

U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman



**How Politics Led the IRS to Target Conservative Tax-Exempt
Applicants for their Political Beliefs**

Staff Report
113th Congress

June 16, 2014

Executive Summary

When the President speaks, people listen. The Presidential Bully Pulpit is a unique and indisputably powerful tool available to the President alone to persuade Americans and shape a national agenda. President Barack Obama – a highly celebrated speaker noted for his oratory – exerts this power with uncommon vigor. President Obama’s ability to command the rapt attention of the national news media, and by extension the American people, has become his most effective and favored rhetorical tool. With his Bully Pulpit, President Obama wields the power to singlehandedly shape the national dialogue. In this case, President Obama’s Bully Pulpit led to the Internal Revenue Service’s targeting of conservative tax-exempt applicants.

On the evening of January 27, 2010, President Barack Obama stood in the chamber of the House of Representatives to deliver his annual State of the Union Address. Speaking to the assembled audience of Congressmen, Senators, Cabinet officials, and Supreme Court Justices – and to the millions of Americans watching on television – President Obama delivered a stunning rebuke of the Supreme Court. “With all due deference to separation of powers,” the President intoned, “last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit in our elections.”¹ The President continued: “I don’t think American elections should be bankrolled by America’s most powerful interests, or worse by foreign entities. They should be decided by the American people. And I’d urge Democrats and Republicans to pass a bill that helps to correct some of these problems.”²

The Supreme Court decision, of course, was its *Citizens United v. Federal Election Commission* decision, in which the Court affirmed free speech by striking down certain arbitrary limits on political spending.³ The bill the President urged to be passed became known as the DISCLOSE Act, sponsored by Senator Charles Schumer (D-NY) and Representative Chris Van Hollen (D-MD).⁴ In the months after the President’s State of the Union Address, he kept up the rhetorical assault as he railed against the decision in campaign-style speeches across the country. In these speeches, the President called conservative groups “shadowy” entities with “innocuous” and “benign-sounding” names that “are running millions of dollars of attack ads against Democratic candidates.”⁵ Calling them “phony” and “front groups,” the President urged a “fix” to the *Citizens United* decision, which he believed allowed these nefarious groups to “pose” as nonprofits.⁶ The President’s allies in Congress and elsewhere echoed this call, working

¹ The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).

² *Id.*

³ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

⁴ See H.R. 5175, 111th Cong. (2010); S. 3628, 111th Cong. (2010).

⁵ See, e.g., The White House, Remarks by the President on the DISCLOSE ACT (July 26, 2010); The White House, Weekly Address: President Obama Calls on Congress to Enact Reforms to Stop a “Corporate Takeover of Our Elections” (May 1, 2010); The White House, Remarks by the President at Finance Reception for Congressman Sestak (Sept. 20, 2010); The White House, Remarks by the President at DNC Gen44 Event (Sept. 30, 2010).

⁶ See, e.g., The White House, Weekly Address: President Obama Castigates GOP Leadership for Blocking Fixes for the *Citizens United* Decision (Sept. 18, 2010); The White House, Remarks by the President at a DNC Finance Event in Chicago, Illinois (Aug. 5, 2010).; The White House, Remarks by the President at an Event for Senator Boxer in Los Angeles, California (Oct. 22, 2010).

aggressively to delegitimize the Court’s decision and Constitutional protections for nonprofit political speech.

The President’s rhetoric against *Citizens United* and so-called “shadow” groups “posing” as nonprofits led to the IRS’s targeting of conservative tax-exempt applicants. The Committee’s investigation shows that as the President generated attention to the issue of nonprofit political speech in 2010, IRS employees followed his public messaging. With jurisdiction over nonprofits and tax law, IRS employees read and acted upon the news reports. In this way, the IRS targeting is – and always has been – rooted in political machinations. Put simply, as the President’s political rhetoric drove the national dialogue and shaped public opinion, the IRS received and responded to the political stimuli.

A review of evidence available to the Committee substantiates this conclusion. In February 2010, the IRS identified and elevated the initial conservative tax-exempt applications due to concerns about media attention surrounding the Tea Party. Likewise, in September 2010, in response to an article in a tax-law journal, former IRS official Lois Lerner initiated a “c4 project” to assess the political activity of certain nonprofits.⁷ In October 2010, after reading news reports that nonprofits were becoming increasingly active in political speech following *Citizens United*, the Justice Department arranged a meeting with the IRS to discuss the decision’s effect on campaign finance law.⁸ Most tellingly, Lerner talked in October 2010 about political pressure on the IRS to “fix the problem” posed by *Citizens United*, saying that “everyone is up in arms” about the decision and that “everybody is screaming at [the IRS] right now: ‘fix it now before the election.’”⁹

In the months since the initial outrage about the IRS targeting faded from public view, congressional Democrats have sought to downplay the IRS wrongdoing. For it to be scandal, they said, the President *himself* must be personally involved. For it to merit attention, they argued, the White House must have *ordered* the targeting. For the public outrage to be warranted, these Democrats alluded, there must be a direct link from the Oval Office to the IRS. Hiding behind these straw men, the defenders of the Obama Administration claimed that the absence of a direct order to target conservatives necessarily meant that there was no political element to the IRS targeting.

The Committee’s investigation shows that the IRS targeting *was* political. It was political in both its genesis and its effect. The IRS targeting was the result of political pressure on the agency to “fix the problem” of nonprofit political speech. This political pressure was generated by campaign-style rhetoric from President Obama and his allies in opposition to the Supreme Court’s *Citizens United* decision and so-called “shadowy” groups “posing” as nonprofits. As a result of the IRS targeting, hundreds of tax-exempt applicants were singled out for scrutiny on undeniably political grounds – that is, that they intended to engage in political speech.

⁷ E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191032]

⁸ Transcribed interview of Richard Pilger, U.S. Dep’t of Justice, in Wash., D.C. (May 6, 2014).

⁹ “Lois Lerner Discusses Political Pressure on IRS in 2010,” www.youtube.com (last visited May 12, 2014) (transcription by Committee).

This staff report details the immense rhetorical barrage orchestrated by the President to delegitimize *Citizens United* and vilify the conservative nonprofit groups the White House feared would be helped by it. The report expands upon the Committee's previous staff report, which found that the IRS systematically treated conservative applicants differently from other tax-exempt applicants.¹⁰ This report chronicles the public statements about the *Citizens United* decision, the DISCLOSE Act, and nonprofit political speech made by President Obama, his senior White House advisors, and other prominent Democrats throughout 2010. These officials spoke loudly and repeatedly about overturning *Citizens United*, mandating reporting requirements for nonprofit political speech, and criticizing donors to nonprofits for engaging in anonymous political speech. When considered in this light, it is apparent that the IRS targeting of conservative tax-exempt applicants initiated and progressed in the context of intense political pressure led by the President for action on politically active nonprofits. It is beyond dispute that the President's political rhetoric contributed to IRS efforts that resulted in the IRS's targeting of conservative tax-exempt groups because of their political beliefs.

¹⁰ H. COMM. ON OVERSIGHT & GOV'T REFORM, DEBUNKING THE MYTH THAT THE IRS TARGETED PROGRESSIVES: HOW THE IRS AND CONGRESSIONAL DEMOCRATS MISLED AMERICA ABOUT DISPARATE TREATMENT (Apr. 7, 2014).

Findings

- The President’s political rhetoric in opposition to the Supreme Court’s *Citizens United* decision and conservative nonprofits engaged in political speech led to the Internal Revenue Service’s targeting of tax-exempt applicants.
- Beginning in January 2010 and continuing through the November 2010 midterm election, President Obama orchestrated a sustained public campaign against *Citizens United* and nonprofit political speech critical of the President’s policies. This rhetorical campaign reached a crescendo in October 2010 as the President made almost daily public statements denouncing *Citizens United* and conservative groups with “benign-sounding” names “posing” as nonprofits. The President even singled out one so-called “shadowy” group, Americans for Prosperity, by name.
- The White House and congressional Democrats opposed *Citizens United* in part because it allowed nonprofits to engage directly in political speech critical of the Administration’s policies. The anonymity afforded to nonprofit contributors prevented the Administration and its allies from retaliating. As the President complained to a group of Democratic donors: “Nobody knows who they are. . . . [N]obody knows where the money is coming from.”
- Senior White House officials, Democratic Members of Congress, and other left-wing political figures and commentators echoed the President’s rhetoric. The Democrat-led Congress convened hearings to examine *Citizens United* and considered legislation to require disclosure of contributors to nonprofits engaged in political speech. The White House and left-leaning commentators supported these measures.
- Democratic Members of Congress, the Democratic Congressional Campaign Committee, and liberal advocacy organizations urged the IRS to investigate conservative nonprofits engaged in political speech.
- The IRS was acutely aware through articles in the national news media of the prevailing political rhetoric condemning *Citizens United* and the influence of nonprofits in the midterm election. One senior IRS official even cited the President’s “salvo” against *Citizens United* in telling her colleagues to expect continued media attention surrounding the issue of anonymous contributors to nonprofits engaged in political speech.
- The IRS internalized the political pressure urging the tax agency to take action on nonprofit political speech. In response to a news article about the Democratic Congressional Campaign Committee’s complaint against Americans for Prosperity, Lois Lerner wrote to her boss: “We won’t be able to stay out of this – we need a plan!” Lerner later initiated a project to examine 501(c)(4) political speech in response to an article in a tax-law journal.

- The IRS was attuned to political pressure exerted by congressional Democrats to address the shortcomings of *Citizens United*. Lerner expressed her support for the DISCLOSE Act’s donor disclosure requirements for nonprofits, writing: “Wouldn’t that be great?”
- As Democratic Members of Congress urged the IRS to investigate a conservative group, Crossroads GPS, Lerner asked a subordinate to look at the group. Echoing themes from the President’s rhetorical campaign and acknowledging the media attention on nonprofit political speech, Lerner wrote: “The organization at issue is Crossroads GPS, which is on the top of the list of c4 spenders in the last two elections. It is in the news regularly as an organization that is not really a c4, rather it is only doing political activity – taking in money from large contributors who wish to remain anonymous and funneling it into tight electoral races.”
- During a speech on October 19, 2010 – in the midst of the President’s rhetorical barrage – Lerner articulated the immense political pressure on the IRS to “fix the problem” posed by *Citizens United*. Echoing the President’s State of the Union Address, Lerner said that the Supreme Court overturned a hundred-year precedent and “everyone is up in arms because they don’t like it.” She continued: “So everybody is screaming at us right now: ‘Fix it now before the election. Can’t you see how much these people are spending?’”
- Lerner’s concern about the *Citizens United* decision caused her to order Tea Party applications to proceed through an unprecedented multi-tier review. As she wrote: “Tea Party Matter very dangerous. This could be the vehicle to go to court on the issue of whether Citizen’s [sic] United overturning ban on corporate spending applies to tax exempt rule.”
- The Justice Department arranged a meeting with Lerner on October 8, 2010, after Jack Smith, Chief of the Department’s Public Integrity Section, read an article in the *New York Times* about the influence of nonprofits in the midterm election. The IRS sent 21 disks containing 1.1 million pages of nonprofit tax-return information – including confidential taxpayer information – to the FBI in advance of this meeting. The Justice Department and the FBI have continued a “dialogue” about potential criminal investigations of nonprofits engaged in political speech.
- The IRS enjoyed a close and mutually beneficial relationship with congressional Democrats. The IRS received tips from Democratic sources about upcoming actions concerning nonprofit political speech, and the IRS even assisted Senator Carl Levin (D-MI) in preparing letters to the agency criticizing nonprofit political speech.

