's investigation, the IRS used inappropriate criteria to target specific conservative groups for increased scrutiny and delay. While the Majority report attempts to draw similarities between the IRS's treatment of liberal and conservative groups, the vast distinctions in treatment prove that conservative groups received the bulk of unfair and burdensome treatment. The IRS failed to use its own "facts and circumstances" test, leading IRS employees to focus on a group's name or policy positions instead of the group's potential political activities. This significant bias created a disparate impact on conservative groups. As shown above, the numbers and analysis by TIGTA and others clearly demonstrate that TIGTA's conclusions were proper and the objections raised by numerous conservative groups valid. TIGTA's audit provided a prudent statistical analysis of the inappropriate treatment of conservative groups by the IRS.

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