Table of Contents

Executive Summary	i
Findings.....	iv
Table of Contents	vi
Table of Figures	vii
Introduction.....	1
The Supreme Court’s affirmation of fundamental free speech rights in <i>Citizens United</i>	2
The President’s public campaign against <i>Citizens United</i> and nonprofit political speech	4
January 2010	5
February 2010	7
March 2010	11
April 2010	13
May 2010	15
June 2010	19
July 2010.....	22
August 2010.....	24
September 2010	26
October 2010.....	35
November 2010.....	48
The IRS’s awareness of political rhetoric to fix the problem of <i>Citizens United</i>	48
The IRS’s awareness of media interest in nonprofit political speech.....	48
The Justice Department meets with Lois Lerner in the wake of media attention about nonprofit political speech	52
Lois Lerner articulates the prevailing political pressure on the IRS.....	59
The IRS’s receptiveness to political pressure from Congress	61
Transcribed interviews confirm the IRS’s awareness of the political pressure	65
Conclusion	68
Appendix: A timeline of the genesis of the IRS targeting	69

Table of Figures

Figure 1: E-mail from Sharon Camarillo to Cindy Thomas, Feb. 25, 2010	49
Figure 2: E-mail from Michelle Eldridge to Steven Miller et al., Aug. 6, 2010.....	50
Figure 3: E-mail from Lois Lerner to Sarah Hall Ingram, Aug. 31, 2010	50
Figure 4: E-mail from Lois Lerner to Cheryl Chasin, Sept. 16, 2010	50
Figure 5: E-mail from Sarah Hall Ingram to Terry Lemons et al., Sept. 21, 2010.....	51
Figure 6: E-mail from Jack Smith to Raymond Hulser et al., Sept. 21, 2010	53
Figure 7: E-mail from Sarah Hall Ingram to Steve Miller et al., Sept. 29, 2010.....	54
Figure 8: Internal IRS Memorandum on Justice Department Meeting about Nonprofit Political Speech.....	55
Figure 9: E-mail exchange between Joseph Urban & Nancy Marks, Oct. 19, 2010	56
Figure 10: E-mail exchange between Cheryl Chasin & Judith Kindell, Oct. 5, 2010.....	57
Figure 11: E-mail from Lois Lerner to Sherry Whitaker et al., Oct. 5, 2010	57
Figure 12: E-mail exchange between Lois Lerner & Richard Pilger, Oct. 6, 2010.....	58
Figure 13: E-mail from Richard Pilger to Unnamed FBI Agent, Oct. 5, 2010.....	59
Figure 14: E-mail from Brad McConnell to Jonathan Davis, Oct. 12, 2010	61
Figure 15: E-mail from Lois Lerner to Joseph Urban et al., Feb. 13, 2012.....	63
Figure 16: E-mail from Floyd Williams to Doug Shulman et al., Mar. 8, 2012.....	63
Figure 17: E-mail from Kaye Meier to Catherine Barre, Sept. 26, 2012.....	64
Figure 18: E-mail from Catherine Barre to Lois Lerner, Jan. 25, 2013.....	65

Introduction

The Internal Revenue Service’s targeting of conservative tax-exempt applicants is inherently political. The targeting began in early 2010 in the wake of the Supreme Court decision in *Citizens United v. Federal Election Commission*,¹¹ a decision vigorously and vocally opposed by the President and congressional Democrats. Throughout 2010, in the run-up to the congressional midterm election, President Obama and high-profile Democrats repeatedly criticized the decision and conservative nonprofits they feared would benefit from it. The intense political rhetoric generated by the President led to the IRS’s systematic scrutiny and delay of conservative tax-exempt applicants.

Evidence obtained by the Committee in the course of its investigation shows that the IRS – and, in particular, former Exempt Organizations Director Lois Lerner – felt pressure to “fix the problem” posed by *Citizens United*. This political pressure affected how the IRS handled tax-exempt applications filed by Tea Party and other conservative groups that sought to engage in political speech. In fact, the concern about *Citizens United* was so great that Lerner wrote to her subordinates in February 2011 that the “Tea Party matter [is] very dangerous. This could be the vehicle to go to court on the issue of whether Citizen’s [sic] United overturning ban on corporate spending applies to tax exempt rule.”¹² Lerner therefore ordered the applicants to proceed through an unprecedented “multi-tier” review by her office and the IRS Chief Counsel’s office.¹³

Yet, attempting to minimize the political element of the wrongdoing, Democratic defenders of the IRS began asserting in June 2013 that the targeting was just a “phony scandal” and the result of bureaucratic mistakes by line-level IRS employees.¹⁴ President Obama, arguing that there was not “even a smidgeon of corruption” in the IRS wrongdoing, attributed the actions to “boneheaded” decisions by an IRS “local office.”¹⁵ Similarly, Ranking Member Elijah Cummings (D-MD) blamed local-level IRS employees in asserting there was “no evidence to indicate that the White House was involved in any way.”¹⁶ With no evidence of direct White House orchestration, he declared “the case is solved.”¹⁷ Representative Gerry Connolly (D-VA) likewise denied any political element to the targeting, explaining it away as mere incompetence. He said on the floor of the House of Representatives:

This was an incompetent, ham-handed effort by one regional office in Cincinnati by the IRS. Was it right? Absolutely not. But does it rise to the level of a

¹¹ 558 U.S. 310 (2010).

¹² E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRS 161811]

¹³ Transcribed interview of Michael Seto, Internal Revenue Serv., in Wash., D.C. (July 11, 2013).

¹⁴ See, e.g., *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Rep. Elijah E. Cummings); *Fox News Sunday* (Fox News television broadcast July 28, 2013) (interview with Treasury Secretary Jacob Lew).

¹⁵ “*Not even a smidgeon of corruption*”: *Obama downplays IRS, other scandals*, FOX NEWS, Feb. 3, 2014.

¹⁶ Letter from Elijah E. Cummings, H. Comm. on Oversight & Gov’t Reform, to Darrell Issa, H. Comm. on Oversight & Gov’t Reform (June 9, 2013).

¹⁷ *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Rep. Elijah E. Cummings).

scandal, or the false assertion by the chairman of our committee on television, as the ranking member cited, that somehow it goes all the way to the White House picking on political enemies? Flat out untrue, not a scintilla of evidence that that is true.¹⁸

These statements conveniently overlook the context of the IRS’s targeting of conservative tax-exempt applicants. The IRS targeting did not occur in a vacuum. The targeting began and progressed at the same time that President Obama and prominent Democrats were publicly criticizing the Supreme Court’s *Citizens United* decision and attacking conservative, politically active nonprofits. Several IRS employees testified that they were acutely aware of the political rhetoric generated by the President, and Lois Lerner remarked publicly about the pressure to “fix the problem” caused by *Citizens United*. In turn, the IRS scrutinized and delayed tax-exempt applications with indications of political activity out of concern that they could eventually result in the Supreme Court extending the holding of *Citizens United* to tax-exempt organizations. In other words, Lois Lerner and the IRS were gravely concerned that the Supreme Court could overturn arbitrary restrictions on nonprofit political speech. The IRS was concerned about the “problem” of *Citizens United* – as so loudly and repeatedly emphasized by President Obama – affecting nonprofit law.

The Supreme Court’s affirmation of fundamental free speech rights in *Citizens United*

Freedom of speech and freedom of assembly are rights so fundamental to American citizens that they are enshrined in the First Amendment of the Constitution’s Bill of Rights.¹⁹ These rights guarantee to all Americans the freedom to express their beliefs and join with other like-minded citizens to pursue their shared goals. Since the founding of the nation, the rights of free speech and free assembly have helped to promote the world’s most robust and vibrant democracy. These rights contribute greatly to the social welfare of the United States.

In *Citizens United v. Federal Election Commission*, the Supreme Court affirmed the nation’s long-held guarantees of free speech and free association.²⁰ In particular, the Court’s decision emphasized the importance of free *political* speech. “Speech is an essential mechanism of democracy,” the Court declared, “for it is the means to hold officials accountable to the people.”²¹ Free political speech is therefore “a precondition to enlightened self-government and a necessary means to protect it.”²² Accordingly, the Supreme Court explained that the First Amendment’s guarantee of free political speech “has its fullest and most urgent application to speech uttered during a campaign for political office.”²³

¹⁸ 160 Cong. Rec. H3905 (May 7, 2014) (statement of Rep. Gerry Connolly).

¹⁹ U.S. CONST. amend. I.

²⁰ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

²¹ *Id.* at 339.

²² *Id.*

²³ *Id.* (quoting *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 265, 272 (1971)) (internal quotation marks omitted).

The Supreme Court in *Citizens United* struck down an arbitrary restriction on free political speech. The issue before the Court was whether Congress could bar a nonprofit corporation from independently expressing support or disapproval of a candidate for public office.²⁴ Tracing precedents invalidating previous restrictions on speech, the Court noted that the restriction at issue went further as “an outright ban, back by criminal sanctions.”²⁵ Because the First Amendment is premised on a “mistrust of governmental power,” the Court explained that “political speech must prevail against laws that would suppress it, whether by design or inadvertence.”²⁶ Thus, “[w]hen Government seeks to use its full power, including the criminal law, to command where a person may get his or her information . . . it uses censorship to control thought. . . . The First Amendment confirms the freedom to think for ourselves.”²⁷

The fundamental right to free speech also extends to groups of citizens who assemble together for a shared purpose. As the Court articulated, political speech is “indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.”²⁸ Whether the speaker is a single citizen or a group of citizens organized together as a union or corporation, the fundamental freedom to speak out politically is the same. In other words, just as the government may not restrict the political speech of individuals, the government may not limit “the political speech of nonprofit or for-profit corporations.”²⁹

Nonprofit corporations organized under section 501(c)(4) of the Internal Revenue Code, are formed “for the promotion of social welfare,”³⁰ and accordingly they are allowed to engage in political speech. Like a for-profit corporation or a labor union, a 501(c)(4) organization engages in political speech as a group of citizens joining together for a shared purpose. Federal law, however, protects 501(c)(4) organizations from publicly disclosing their contributors.³¹ This protection exists because, in the words of one expert, 501(c)(4) groups serve as the “beating heart of civil society,” existing to “take unpopular positions and move the national debate and make this a vibrant and functioning democracy.”³²

For decades, the Supreme Court has protected the right to anonymous political speech, due to the very real threat of repercussion or harassment for expressing a disfavored political belief.³³ In 1958, the Supreme Court in *NAACP v. Alabama* protected the membership lists of the NAACP’s Alabama chapter, explaining that the “compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of

²⁴ *Id.* at 319-22.

²⁵ *Id.* at 336-37.

²⁶ *Id.* at 340.

²⁷ *Id.* at 356.

²⁸ *Id.* at 313 (quoting *First Nat. Bank of Boston v. Belotti*, 435 U.S. 765, 777 (1978)) (internal quotation marks omitted).

²⁹ *Id.* at 365.

³⁰ I.R.C. § 501(c)(4).

³¹ I.R.C. § 6104.

³² “*The Administration’s Proposed Restrictions on Political Speech: Doubling Down on IRS Targeting*”: Hearing before the Subcomm. on Economic Growth, Job Creation & Regulatory Affairs of the H. Comm. on Oversight & Gov’t Reform, 113th Cong. (2014) (opening statement of Allen Dickerson, Center for Competitive Politics).

³³ See, e.g., *NAACP v. Alabama*, 357 U.S. 449 (1958).

association,” particularly “where a group espouses dissident beliefs.”³⁴ The Court continued: “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.”³⁵ Compelled disclosure of the NAACP membership, the Court concluded, was likely to hurt the ability of NAACP members “to pursue their collective effort to foster beliefs.”³⁶

In the wake of *Citizens United*, the anonymity afforded to contributors to 501(c)(4) entities hastened the emergence of these groups as conduits for political speech critical of the policies of the Obama Administration. Exercising their free speech and free assembly rights, people joined together in these groups to levy criticism and seek accountability from their government. The power of this speech, and the disapproval it carried, threatened the political interests of the President and his Administration.

The President’s public campaign against *Citizens United* and nonprofit political speech

Beginning on the same day that the Supreme Court issued its *Citizens United* decision and continuing through the fall, President Obama and his high-profile Democratic surrogates publicly criticized the decision and nonprofit political speech. Time and again, the President lamented unknown donors giving to groups with “benign-sounding” names that were “posing” as nonprofits. A closer review of these public statements, however, makes clear that the President’s real concern was that these donations were not flowing to Democratic candidates. In almost daily campaign stops in the run-up to the 2010 midterm election, the President loudly and repeatedly criticized the *Citizens United* decision and emphasized that the decision, in his mind, largely benefited Republican candidates.³⁷

In other words, the President did not oppose nonprofit political speech in the abstract. He even established his own 501(c)(4), called Organizing for Action, as an offshoot of his political campaign apparatus.³⁸ Viewed through this lens, there is no doubt that the President’s concern for the *Citizens United* decision and nonprofit political speech was not just policy-based. President Obama had a deep and real fear that the *Citizens United* decision would hurt the Democratic Party’s electoral chances.

The President, like all Americans, has a right to speak publicly about his policy concerns and to advocate openly and persuasively for changes in the law. The President and his congressional allies have the right to speak out about *Citizens United* and political speech by nonprofits. What should not be ignored, however, is the *effect* that these statements have on the

³⁴ *Id.* at 462.

³⁵ *Id.* at 460.

³⁶ *Id.* at 462-63.

³⁷ See, e.g., The White House, Remarks by the President at Rally for Maryland Governor Martin O’Malley (Oct. 7, 2010).

³⁸ See Paul Blumenthal, *Organizing For Action: Obama Campaign Relaunches As Issue-Based Nonprofit*, HUFFINGTON POST, Jan. 18, 2013.

federal bureaucracy. The President's public campaign against *Citizens United* and nonprofit political speech, while completely appropriate, had a causal effect on how the IRS treated tax-exempt applicants engaged in political speech.

As chronicled below, from January 21, 2010, through the midterm election on November 2, 2010, President Obama made dozens of public remarks and statements criticizing *Citizens United* and nonprofit political speech. These remarks and statements are in addition to other public statements from senior White House advisors, the Democratic National Committee, and prominent national Democrats to the same effect.

January 2010

January 21, 2010

The Supreme Court issued its decision in *Citizens United v. Federal Election Commission*.³⁹

President Obama President Obama issued a statement on *Citizens United*: “With its ruling today, **the Supreme Court has given a green light to a new stampede of special interest money in our politics. It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests** that marshal their power every day in Washington to drown out the voices of everyday Americans.”⁴⁰

Robert Gibbs In his daily press briefing that day, White House Press Secretary Robert Gibbs warned: “**I think everybody should be worried that special interest groups that have already clouded the legislative process are soon going to get involved in an even more active way in doing the same thing in electing men and women to serve in Congress.**”⁴¹

New York Times The *New York Times* published an editorial on the *Citizens United* decision, writing: “With a single, disastrous 5-to-4 ruling, the Supreme Court has thrust politics back to the robber-baron era of the 19th century. Disingenuously waving the flag of the First Amendment, the court’s conservative majority has paved the way for corporations to use their vast treasuries to overwhelm elections and intimidate elected officials into doing their bidding. . . . **Congress and members of the public who care about fair elections and clean government need to mobilize right away, a cause President Obama has said he would join.**”⁴²

³⁹ 558 U.S. 310 (2010).

⁴⁰ The White House, Statement from the President on Today’s Supreme Court Decision (Jan. 21, 2010).

⁴¹ The White House, Briefing by White House Press Secretary Robert Gibbs and PERAB Chief Economist Austan Goolsbee (Jan. 21, 2010).

⁴² *The Court’s Blow to Democracy*, N.Y. TIMES, Jan. 21, 2010.

January 23, 2010

President Obama

In his weekly radio address, President Obama said: “[T]his week, the **United States Supreme Court handed a huge victory to the special interests and their lobbyists – and a powerful blow to our efforts to reign in corporate influence. This ruling strikes at our democracy itself. . . . This ruling opens the floodgates** for an unlimited amount of special interest money into our democracy. . . . I can’t think of anything more devastating to the public interest.”⁴³

Ruth Marcus

Washington Post columnist Ruth Marcus wrote: “In opening the floodgates for corporate money in election campaigns, the Supreme Court did not simply engage in a brazen power grab. It did so in an opinion stunning in its intellectual dishonesty.”⁴⁴

January 27, 2010

President Obama

In his State of the Union Address, President Obama declared: “**With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit in our elections.** I don’t think American elections should be bankrolled by America’s most powerful interests, or worse, by foreign entities. They should be decided by the American people. And I’d urge Democrats and Republicans to pass a bill that helps to correct some of these problems.”⁴⁵

January 28, 2010

Senator Leahy

Senator Patrick Leahy (D-VT) said on the floor of the Senate: “I hope the American people watched and heard President Obama’s speech last night and were reassured. . . . **The Supreme Court’s 5-to-4 decision last week in *Citizens United v. Federal Election Commission*. That decision threatens to allow corporations to drown out the individual voices of hard-working Americans in our elections.** By overturning years of work in Congress, years of work by both Republicans and Democrats alike—campaign finance laws, and by reversing a century of its own precedent, the conservative, activist bloc on the Supreme Court reached an

⁴³ The White House, Weekly Address: President Obama Vows to Continue Standing Up to the Special Interest on Behalf of the American People (Jan. 23, 2010).

⁴⁴ Ruth Marcus, *Court’s campaign finance decision a case of shoddy scholarship*, WASH. POST, Jan. 23, 2010.

⁴⁵ The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).

unnecessary and improper decision that is going to distort future elections. The *Citizens United* decision turns the idea of government of, by, and for the people on its head. It creates new rights for Wall Street at the expense of Main Street. . . . **I think every one of us, as Americans, must work to ensure that the system of checks and balances envisioned by the Founders is not cast aside by the whimsical preferences of five Justices overriding the rights of 300 million Americans. I look forward to working with President Obama and Senators from both sides of the aisle as we try to restore the ability of every American to be heard and effectively participate in free and fair elections.**⁴⁶

January 29, 2010

Senator Whitehouse

Senator Sheldon Whitehouse (D-RI) said on the floor of the Senate: **“I rise this morning to join Chairman Leahy’s eloquent and inspiring remarks of yesterday and express my strong disagreement with the Supreme Court’s decision released last week in *Citizens United v. the Federal Election Commission*. In this astonishing decision, the slimmest of 5-to-4 majorities overturned legal principles that have been in place since Theodore Roosevelt’s administration. The five Justices who make up the Court’s conservative bloc opened floodgates that had for over a century kept unlimited spending by corporations from drowning out the voices of the American people. . . . Last week, that activist element of the Supreme Court struck down key protections of our elections integrity, overturned the will of Congress and the American people, and allowed all corporations to spend without limit in order to elect and defeat candidates and influence policy to meet their political ends. **The consequences may well be nightmarish. As our colleague, Senator Schumer said, one thing is clear: the conservative bloc of the Supreme Court has predetermined the outcome of the next election; the winners will be the corporations.**”⁴⁷**

February 2010

February 1, 2010

Norm Eisen

Norm Eisen, Special Counsel to the President, wrote in a blog post on the White House website: “We noted with interest reports that subsidiaries of foreign corporations from across the globe have launched a lobbying campaign in Washington to protect their newfound power to influence

⁴⁶ 156 Cong. Rec. S274-76 (Jan. 28, 2010) (statement of Senator Patrick Leahy).

⁴⁷ Press Release, Senator Sheldon Whitehouse, Whitehouse Criticizes Supreme Court Decision on Campaign Finance (Jan. 29, 2010).

American elections under the *Citizens United* case. . . . **But it appears that the group of companies has the potential to spend hundreds of millions of dollars to influence American elections. All of this demonstrates why the President was right to criticize the Supreme Court’s recent decision in *Citizens United* – and why he is also right to call for reform of the lobbying laws, including tough new rules on lobbyist disclosure, that build on the dramatic steps he has already taken in his first year in office to change Washington.**”⁴⁸

February 2, 2010

Senator Schumer Senator Charles Schumer (D-NY) stated at a hearing of the Senate Committee on Rules and Administration: “Put bluntly, **I believe that the Supreme Court’s opinion in *Citizens United* is corrosive to our democracy.** . . . If this ruling is left unchallenged, if Congress fails to act, our country will be faced with big, moneyed interests spending, or threatening to spend, millions on ads against those who dare to stand up to them. The threat alone is enough to chill debate and distort the political process in ways that hurt the voice and influence of the average citizen.”⁴⁹

February 3, 2010

Speaker Pelosi Speaker Nancy Pelosi (D-CA) announced that she would create a task force of prominent Democratic congressmen to consider options for overturning the Supreme Court’s decision. Speaker Pelosi selected Representative Chris Van Hollen (D-MD), the Chairman of the Democratic Congressional Campaign Committee, to lead the task force.⁵⁰

Rep. Brady The House Committee on House Administration convened a hearing titled, “Defining the Future of Campaign Finance in an Age of Supreme Court Activism,” to discuss the *Citizens United* decision. In his opening statement, Chairman Robert Brady (D-PA) stated: “**On January 21, 2010, in a single sweeping opinion, the conservative majority of the Supreme Court threw out nearly 100 years of laws and destroyed decades of commonsense legislation and regulations designed to adhere to that basic principle. . . . In his State of the Union Address last week, President Obama said that the Supreme Court decision will open the floodgates for special interests, including foreign corporations, to spend without limits in our elections.** At least one

⁴⁸ The White House, Norm Eisen, Lobbyist Rush to Hold the Floodgates Open (Feb. 1, 2010).

⁴⁹ “*Corporate America vs. The Voter: Examining the Supreme Court’s Decision to Allow Unlimited Corporate Spending in Election*”: Hearing of the S. Comm. on Rules & Administration, 111th Cong. (2010).

⁵⁰ See Ryan Grim, *Pelosi Taps Task Force to Counter Supreme Court’s Citizens United Ruling*, HUFFINGTON POST, Feb. 3, 2010.

jurist seems to believe that this is simply not true. I say today to Justice Alito, prove it; prove that *Citizens United* will not lead to an election system that is, in the words of the President, ‘bankrolled by America’s most powerful interests, or worse, by foreign entities.’ Today we begin the process.”⁵¹

Rep. Nadler

A subcommittee of the House Judiciary Committee convened a hearing on the campaign-finance ramifications of *Citizens United*. Representative Jerrold Nadler (D-NY), the Chairman of the subcommittee, said in his opening statement: “**Today’s hearing examines the Supreme Court’s recent decision in the case of *Citizens United v. FEC*. It is a case which poses a great threat to the integrity of our democratic system.** The subcommittee will examine the Court’s reasoning, the scope of the decision, its likely impact and **what options Congress may have at its disposal remaining to deal with the problems we are likely to encounter now that the Court has declared open season on democracy.**”⁵²

February 9, 2010

Senator Leahy

Senator Patrick Leahy (D-VT), the Chairman of the Senate Judiciary Committee, spoke on the Senate floor about *Citizens United*. He said in part: “Two weeks ago, I came to the floor to address one of the latest Supreme Court cases where Justice Alito’s vote was both decisive and divisive. **The decision in *Citizens United v. Federal Election Commission* was a 5 to 4, and it illustrates how the change in just one justice on the Supreme Court can have serious consequences for hardworking Americans and for our democracy.** . . . The court’s ruling exacerbates the already existing loophole allowing campaign contributions from American subsidiaries of foreign corporations. Today, an American subsidiary of a multinational corporation is treated as an American corporation under the campaign finance laws. With the newly-expanded ability of corporations to make unlimited independent political expenditures, that right is conferred on U.S. subsidiaries of multinational corporations as well. . . . I fear that we have not seen the last of the efforts of the newly-constituted Supreme Court to knock down long-established precedents. **The *Citizens United* decision may have a dramatic impact on American democracy, but it is only the latest in a growing set of**

⁵¹ “*Defining the Future of Campaign Finance in an Age of Supreme Court Activism*”: Hearing before the H. Comm. on H. Admin., 111th Cong. (2010) (opening statement of Representative Robert Brady).

⁵² “*First Amendment and Campaign Finance Reform after Citizens United*”: Hearing before the Subcomm. on the Constitution, Civil Rights & Civil Liberties of the H. Comm. on the Judiciary, 111th Cong. (2010) (opening statement of Representative Jerrold Nadler).

examples of why every seat on the highest court affects the lives of all Americans.”⁵³

February 11, 2010

Senator Schumer Senator Charles Schumer (D-NY) and Representative Chris Van Hollen (D-MD) unveiled proposed legislation, authored in consultation with the White House, to implement disclosure requirements on corporations and nonprofits involved in political speech. Senator Schumer said the proposed legislation will make “them think twice,” adding: “**The deterrent effect should not be underestimated.**”⁵⁴

February 16, 2010

Robert Gibbs White House Press Secretary Robert Gibbs stated in the White House press briefing: “**You heard the President outline ways that he thinks this town can work better in the State of the Union; that we have to take steps to ensure that foreign corporations can’t unduly influence our elections off of what the Supreme Court decided;** that contacts with lobbyists are reported more readily so that people understand if you’re working on behalf of the people’s interest or the special interests. That’s what led us to put online each month the visitors that come into this building for the first time in the history of this country.”⁵⁵

February 17, 2010

New York Times The *New York Times* published an editorial endorsing the legislative proposal of Senator Charles Schumer (D-NY) and Representative Chris Van Hollen (D-MD) to remedy *Citizens United*. The editorial read in part: “‘Hi. I’m the C.E.O. of (Fill in the Blank) Corporation, and I approved this message.’ If Senator Charles Schumer and Representative Chris Van Hollen have their way, you’ll be hearing those sorts of disclosures in political ads for November’s Congressional elections. It is a sensible way for voters to find out which businesses, or unions, are using their treasuries to promote which candidates. And it has become absolutely necessary since the Supreme Court’s disastrous ruling last month in the case of *Citizens United v. Federal Election Commission*.”⁵⁶

⁵³ Press Release, Senator Patrick Leahy, Leahy: *Citizens United* Decision Has Invited Foreign Influence Over Our Political Process (Feb. 9, 2010).

⁵⁴ Jess Bravin & Brody Mullins, *New rules proposed on campaign donors*, WALL ST. J., Feb. 12, 2010.

⁵⁵ The White House, Briefing by White House Press Secretary Robert Gibbs (Feb. 16, 2010).

⁵⁶ *A Welcome, if Partial, Fix*, N.Y. TIMES, Feb. 17, 2010.

February 25, 2010

IRS Action

The IRS Cincinnati office elevated a tax-exempt application filed by a Tea Party group to Washington, D.C., due to “media attention.”⁵⁷ Washington official Holly Paz accepted the application, writing: “I think sending it up here is a good idea given the potential for media interest.”⁵⁸

March 2010

March 10, 2010

Senator Leahy

The Senate Committee on the Judiciary convened a hearing to discuss how *Citizens United* would affect elections. Senator Patrick Leahy (D-VT), Chairman of the Committee, stated during the hearing: “**In a case called *Citizens United v. Federal Election Commission*, five justices acted to overturn a century of law designed to protect our elections from corporate spending.** They ruled that corporations are no longer prohibited from direct spending on political campaigns, and extended to corporations the same First Amendment rights in the political process that are guaranteed by the Constitution to individual Americans. . . . **I am concerned that the *Citizens United* decision risks opening the floodgates of corporate influence in American elections.** In these tough economic times, I believe individual Americans should not have their voices drowned out by unfettered corporate interests.”⁵⁹

Senator Whitehouse

Senator Sheldon Whitehouse (D-RI) wrote an opinion piece in *Politico* about *Citizens United*. Echoing the President’s rhetoric, Senator Whitehouse wrote: “**The Supreme Court’s recent slim majority decision in *Citizens United* has opened floodgates that long prevented corporate cash from drowning out the voices of American citizens in election campaigns. . . . I look forward to working with [Senator] Schumer to limit the harmful effects of the *Citizens United* opinion:** to prevent foreign corporations from influencing U.S. elections; to ban pay-to-play spending by government contractors; to strengthen disclosure laws that ensure voters know who is funding the ads they see; and to enhance

⁵⁷ E-mail from Sharon Camarillo, Internal Revenue Serv., to Cindy Thomas, Internal Revenue Serv. (Feb. 25, 2010). [IRSR 428451]

⁵⁸ E-mail from Holly Paz, Internal Revenue Serv., to Cindy Thomas, Internal Revenue Serv. (Feb. 26, 2010). [IRSR 428451]

⁵⁹ “*We the People? Corporate Spending in American Elections After Citizens United*”: Hearing before the S. Comm. on the Judiciary, 111th Cong. (2010) (opening statement of Senator Patrick Leahy); Press Release, Senator Patrick Leahy, Leahy Chairs Hearing On Impact Of *Citizens United* Decision (Mar. 10, 2010).

corporate disclosure of election spending. There are certain to be well-bankrolled interests opposing these reforms. But it is worth the fight.”⁶⁰

March 11, 2010

Robert Gibbs

White House Press Secretary Robert Gibbs stated in the daily White House press briefing: “**I think two things that we’ve already discussed are big priorities for the President after we get health care reform done.** First is financial reform, as we’ve talked about, and that’s moving its way through the process. **Secondly, we’ve talked about the *Citizens United* case.** We’ve got important elections coming up, and the question is, are the special interests going to have – play a bigger role in those with their contributions than they normally would?”⁶¹

March 12, 2010

Robert Gibbs

During his daily press briefing, White House Press Secretary Robert Gibbs discussed the Administration’s goal for addressing *Citizens United*. He said: “[T]he legislation right now with **Senator Schumer and Congressman Van Hollen that would address some of the things that were opened up as a result of that Supreme Court ruling.** We’ve certainly looked at that legislation, and I think counsel and others are evaluating that and other vehicles in order to address – to address what the Supreme Court opened up in their ruling.”⁶²

March 16, 2010

Robert Gibbs

White House Press Secretary Robert Gibbs stated in the White House press briefing: “I think the President has made clear through his commitment the importance of getting [health care reform] done. That having been said, we will wake up next week, next month, several months from now with many critical and important issues. Senator Dodd introduced financial reform yesterday to put in place strong rules governing the way our financial system should work that it didn’t 18 months ago when we watched Wall Street collapse and the dreams of many in America collapse. That’s an important issue that is going to be on the plates of legislators, regardless of the outcome of health care. **We’ve mentioned in here over the past several days the Supreme Court case around *Citizens United* that the President has serious**

⁶⁰ Sheldon Whitehouse, *Corporate justice at our expense*, POLITICO, Mar. 10, 2010.

⁶¹ The White House, Briefing by White House Press Secretary Robert Gibbs (Mar. 11, 2010).

⁶² The White House, Briefing by White House Press Secretary Robert Gibbs (Mar. 12, 2010).

reservations about. . . . Regardless of the outcome of health care, those problems still exist and they have to be addressed throughout the remainder of the year.”⁶³

March 22, 2010

Robert Gibbs

During his daily press briefing, White House Press Secretary Robert Gibbs discussed the President’s policy priorities, stating: “As for the next mountains, we’ve talked about some of them. There’s no doubt that finishing the legislation that the President has offered and ideas that he’s offered on getting our economy moving again, small business lending, zero capital gains for start-up small businesses, the retrofitting initiatives to, again, create jobs. **There’s the outstanding case – and the loophole that the case generated for *Citizens United***; obviously, financial reform, which Senator Dodd’s committee will take up today, and I think we feel there’s some momentum building for seeing that through, as well as big issues like comprehensive energy and immigration legislation are obviously still left for the President to do.”⁶⁴

April 2010

April 28, 2010

IRS Action

Steven Grodnitzky, an IRS manager in Washington, notified Lois Lerner, Director of IRS Exempt Organizations, that the Washington office had accepted two Tea Party applications to be “worked here in DC.”⁶⁵ Grodnitzky notified Lerner of the applications due to their potential for media attention.⁶⁶

April 29, 2010

Senator Charles Schumer (D-NY) and Representative Chris Van Hollen (D-MD) introduced the DISCLOSE Act, which would require certain politically active nonprofits to report information about their donors.⁶⁷

⁶³ The White House, Briefing by White House Press Secretary Robert Gibbs (Mar. 16, 2010).

⁶⁴ The White House, Briefing by White House Press Secretary Robert Gibbs (Mar. 22, 2010).

⁶⁵ E-mail from Steven Grodnitzky, Internal Revenue Serv., to Lois Lerner & Robert Choi, Internal Revenue Serv. (Apr. 28, 2010). [IRS 141809]

⁶⁶ Transcribed interview of Steven Grodnitzky, Internal Revenue Serv., in Wash., D.C. (July 16, 2013).

⁶⁷ S. 3295, 111th Cong. (2010); H.R. 5175, 111th Cong. (2010).

President Obama The President issued a statement supporting the DISCLOSE Act, which read: “I welcome the introduction of this strong bi-partisan legislation to control the flood of special interest money into America’s elections. Powerful special interests and their lobbyists should not be able to drown out the voices of the American people. . . . **The legislation introduced today would establish the toughest-ever disclosure requirements for election-related spending by big oil corporations, Wall Street and other special interests, so the American people can follow the money and see clearly which special interests are funding political campaign activity and trying to buy representation in our government. . . . I hope that Congress will give this legislation the swift consideration it deserves, which is especially urgent now in the aftermath of the Supreme Court’s *Citizens United* decision.** Passing the legislation is a critical step in restoring our government to its rightful owners: the American people.”⁶⁸

Senator Schumer Senator Schumer wrote in a statement: “**At a time when the public’s fears about the influence of special interests were already high, the Court’s decision [in *Citizens United*] stacks the deck against the average American even more.** Our bill will follow the money. In cases where corporations try to mask their activities through shadow groups, we drill down so that ultimate funder of the expenditure is disclosed. **If we don’t act quickly to confront this ruling, we will have let the Supreme Court predetermine the outcome of next November’s elections.**”⁶⁹

Rep. Van Hollen Representative Chris Van Hollen (D-MD) stated: “[T]he **DISCLOSE Act . . . will address the Supreme Court’s ruling in *Citizens United v. FEC* and ensure transparency and disclosure in our electoral process. . . . This legislation will let the sun shine in at a time when so many Americans are already concerned about the influence of powerful special interests on our democracy.** Every citizen has a right to know who is spending money to influence elections, and our legislation will allow voters to follow the money and make informed decisions.”⁷⁰

Senator Wyden Senator Ron Wyden (D-OR) said of the DISCLOSE Act: “I wish Congress didn’t have to take action to ensure that a citizen’s voice doesn’t get buried by new and larger mountains of corporate cash; but that is what our legislation will do. If the Supreme Court wants to treat corporations as individuals then we will hold those entities to the same standards of

⁶⁸ The White House, Statement by the President on the DISCLOSE Act (Apr. 29, 2010).

⁶⁹ Press Release, Senator Charles E. Schumer, Senate Democrats Unveil Legislation to Limit Fallout from Supreme Court Ruling that Allows Unlimited Special-interest Spending on Elections—Announce Plan for Senate Passage by July 4 (Apr. 29, 2010).

⁷⁰ Press Release, Representative Chris Van Hollen, Van Hollen, Castle, Jones, Brady Announce DISCLOSE Act to Address *Citizens United* Ruling (Apr. 29, 2010).

accountability that we do individuals, which means requiring that CEO's [sic], labor leaders and even political consultants stand by their ads."⁷¹

Senator Franken

Senator Al Franken (D-MN) said of the DISCLOSE Act: **“I rise today to support the Democracy Is Strengthened by Casting Light On Spending in Elections Act, or the ‘DISCLOSE’ Act, Senator Schumer’s bill to fight the effects of the *Citizens United* decision. . . . I want to talk about how this decision will affect people’s everyday lives. I want to talk about the crisis that *Citizens United* has created for our communities—for the safety of our communities, and for our ability to run them without a permission slip from big business.”**⁷²

Senator Murray

Senator Patty Murray (D-WA) condemned the Court’s ruling in *Citizens United* while announcing her support for the DISCLOSE Act, writing: **“The Supreme Court’s appalling ruling in *Citizens United* gave wealthy corporations and special interests a megaphone to drown out the voices of Washington state voters.”**⁷³

Rep. Welch

Representative Peter Welch (D-VT) stated: **“The Supreme Court’s decision to reverse a century of practice and precedent opened the door to a flood of corporate cash. If we don’t act soon to reduce the impact of this misguided decision, the voices of ordinary Americans will be drowned out by special interests.”**⁷⁴

May 2010

May 1, 2010

President Obama

In his weekly address, President Obama proclaimed: **“We’ve all seen groups with benign-seeming names sponsoring television commercials that make accusations and assertions designed to influence the public debate and sway voters’ minds.** Now, of course every organization has every right in this country to make their voices heard. But the American people also have the right to know when some group like ‘Citizens for a

⁷¹ Press Release, Senator Charles E. Schumer, Senate Democrats Unveil Legislation to Limit Fallout from Supreme Court Ruling that Allows Unlimited Special-interest Spending on Elections—Announce Plan for Senate Passage by July 4 (Apr. 29, 2010).

⁷² Press Release, Senator Al Franken, Sen. Franken’s Floor Statement on the Introduction of the DISCLOSE Act (Apr. 29, 2010).

⁷³ Press Release, Senator Patty Murray, Murray: We Can’t Allow Corporations and Special Interests to Drown Out the Voices of Washington State Families (Apr. 29, 2010).

⁷⁴ Press Release, Representative Peter Welch, Welch joins bipartisan response to *Citizens United* case (Apr. 29, 2010).

Better Future’ is actually funded entirely by ‘Corporations for Weaker Oversight.’”⁷⁵

Rep. Van Hollen

Representative Chris Van Hollen (D-MD) issued a statement, reading: “**As President Obama made clear in his weekly address, the Supreme Court’s ruling in *Citizens United v. FEC* threatens to drown out the voices of American citizens by allowing big banks and corporations to funnel millions of dollars into political advertising. . . . We must ensure that voters know who is trying to influence our elections so they can make informed decisions – this is a bedrock principle of our nation. **The DISCLOSE Act promotes transparency and disclosure of political spending, keeps foreign-controlled companies from impacting America’s elections, and ensures that entities that receive large amounts of taxpayer money can’t turn around and spend that money in campaigns. I welcome the President’s support.**”⁷⁶**

May 6, 2010

Democracy 21

The House Committee on House Administration convened a hearing to consider testimony about the DISCLOSE Act. Donald Simon, the General Counsel for Democracy 21, testified: “In his radio address last Saturday, President Obama strongly endorsed this legislation. **The President said that in the wake of *Citizens United*, ‘what we are facing is no less than a potential corporate takeover of our elections and what is at stake is no less than the integrity of our democracy. This shouldn’t be a Democratic or Republican issue. This is an issue that goes to whether or not we will have a government that works for ordinary Americans, a government of, by, and for the people. That is why these reforms are so important.’ We agree.** The public is entitled to know whose money is behind campaign-related spending and, ensuring there will be an effective answer to this question, this legislation serves as an important protection to safeguard the integrity of the democratic process. **We urge you to act quickly to enact the DISCLOSE Act so it can be effective in time for this year’s elections.**”⁷⁷

May 9, 2010

Washington Post

The *Washington Post* published an editorial titled, “Corporate Money in Politics,” about *Citizens United* and the DISCLOSE Act. The editorial

⁷⁵ The White House, Weekly Address: President Obama Calls on Congress to Enact Reforms to Stop a “Corporate Takeover of Our Elections” (May 1, 2010).

⁷⁶ Press Release, Representative Chris Van Hollen, Van Hollen Statement on the President’s Weekly Address (May 1, 2010).

⁷⁷ *Hearing before the H. Comm. on H. Admin.*, 111th Cong. (2010).

read: “**The Supreme Court’s ruling in the *Citizens United* campaign finance case opened a dangerous pathway for corporations to spend money in direct support of – or in opposition to – candidates for federal office.** Under the decision, corporations – and labor unions – still can’t give money directly to federal candidates, but they can spend unlimited sums in independent expenditures for or against them. Even more dangerous, because of preexisting gaps in campaign disclosure laws, the money can be spent, in effect, anonymously. **The entity spending the money – say, Americans for Really Good Government (ARGG) – would have to register with the Federal Election Commission and report its activities, but ARGG would not have to disclose its donors. So Corporation A or Labor Union B could give unlimited sums to ARGG to run ads going after Candidate C – and the public would have no clue. This troubling situation should be fixed in time for the next election. . . . The legislation, crafted by Sen. Charles E. Schumer (D-N.Y.) and Rep. Chris Van Hollen (D-Md.), addresses the *Citizens United* ruling in two ways: first, by imposing limits on the kind of corporations that are allowed to try to influence elections, and second, by expanding disclosure rules. . . . The most important provision, however, is disclosure. Here, the proposal would go beyond addressing the particular problems created by the *Citizens United* ruling and improve on existing law.”⁷⁸**

May 10, 2010

President Obama

President Obama, in announcing his nomination of Solicitor General Elena Kagan to the Supreme Court, stated: “During her time in this office, she’s repeatedly defended the rights of shareholders and ordinary citizens against unscrupulous corporations. **Last year, in the *Citizens United* case, she defended bipartisan campaign finance reform against special interests seeking to spend unlimited money to influence our elections.** Despite long odds of success, with most legal analysts believing the government was unlikely to prevail in this case, Elena still chose it as her very first case to argue before the Court.”⁷⁹

May 11, 2010

The House Committee on House Administration convened a hearing to consider further testimony about the DISCLOSE Act.⁸⁰

⁷⁸ *Corporate Money in Politics*, WASH. POST, May 9, 2010.

⁷⁹ The White House, Remarks by the President and Solicitor General Elena Kagan at the Nomination of Solicitor General Elena Kagan to the Supreme Court (May 10, 2010).

⁸⁰ *Hearing before the H. Comm. on H. Admin.*, 111th Cong. (2010).

May 20, 2010

The House Committee on House Administration marked up and passed the DISCLOSE Act.⁸¹

President Obama

After the Committee approved the DISCLOSE Act, President Obama issued the following statement: “Today, the House Administration Committee took another important step toward putting in place critical protections to control the flood of special interest money into American elections. The DISCLOSE Act, now moving to debate on the floor of the House of Representatives, would establish the toughest-ever disclosure requirements for election-related spending by big oil corporations, Wall Street and other special interests. It would prohibit foreign entities from manipulating the outcome of U.S. elections, and it would shine an unprecedented light on corporate spending in political campaigns so that the American people can clearly see who is trying to influence campaigns for public office. **These changes are particularly urgent in the aftermath of the Supreme Court’s *Citizens United* decision, and I encourage the full Congress to give this strong, bipartisan legislation the swift consideration it deserves.**”⁸²

Speaker Pelosi

Speaker Nancy Pelosi (D-CA) issued a statement following the Committee’s passage of the DISCLOSE Act, which read in part: “Today the House of Representatives made critical progress on The DISCLOSE Act, to protect our elections from being overtaken by special interest money and influence. **The recent Supreme Court decision in the *Citizens United* case opened the floodgates for the corporate takeover of elections. With this legislation, Congress has acted to help ensure that the special interests do not drown out the voices of America’s voters.**”⁸³

Rep. Van Hollen

Representative Chris Van Hollen (D-MD) issued the following statement after the Committee’s passage of the DISCLOSE Act: “I want to applaud the Committee on House Administration’s work to complete its markup of the bipartisan DISCLOSE Act today. As many Members of the Committee echoed today, **we must act swiftly to address the Supreme Court’s radical ruling in *Citizens United v. Federal Election***

⁸¹ *Bus. Meeting of the H. Comm. on H. Admin.*, 111th Cong. (2010).

⁸² The White House, Statement by the President on the House Administration Committee’s Passage of the DISCLOSE Act (May 20, 2010).

⁸³ Press Release, Representative Nancy Pelosi, Pelosi Statement on Passage of DISCLOSE Act by House Administration Committee (May 20, 2010).

*Commission – the decision allows corporations to spend unlimited funds and gives them undue influence in our electoral system.*⁸⁴

June 2010

June 16, 2010

Dan Pfeiffer

Dan Pfeiffer, White House Communications Director, wrote on the White House blog: **“In the *Citizens United* decision this January, the Supreme Court overturned decades of law that had barred corporations from using their financial clout to directly interfere with U.S. elections. The decision was a major victory for special interests in Washington because it opened the floodgates for an unlimited amount of special interest expenditures to drown out the voices of ordinary Americans.** The President has consistently criticized this decision, and has asked Congress to take swift action on the DISCLOSE Act, the strong, bipartisan legislation that would establish the toughest-ever requirements for election-related spending by big oil corporations, Wall Street and other special interests. . . . The American people deserve to know exactly who is spending that money trying to influence their vote. The bill will also combat spending by foreign-owned interests in our elections, fight pay-for-play practices by government contractors and otherwise enact strong measures to protect the public interest. **Inaction on the DISCLOSE Act is simply not an option.**”⁸⁵

June 21, 2010

Bill Burton

White House Deputy Press Secretary Bill Burton said during a press briefing: **“The Supreme Court made a decision that allowed all sorts of money to be injected into the political system. The President just doesn’t think that’s how it should go.** He doesn’t think that foreign-owned corporations should be able to donate unlimited amounts of money into our political process. And he thinks that the bill that they’re working on right now is the best way to help address that issue.”⁸⁶

⁸⁴ Press Release, Representative Chris Van Hollen, Van Hollen Applauds Committee Passage of the DISCLOSE Act (May 20, 2010).

⁸⁵ The White House, Dan Pfeiffer, More Support for Curbing Special Interest Influence in Our Elections (June 16, 2010).

⁸⁶ The White House, Press Briefing by Deputy Press Secretary Bill Burton (June 21, 2010).

June 22, 2010

Sens. Reid & Schumer Senator Harry Reid (D-NV) and Senator Charles Schumer (D-NY) wrote to Speaker Nancy Pelosi (D-CA) and Representative Robert Brady (D-PA) in support of the DISCLOSE Act. They wrote: “**The Disclose Act is vital to the health of our democracy. In *Citizens United v. F.E.C.*, the Roberts Supreme Court and its activist majority overturned decades of law and precedent and gave corporations and other special interests unprecedented new power to influence America’s elections.** Additionally, the activist decision opened the door for foreign-controlled corporations to spend unlimited amounts of money on American political campaigns. The Disclose Act closes that loophole, while respecting the constitutional implications of the Court’s decision by setting up a disclosure system so that the American public will know what special interests are trying to influence U.S. elections. . . . **We look forward to working with you to make sure that the Disclose Act gets signed into law.**”⁸⁷

June 24, 2010

The House of Representatives passed the DISCLOSE Act.⁸⁸

President Obama After the House of Representatives passed the DISCLOSE Act, President Obama issued a statement that read in part: “**I congratulate the House of Representatives on today’s passage of the DISCLOSE Act, a critical piece of legislation to control the flood of special interest money into our elections.** The DISCLOSE Act would establish the strongest-ever disclosure requirements for election-related spending by special interests, including Wall Street and big oil companies, and it would restrict spending by foreign-controlled corporations. It would give the American public the right to see exactly who is spending money in an attempt to influence campaigns for public office.”⁸⁹

Speaker Pelosi Speaker Nancy Pelosi (D-CA) spoke on the floor of the House of Representatives in favor of the DISCLOSE Act, stating: “**Earlier this year, the Supreme Court overturned decades of precedent in a court case called the *Citizens United* case. The decision undermines democracy and empowers the powerful. It opens the floodgates to a corporate takeover of our elections and invites unrestricted special interest dollars in our campaigns.** And it even left open the door to donations from companies owned by foreign governments. Imagine. **In response, Congress and the President immediately went to work on**

⁸⁷ David M. Herszenhorn, *Senate Democrats Call for House Support on Disclose Bill*, N.Y. TIMES, June 22, 2010.

⁸⁸ H.R. 5175, 111th Cong. (2010).

⁸⁹ The White House, Statement by the President on Passage of the DISCLOSE Act in the House of Representatives (June 24, 2010).

the DISCLOSE Act. This legislation restores transparency and accountability to federal campaigns, and ensures that Americans know when Wall Street, Big Oil, and health insurers are the ones behind political advertisements.”⁹⁰

Rep. Van Hollen

Representative Chris Van Hollen (D-MD) spoke on the floor of the House of Representatives in favor of the DISCLOSE Act, stating: “Thank you, Mr. Speaker, and I want to start by thanking Chairman Brady and Ms. Lofgren and the other members of the Committee, as well as Chairman Conyers and Mr. Nadler and those on the Judiciary Committee. And to Mike Castle and all the other co-sponsors of this legislation, **which addresses the very serious threats to our democracy created by the Supreme Court’s decision in *Citizens United*. . . .** And third, we require disclosure. We believe the voter has a right to know. You would think, from the comments from the other side of the aisle, we are restricting what people can say. That’s just not true. You can say anything you want in any ad you want. **What you can’t do is hide behind the darkness. Not tell people who you are. Voters have a right to know when they see an ad going on with a nice sounding name – the Fund for a Better America – they have a right to know who is paying for it. They have a right to know if BP is paying for it.** They have a right to know if any corporation or big bucks individual is paying for it, because it’s a way to give them information to access the credibility of the ad.”⁹¹

June 28, 2010

Senator Durbin

Senator Dick Durbin (D-IL), the Assistant Majority Leader in the Senate, said: “**Earlier this year in the *Citizens United* case, a 5-4 majority of the court demanded to hear arguments on an issue that wasn’t posed by the parties in the case; reversed its own precedents; ignored the will of Congress; and ruled that corporations and special interests can spend unlimited amounts of money to affect elections. This decision has the power to drown out the voices of average Americans.**”⁹²

⁹⁰ Press Release, Representative Nancy Pelosi, Pelosi: Passage of DISCLOSE Act Will Protect the Voices and Votes of the American People (June 24, 2010).

⁹¹ Press Release, Representative Chris Van Hollen, Van Hollen Floor Statement in Support of the DISCLOSE Act (June 24, 2010).

⁹² Press Release, Senator Dick Durbin, Confirmation of Elena Kagan to be a Supreme Court Justice (June 28, 2010).

July 2010

July 21, 2010

Senator Charles Schumer (D-NY) reintroduced the DISCLOSE Act in the Senate.⁹³

July 26, 2010

President Obama

In a Rose Garden address, the President stated: **“Because of the Supreme Court’s decision earlier this year in the *Citizens United* case, big corporations -- even foreign-controlled ones -- are now allowed to spend unlimited amounts of money on American elections. They can buy millions of dollars worth of TV ads -- and worst of all, they don’t even have to reveal who’s actually paying for the ads. Instead, a group can hide behind a name like ‘Citizens for a Better Future,’ even if a more accurate name would be ‘Companies for Weaker Oversight.’ These shadow groups are already forming and building war chests of tens of millions of dollars to influence the fall elections.”**⁹⁴

Robert Gibbs

White House Press Secretary Robert Gibbs said: “In your words, we might have underestimated that those in the Senate on both the Democrat and Republican side shared the President’s goal – mostly, if not completely, on the Republican side – in protecting the corporate influence and the special interest donors that seek to not just influence elections but ultimately influence policy. . . . And **in the next couple days, we’ll figure out who thinks there’s too much corporate influence in our elections, and who’s just fine with the corporate influence we’ve got.**”⁹⁵

July 27, 2010

Senator Reid

On the floor of the Senate, Senator Harry Reid (D-NV), the Senate Majority Leader, said: “Both Brandeis and Douglas were right. And these two Justices’ observations should guide us **as we correct an error made by today’s Supreme Court – the Roberts Court – when it wrongly ruled in January that corporations, special interests and foreign governments can flood America’s political system with contributions in unlimited amounts, and in secrecy. The campaign advertisements at the heart of the case, *Citizens United v. Federal Election Commission*, and in the bill before us, the DISCLOSE Act, are**

⁹³ S. 3628, 111th Cong. (2010).

⁹⁴ The White House, Remarks by the President on the DISCLOSE ACT (July 26, 2010).

⁹⁵ The White House, Press Briefing by Press Secretary Robert Gibbs (July 26, 2010).

presumably about giving the electorate the information it needs to make an informed choice. But that information must also include its source, because an open political process demands the disclosure of who is paying the bills. . . . Why would we let those who go to such great lengths to conceal their names - and those who try to protect them by blocking this bill - dilute or manipulate our votes?"⁹⁶

Senator Leahy

Senator Patrick Leahy (D-VT) issued a statement in support of a motion to proceed with debate in the Senate on the DISCLOSE Act. Senator Leahy wrote: "**Today, the Senate is attempting to fix an important problem created earlier this year by the Supreme Court's decision in *Citizens United v. Federal Election Commission*. In that case, five Supreme Court justices cast aside a century of law and opened the floodgates for corporations to drown out individual voices in our elections.** The broad scope of the *Citizens United* decision was unnecessary and improper. At the expense of hardworking Americans, the Supreme Court ruled that corporations could become the predominant influence in our elections for years to come."⁹⁷

Senator Levin

Senator Carl Levin (D-MI) spoke in support of the DISCLOSE Act: "Since the Supreme Court decision in *Citizens United*, our elections are vulnerable to the influence of corporate power, which threatens to drown out the voices of individual Americans. The DISCLOSE Act will restore the public trust in both the election process and government itself. In our federal elections, all voices must be heard not just those with the deepest pockets. The DISCLOSE Act will help restore the peoples voice, and I urge my colleagues to support the Motion to Proceed."⁹⁸

Washington Post

The *Washington Post* published an editorial titled, "It's the Senate's turn to pass the Disclose Act," which read: "**Senators are facing a simple, fateful decision: Do they want to allow millions of dollars from corporations, labor unions and wealthy individuals to pour, undisclosed, into U.S. elections? The key word is undisclosed.** The existing crazy quilt of campaign finance reporting rules was already threadbare. Then the Supreme Court stepped in, ruling in the *Citizens United* case that corporations and labor unions could spend unlimited sums advocating the election or defeat of federal candidates. That made the implications of that regulatory patchwork far more dangerous. . . . **Under another gap in disclosure rules, wealthy individuals who want to influence elections without the inconvenience of having their cash exposed can give money to nonprofit groups set up under Section 501(c)(4) of the tax code.** Such organizations face limits on how much

⁹⁶ 156 Cong. Rec. S6284 (July 27, 2010) (statement of Senator Harry Reid).

⁹⁷ Press Release, Senator Patrick Leahy, Leahy Urges Bipartisan Support For Debate, Vote On DISCLOSE Act (July 27, 2010).

⁹⁸ Press Release, Senator Carl Levin, Senate Floor Statement on the DISCLOSE Act (July 27, 2010).

they can spend on election-related activities, but the limits are hardly an impediment. . . . The Senate faces a vote, perhaps as early as this week, about whether to kill or proceed with the Disclose Act. Senators who care about maintaining a transparent campaign finance system should vote to go forward with the measure.”⁹⁹

August 2010

August 5, 2010

President Obama

President Obama proclaimed at a Democratic National Committee event in Chicago, Illinois: “I’ve always had confidence in you, that ultimately despite all the special interest ads – and by the way, **right now we’ve got a Supreme Court decision that’s allowing uninhibited special interest spending on ads, and we’ve got legislation in the Senate and the House to try to fix this. But the other side, of course, is saying no. And we’re going to keep on fighting to make sure that foreign corporations and big special interests can’t just fund unlimited ads without even disclosing who they are.**”¹⁰⁰

August 6, 2010

IRS Action

An IRS media relations employee e-mailed her colleagues about a forthcoming *Washington Post* article on 501(c)(4) groups engaged in political activity. She wrote that the article is “about the new importance of IRS regulations covering campaign/election-related activity for section 501c4 and 527 groups in light of a recent Supreme Court decision freeing corporations to run campaign ads. The premise of his story, in [the reporter’s] words, is that the IRS has a harder time regulating money in politics than the FEC because it is primarily a bill collector and not an enforcement agency.”¹⁰¹

August 9, 2010

President Obama

During a Democratic National Committee event in Austin, Texas, the President declared: “**Right now all around this country there are groups with harmless-sounding names like Americans for Prosperity, who are running millions of dollars of ads against Democratic**

⁹⁹ *It’s the Senate’s turn to pass the Disclose Act*, WASH. POST, July 27, 2010.

¹⁰⁰ The White House, Remarks by the President at a DNC Finance Event in Chicago, Illinois (Aug. 5, 2010).

¹⁰¹ E-mail from Michelle Eldridge, Internal Revenue Serv., to Steven Miller et al., Internal Revenue Serv. (Aug. 6, 2010). [IRSR 452184]

candidates all across the country. And they don't have to say who exactly the Americans for Prosperity are. You don't know if it's a foreign-controlled corporation. You don't know if it's a big oil company, or a big bank. You don't know if it's a insurance company that wants to see some of the provisions in health reform repealed because it's good for their bottom line, even if it's not good for the American people. A Supreme Court decision allowed this to happen. And we tried to fix it, just by saying disclose what's going on, and making sure that foreign companies can't influence our elections. Seemed pretty straightforward. The other side said no. They don't want you to know who the Americans for Prosperity are, because they're thinking about the next election. But we've got to think about future generations. We've got to make sure that we're fighting for reform. We've got to make sure that we don't have a corporate takeover of our democracy.”¹⁰²

President Obama

During a campaign event in Dallas, Texas, the President said: **“And part of what's happened in this landscape is the Supreme Court – those of you who don't think the Supreme Court matters, their ruling in *Citizens United*, which said that corporations, including potentially foreign corporations, can go ahead and spend unlimited amounts without disclosing who they are during election season – means that you're going to have a whole bunch of organizations like Americans for Prosperity spending millions of dollars trying to roll back reforms that we've initiated. And you won't even know who they are, because right now the law says they don't have to disclose who they are.”¹⁰³**

August 21, 2010

President Obama

President Obama stated during his weekly address: “As the political season heats up, Americans are already being inundated with the usual phone calls, mailings, and TV ads from campaigns all across the country. **But this summer, they're also seeing a flood of attack ads run by shadowy groups with harmless-sounding names. We don't know who's behind these ads and we don't know who's paying for them. The reason this is happening is because of a decision by the Supreme Court in the *Citizens United* case – a decision that now allows big corporations to spend unlimited amounts of money to influence our elections.** They can buy millions of dollars worth of TV ads – and worst of all, they don't even have to reveal who is actually paying for them. You don't know if it's a foreign-controlled corporation. You don't know if it's BP. You don't know if it's a big insurance company or a Wall Street Bank. **A group can hide behind a phony name like ‘Citizens for**

¹⁰² The White House, Remarks by the President at a DNC Finance Event in Austin, Texas (Aug. 9, 2010).

¹⁰³ The White House, Remarks by the President at a DSCC Finance Event in Dallas, Texas (Aug. 9, 2010).

a Better Future,' even if a more accurate name would be 'Corporations for Weaker Oversight.'”¹⁰⁴

August 27, 2010

DCCC

The Democratic Congressional Campaign Committee filed a complaint with the IRS asking the tax agency to investigate the conservative-leaning group, Americans for Prosperity.¹⁰⁵

August 31, 2010

IRS Action

Lois Lerner, in response to a *New York Times* article about the Democratic Congressional Campaign Committee's complaint to the IRS, wrote to her boss, Sarah Hall Ingram: “We won't be able to stay out of this – we need a plan!!”¹⁰⁶

September 2010

September 13, 2010

E.J. Dionne

Columnist E.J. Dionne penned an opinion piece in the *Washington Post*. Channeling the President's rhetoric, Dionne wrote: “Imagine that your neighbors started getting letters describing all sorts of horrific deeds you had allegedly performed. Wouldn't you feel you had the right to know who was spreading this sleaze – especially if the charges were untrue? Now imagine a member of Congress telling a lobbyist from Consolidated Megacorp Inc. that she would do all she could to block an extra \$2 billion in an appropriations bill to purchase the company's flawed widgets for the federal government. A week later, television advertisements start appearing in the representative's district portraying her as corrupt, out of touch and in league with lobbyists. **It turns out they are being paid for by Consolidated Megacorp through contributions to a front group called Americans for Clean Government. Shouldn't the voters be able to know who is behind the ads? This hypothetical tale is not**

¹⁰⁴ The White House, Weekly Address: President Obama Challenges Politicians Benefiting from *Citizens United* Ruling to Defend Corporate Influence in Our Elections (Aug. 21, 2010).

¹⁰⁵ Press Release, Dem. Cong. Campaign Comm., DCCC: IRS should investigate Americans for Prosperity Foundation (Aug. 27, 2010).

¹⁰⁶ E-mail from Lois Lerner, Internal Revenue Serv., to Sarah Hall Ingram, Internal Revenue Serv. (Aug. 31, 2010). [IRSR 632342]

fantasyland, thanks to the U.S. Supreme Court’s hideous decision this year in the *Citizens United* case.”¹⁰⁷

September 15, 2010

IRS Action Lois Lerner initiated a “c4 project” to assess the political activity of nonprofits in the wake of *Citizens United*.¹⁰⁸ Lerner wrote to her subordinates: “We need to have a plan. We need to be cautious so it isn’t a *per se* political project. More a c4 project that will look at levels of lobbying and pol. activity along with exempt activity.”¹⁰⁹

September 16, 2010

President Obama At a campaign event in Connecticut, the President said: “Because if you don’t think the stakes are large – and I want you to consider this – right now, all across the country, special interests are planning and running millions of dollars of attack ads against Democratic candidates. **Because last year, there was a Supreme Court decision called *Citizens United*. They’re allowed to spend as much as they want without ever revealing who’s paying for the ads.** That’s exactly what they’re doing. Millions of dollars. **And the groups are benign-sounding: Americans for Prosperity. Who’s against that? Or Committee for Truth in Politics. Or Americans for Apple Pie. Moms for Motherhood. I made those last two up. None of them will disclose who’s paying for these ads.** You don’t know if it’s a Wall Street bank. You don’t know if it’s a big oil company. You don’t know if it’s an insurance company. You don’t even know if it’s a foreign-controlled entity.”¹¹⁰

September 17, 2010

Democracy 21 Fred Wertheimer, the President of Democracy 21, wrote an op-ed in *Politico* titled, “Secret Funds Flow into Races.” Using some of the same language as the President, Wertheimer wrote: “But now, secret money has returned to U.S. politics and is flooding the 2010 congressional races. The main vehicles being used to hide donors are 501(c)(4) tax-exempt

¹⁰⁷ E.J. Dionne, Jr., *Repairing Citizens United Becomes a Test for Three GOP Senators*, WASH. POST, Sept. 13, 2010.

¹⁰⁸ E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191032]

¹⁰⁹ E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Laurice Ghougasian, & Judith Kindell, Internal Revenue Serv. (Sept. 16, 2010). [IRSR 191030]

¹¹⁰ The White House, Remarks by the President at a Reception for Connecticut Attorney General Richard Blumenthal (Sept. 16, 2010).

organizations, which do not have to disclose their donors. These groups are expected to spend tens of millions of dollars on the 2010 congressional races. Many news outlets have reported this year about the dire financial condition of the Republican National Committee, but this turns out to be an illusionary problem. **Two ‘shadow RNC’ groups, American Crossroads GPS and American Action Network, are prime examples of full-scale political operations run inside the structure of tax-exempt 501(c)(4) groups. . . . The explosion of secret money in the 2010 races was triggered by the Supreme Court’s 5-4 decision in *Citizens United v. Federal Election Commission*, which struck down the long-standing ban on corporations making campaign expenditures to influence federal elections. . . . The *Citizens United* decision opened the door for 501(c)(4) advocacy groups and 501(c)(6) trade associations to make unlimited campaign expenditures funded by undisclosed contributions.**¹¹¹

September 18, 2010

President Obama

In his weekly address, President Obama stated: **“Now, as an election approaches, it’s not just a theory. We can see for ourselves how destructive to our democracy this can become. We see it in the flood of deceptive attack ads sponsored by special interests using front groups with misleading names. We don’t know who’s behind these ads or who’s paying for them. Even foreign-controlled corporations seeking to influence our democracy are able to spend freely in order to swing an election toward a candidate they prefer.”**¹¹²

September 20, 2010

President Obama

During a campaign event for Congressman Joe Sestak (D-PA), the President proclaimed: **“Right now, all across this country, special interests are running millions of dollars of attack ads against Democratic candidates. And the reason for this is last year’s Supreme Court decision in *Citizens United*, which basically says that special interests can gather up millions of dollars – they are now allowed to spend as much as they want without limit, and they don’t have to ever reveal who’s paying for these ads. And that’s what they’re doing all across the country. They’re doing it right here in Pennsylvania – millions of dollars being spent. And the names always sound very benign – it’s Americans for Prosperity, Committee for Truth in Politics, Americans**

¹¹¹ Fred Wertheimer, *Secret Funds Flow into Races*, POLITICO, Sept. 17, 2010.

¹¹² The White House, Weekly Address: President Obama Castigates GOP Leadership for Blocking Fixes for the *Citizens United* Decision (Sept. 18, 2010).

for Apple Pie. I made that last one up. None of them will disclose who is paying for these ads. You don't know whether it's some big financial interest; you don't know if it's a big oil company or an insurance company. You don't even know if it's foreign controlled. And we tried to fix this, but the leaders of the other party wouldn't even allow it to come up for a vote. They want the public to be in the dark."¹¹³

President Obama

At a Democratic National Committee dinner in Philadelphia, Pennsylvania, the President said: "I mean, the truth of the matter is, is that there is no reason why we can't take our case directly to the American people and win. And we've got terrific candidates all across the country who are prepared to do so. **And the biggest impediment we have right now is that independent expenditures coming from special interests – who we don't know because they're not obligated to disclose their contributions under a Supreme Court decision called *Citizens United* – means that in some places, you've got third parties that are spending millions more than the candidates combined, more than the parties in these states. That's the biggest problem that we have all across the country right now.** We've got great candidates who are taking their case directly to the American people, but they are being drowned out by groups like Americans for Prosperity. **Nobody knows who they are. Well, we know who they are – but nobody knows where the money is coming from,** and they certainly don't appear on those ads."¹¹⁴

The IRS received a media inquiry from the *New York Times* about "a large upswing in the money donated to 501(c)(4)'s [and] that the IRS has too few resources to monitor and deal with compliance and enforcement issues in this area." Lois Lerner and Sarah Hall Ingram spoke to the reporter on background to assist in preparing the article.¹¹⁵

September 21, 2010

New York Times

The *New York Times* published a front page article titled, "Donor Names Remain Secret as Rules Shift."¹¹⁶

Diane Rehm Show

National Public Radio's *Diane Rehm Show* featured a thorough discussion of *Citizens United* and an interview with Representative Chris Van Hollen about the DISCLOSE Act.¹¹⁷

¹¹³ The White House, Remarks by the President at Finance Reception for Congressman Sestak (Sept. 20, 2010).

¹¹⁴ The White House, Remarks by the President at DNC Finance Dinner (Sept. 20, 2010).

¹¹⁵ E-mail from Michelle Eldridge, Internal Revenue Serv., to Doug Shulman et al., Internal Revenue Serv. (Sept. 20, 2010). [IRSR 250053]

¹¹⁶ See Michael Luo & Stephanie Strom, *Donor Names Remain Secret as Rules Shift*, N.Y. TIMES, Sept. 21, 2010.

¹¹⁷ *The Diane Rehm Show* (Nat'l Public Radio radio broadcast Sept. 21, 2010), transcript available at <http://thedianerehmshow.org/shows/2010-09-21/campaign-spending/transcript>.

IRS Action

After reading the *New York Times* article, Sarah Hall Ingram wrote: “Thanks, as always, for the excellent support from Media. I do think it came out pretty well. The ‘secret donor’ theme will continue – see Obama salvo and today’s Diane Reehm [sic]. At least [the article’s author] started the idea that we don’t have the law to do something”¹¹⁸

DOJ Action

After reading the *New York Times* article, Justice Department Public Integrity Section Chief Jack Smith wrote to his colleagues: “Check out [the] article on front page of ny times [sic] regarding misuse of nonprofits for indirectly funding campaigns. This seems egregious to me – could we ever charge a [18 U.S.C. §] 371 conspiracy to violate laws of the USA for misuse of such non profits to get around existing campaign finance laws + limits? I know 501s are legal but if they are knowingly using them beyond what they are allowed to use them for (and we could prove that factually)? IRS Commissioner sarah ingram [sic] oversees these groups. Let’s discuss tomorrow but maybe we should try to set up a meeting this week.”¹¹⁹

September 22, 2010

President Obama

President Obama said during remarks to the Democratic Congressional Campaign Committee and the Democratic Senatorial Campaign Committee: “If you don’t think the stakes are large, I want you to understand right now all over this country special interests are planning and running millions of dollars of attack ads against Democratic candidates. **Because of last year’s Supreme Court decision in *Citizens United*, they are now . . . allowed to spend as much as they want, unlimited amounts of money, and they don’t have to reveal who is paying for these ads. And that’s what they’re doing. Millions of dollars being spent by groups with harmless-sounding names, Americans for Prosperity, the Committee for Truth in Politics, or Moms for Motherhood. I made that last one up. But they pose as non-for-profit, social welfare and trade groups. Every single one of them, virtually, is guided by seasoned, Republican political operatives.** None of them will disclose who is paying for these ads. They are spending tens of millions of dollars against Democratic candidates without telling the American people where that flood of money is coming from. You don’t know if it’s coming from big oil or insurance companies. You don’t even know if it’s coming from a foreign-controlled corporation.”¹²⁰

¹¹⁸ E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Terry Lemons et al., Internal Revenue Serv. (Sept. 21, 2010). [IRSR 508974]

¹¹⁹ E-mail from Jack Smith, U.S. Dep’t of Justice, to Raymond Hulser, U.S. Dep’t of Justice (Sept. 21, 2010). [OGR IRS 1]

¹²⁰ The White House, Remarks by the President at DCCC/DSCC General Reception (Sept. 22, 2010).

Senator Schumer

In a news conference promoting the DISCLOSE Act, Senator Charles Schumer (D-NY) said: “Leader Reid has brought the DISCLOSE Act to the Senate floor for a second time. We expect a vote on proceeding to the bill tomorrow. **The bill is a direct response to *Citizens United v. FEC*, in which the Supreme Court went out of its way, led by Chief Justice Roberts, and overruled almost a century of law and precedent that held corporations have the same First Amendment rights as people.** Because of this decision, the winner of every upcoming election this November won’t be Democrats or Republicans. It will be special interests. . . . **Right now, the public is under siege by advertising from shadowy special interest groups. It’s no longer conjecture; it’s fact.**”¹²¹

Senator Merkley

In a news conference promoting the DISCLOSE Act, Senator Jeff Merkley (D-OR) said: “**I have here a copy of *Citizens United*, and this court decision is a dagger poised at the heart of the American republic, at the heart of our American system of government. . . .** This piece of legislation, the DISCLOSE Act, takes and says there are several things we can do to improve this situation within the constitutional framework laid out by *Citizens United*. First is that **we can make sure that those donations are not secret, that citizens have the opportunity to evaluate who is behind the ads and the political campaigns that are being waged, and therefore take that into account so that no longer do you have a shadowy front group called, if you will, something like Citizens for a Stronger America that actually is a massive special interest** who is dramatically opposed to certain candidates because they stood up for the public interest, rather than the special interest.”¹²²

September 23, 2010

President Obama

After the Senate failed to advance the DISCLOSE Act, President Obama stated: “I am deeply disappointed by the unanimous Republican blockade in the Senate of the DISCLOSE Act, a critical piece of legislation that would control the flood of special interest money into our elections. **Today’s decision by a partisan minority to block this legislation is a victory for special interests and U.S. corporations – including foreign-controlled ones – who are now allowed to spend unlimited money to fill our airwaves, mailboxes and phone lines right up until Election Day.** And it comes at the expense of the American people, who no longer have the right to know who is financing these ads in an attempt to influence an election for their preferred candidate. Wall Street, the

¹²¹ Transcript, Senate Democrats Hold a News Conference on the DISCLOSE Act (Sept. 22, 2010).

¹²² *Id.*

insurance lobby, oil companies and other special interests are now one step closer to taking Congress back and returning to the days when lobbyists wrote the laws. But despite today's setback, I will continue fighting to ensure that our democracy stays where it belongs – in the hands of the American people.”¹²³

Senator Reid

Senator Harry Reid (D-NV), the Senate Majority Leader, issued the following statement: “**The *Citizens United* Supreme Court decision earlier this year opened the door for special interests, big corporations and foreign entities like BP to secretly spend hundreds of millions of dollars to influence American elections** – recent reports indicate \$400 million during these midterm elections. We have offered to delay the effective date until after this year's elections and to make any other reasonable changes that preserve the core disclosure provisions of the bill. But Republicans continue to block the Senate from even debating common-sense oversight to bring transparency to our campaign finance laws.”¹²⁴

Senator Schumer

On the floor of the Senate, Senator Charles Schumer (D-NY) said: “**In removing the restrictions on corporate and union campaign spending, the *Citizens United* decision has opened a door for the creation of shadow groups whose spending is not clearly regulated. Neither the IRS, which has jurisdiction for nonprofits, nor the FEC provides oversight for these groups. That is a scary thought.** In fact, one such group, American Crossroads, the leader in campaign spending in the Senate, was created by Karl Rove, who pledged to spend \$50 million on just the 2010 election cycle. In fact, since our last vote on this issue, it has been reported that these shadow groups have raised \$20 million. . . . **The Supreme Court's decision this year has made it imperative for us to act now.**”¹²⁵

Senator Whitehouse

Senator Sheldon Whitehouse (D-RI) stated on the floor of the Senate: “But [the Supreme Court] could not resist. They could not resist, and by a 5-to-4 decision—one of an array of 5-to-4 decisions by which a narrow partisan majority of our Supreme Court has taken the law and moved it as far as it could—they changed the law of the United States. They knocked down this standing precedent in order to open the floodgates of American elections to corporate money. . . . **[T]his Court has opened the corporate floodgates so that international corporations can come in, drown out American voters, buy up American elections, and what was law before, a type of corruption in the political arena and 85 percent**

¹²³ The White House, Statement by the President on the DISCLOSE Act Vote in the Senate (Sept. 23, 2010).

¹²⁴ Press Release, Senator Harry Reid, Reid: Republicans Block Debate On Common-Sense Measures To Prevent Special Interests From Drowning Out The Voices Of Voters (Sept. 23, 2010).

¹²⁵ 156 Cong. Rec. S7383 (Sept. 23, 2010) (statement of Senator Charles Schumer).

of the spending by the big corporations is on behalf of Republicans—I am sure that is just a coincidence.”¹²⁶

Rep. Van Hollen

Representative Chris Van Hollen (D-MD) issued a statement that read in part: **“With today’s vote in the Senate, Republicans have ensured that Americans will be left in the dark as shadowy organizations continue to spend millions on the upcoming elections.** The winners today are corporate special interests who remain free to funnel millions of dollars into groups like Americans for Job Security or 60 Plus Association to secretly fund advertising in favor of a particular agenda or against those who try to hold them accountable.”¹²⁷

New York Times

The *New York Times* published an article, titled “Hidden Under Tax-Exempt Cloak, Political Donors Flow.” The article started in part: “With every election cycle comes a shadow army of benignly titled nonprofit groups like Americans for Job Security, devoted to politically charged “issue advocacy,” much of it negative. But they are now being heard as never before — in this year of midterm discontent, Tea Party ferment and the first test of the Supreme Court decision allowing unlimited, and often anonymous, corporate political spending. Already they have spent more than \$100 million — mostly for Republicans and more than twice as much as at this point four years ago.”¹²⁸

September 24, 2010

IRS Action

An IRS media affairs employee circulated the *New York Times* article published the previous day to several IRS officials, including Lois Lerner and Sarah Hall Ingram.¹²⁹

September 26, 2010

David Axelrod

Senior White House advisor David Axelrod said during an appearance on ABC’s *This Week*: “[H]ere’s the thing about Karl Rove and what he’s doing. The insidious thing about it is they are funding negative ads all over the country against Democratic candidates paid for by major corporate special interests who don’t have to disclose their participation, the oil industry, Wall Street, insurance industry. We put a bill in the

¹²⁶ Press Release, Senator Sheldon Whitehouse, Whitehouse: DISCLOSE Act Ensures Our Military Reflects Nation’s Values (Sept. 23, 2010).

¹²⁷ Press Release, Representative Chris Van Hollen, Van Hollen Statement DISCLOSE Act Vote in the Senate (Sept. 23, 2010).

¹²⁸ Mike McIntire, *Hidden Under Tax-Exempt Cloak, Political Dollars Flow*, N.Y. TIMES, Sept. 23, 2010.

¹²⁹ E-mail from Steve Pyrek, Internal Revenue Serv., to Lois Lerner et al., Internal Revenue Serv. (Sept. 24, 2010). [IRSR 230887]

United States Congress asking one thing – and this was a loophole that was opened by the Supreme Court earlier in this year – we put a bill in the – in the – in the Congress saying, disclose who is funding these campaigns. Let the American people know who’s paying for these ads. It’s a very simple premise. . . . I mean, if you – **they’re spending tens of millions of dollars. In some districts, they’re spending more money than the candidate – candidates themselves on negative ads from benign-sounding Americans for Prosperity, the American Crossroads Fund. No. These are front groups for special interests.** These are front groups for foreign-controlled companies, which would have been banned under the bill that we put through Congress, and they don’t want the American people to know, and the American people ought to be alert to that.”¹³⁰

September 28, 2010

President Obama

At a campaign event in Wisconsin, President Obama said: “And so you can persuade them maybe to give the Republicans the keys back if they’re not hearing the other side of the argument. So a lot of them are fired up. **And thanks to a recent Supreme Court decision, they are being helped along this year, as I said, by special interest groups that are allowed to spend unlimited amounts of money on attack ads. They don’t even have to disclose who’s behind the ads. You’ve all seen the ads. Every one of these groups is run by Republican operatives. Every single one of them – even though they’re posing as nonprofit groups with names like Americans for Prosperity, or the Committee for Truth in Politics, or Americans for Apple Pie.** I made that last one up.”¹³¹

Senator Baucus

Senator Max Baucus (D-MT) wrote to IRS Commissioner Douglas Shulman demanding a review of “major” nonprofits engaged in political speech. He wrote: “I request that you and your agency survey major 501(c)(4), (c)(5) and (c)(6) organizations involved in political campaign activity to examine whether they are operated for the organization’s intended tax exempt purpose and to ensure that political campaign activity is not the organization’s primary activity.”¹³²

¹³⁰ ABC News, ‘This Week’ Transcript: Axelrod, McConnell, and Queen Rania (Sept. 26, 2010), available at <http://abcnews.go.com/ThisWeek/week-transcript-axelrod-mcconnell-queen-rania/story?id=11729101&singlePage=true>.

¹³¹ The White House, Remarks by the President at DNC Rally in Madison, Wisconsin (Sept. 28, 2010).

¹³² Letter from Max Baucus, S. Comm. on Finance, to Douglas H. Shulman, Internal Revenue Serv. (Sept. 28, 2010).

September 29, 2010

DOJ Action

Richard Pilger, Director of the Justice Department's Election Crimes Branch, contacted the IRS to arrange a meeting about nonprofits engaged in political speech.¹³³

September 30, 2010

President Obama

During a Democratic National Committee event in Washington, D.C., the President stated: "At the end of the day, whether they get the keys back or not will depend on you – because, look, look, the other side is excited. **And thanks to a recent Supreme Court decision, called *Citizens United* . . . they're being helped along this year by special interest groups. They are allowed to spend unlimited amounts of money on attack ads. And they don't have to disclose who's behind these ads. They have these innocuous names like 'Americans for Prosperity,' or 'Americans for Apple Pie. 'Moms for Motherhood.'** **And you look back, and it's like the Wizard of Oz – you look behind the curtain and there's some Republican operative,** and it's insurance companies or the banks or all the folks that were fighting change. I mean, why do you think they're giving up all this money? I mean, it's possible that maybe they're doing it because they want good government. . . . But I've got to admit, I'm kind of skeptical."¹³⁴

October 2010

October 5, 2010

Democracy 21

Left-leaning Democracy 21 and the Campaign Legal Center wrote to IRS Commissioner Douglas Shulman requesting that he investigate the conservative nonprofit, Crossroads GPS. Their letter read in part: "We urge the IRS to conduct its investigation and make its determination about whether the tax laws are being violated as expeditiously as possible, consistent with IRS procedures. **The status of Crossroads GPS as a section 501(c)(4) entity allows its donors to evade the public disclosure requirements** that would apply if the organization was registered as a section 527 political organization. Section 527 groups are organizations that are 'primarily organized and operated' to engage in political activities. By contrast, Section 501(c)(4) organizations are not permitted to be 'primarily engaged' in activities to influence elections. They are not

¹³³ E-mail from Richard Pilger, U.S. Dep't of Justice, to Cynthia Brown, Internal Revenue Serv. (Sept. 29, 2010). [HOCR IRS 10]

¹³⁴ The White House, Remarks by the President at DNC Gen44 Event (Sept. 30, 2010).

required to disclose their donors. **If, in fact, Crossroads GPS is impermissibly operating as a section 501(c)(4) organization in order to conceal its donors from the American people, the IRS has an obligation to take steps to protect the integrity of our tax laws and to make clear that such abuses will not be permitted in future elections.**¹³⁵

IRS Action

Lois Lerner wrote to Justice Department attorney Richard Pilger, Director of the Department's Election Crimes Branch, that the IRS is "getting you the disks we spoke about" and asked whether the Department had a formatting preference.¹³⁶ Pilger forwarded the e-mail to an FBI agent, writing: "This is incoming data re 501c4 issues. Does FBI have a format preference?"¹³⁷ Pilger later responded to Ms. Lerner, writing: "Thanks Lois – FBI says Raw format is best because they can put it into their systems like excel."¹³⁸

October 6, 2010

New York Times

The *New York Times* published an editorial, which read in part: "**Because of a series of court decisions that culminated in the Supreme Court's *Citizens United* ruling earlier this year, these and similar 501(c) nonprofits have become huge players in the year's election, using unlimited money from donors who have no fear of disclosure. . . .** One such group, American Crossroads, organized by Karl Rove, announced on Tuesday a \$4.2 million ad buy to support Republican candidates, bringing the group's total spending to about \$18 million so far. The possible commingling of secret foreign money into these groups raises fresh questions about whether they are violating both the letter and spirit of the campaign finance laws. The Federal Election Commission, which has been rendered toothless by its Republican members, should be investigating possible outright violations of the Federal Election Campaign Act by foreign companies and the chamber. **The Internal Revenue Service, which is supposed to ensure that these nonprofit groups are not primarily political, has fallen down on the job. Last week, Senator Max Baucus, Democrat of Montana and chairman of the Senate Finance Committee, demanded that the I.R.S. look into whether the tax code was being misused for political purposes, and, on**

¹³⁵ Letter from J. Gerald Hebert, Campaign Legal Center, & Fred Wertheimer, Democracy 21, to Douglas Shulman, Internal Revenue Serv. (Oct. 5, 2010).

¹³⁶ E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep't of Justice (Oct. 5, 2010). [HOCR IRS 19]

¹³⁷ E-mail from Richard Pilger, U.S. Dep't of Justice, to unnamed FBI agent, Fed. Bureau of Investigation (Oct. 5, 2010). [HOCR IRS 20]

¹³⁸ E-mail from Richard Pilger, U.S. Dep't of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010). [HOCR IRS 22]

Tuesday, two watchdog groups made the same request of the agency. The government needs to make sure that the tax code — and American control of American elections — is not being violated.”¹³⁹

October 7, 2010

President Obama

President Obama said during a campaign event for an Illinois Senatorial candidate: **“And thanks to a recent Supreme Court decision, they’re being helped along by special interest groups that are spending unlimited amounts of money all on attack ads, and they don’t disclose who’s behind them.** It could be the oil industry, could be an insurance industry, could be Wall Street — you don’t know. Almost every one of them is run by Republican operatives. They’re posing as nonprofits, nonpolitical groups. **They’ve got these innocuous-sounding names like Americans for Prosperity, or the Committee for Truth in Politics. Or Moms for Motherhood. I made that last one up. But you wouldn’t know. According to one recent report, conservatives – conservative groups like these have outspent Democratic seven to one.** Right here in Illinois, in this Senate race, two groups funded and advised by Karl Rove have outspent the Democratic Party two to one in an attempt to beat [Democratic Senatorial candidate] Alexi [Giannoulis] – two to one. Funded and advised by Karl Rove. Just this week, we learned that one of the largest groups paying for these ads regularly takes in money from foreign sources. So the question for the people of Illinois is, are you going to let special interests from Wall Street and Washington and maybe places beyond our shores come to this state and tell us who our senator should be?”¹⁴⁰

President Obama

During a campaign rally for Maryland Governor Martin O’Malley, President Obama said: “See, the other side sees a chance to get back in the driver’s seat. And, by the way, **thanks to a recent Supreme Court decision, they are being helped this year like we’ve never seen before by special interest groups that are spending unlimited amounts of money on attack ads. And then they don’t disclose who is behind them.** Because of the Supreme Court law, they don’t have to disclose who is behind it. It could be the oil companies. It could be the insurance industry. It could be Wall Street. You don’t know. Their lips are sealed. The floodgates are open, though. **And almost every one of these independent organizations is run by Republican operatives. They’re posing as nonprofit, non-political groups. They’ve got names like ‘Americans for Prosperity,’ or the ‘Committee for Truth in Politics,’ or Moms for Motherhood.** Actually, the last one I made up. But you’d

¹³⁹ *Clean and Open American Elections*, N.Y. Times, Oct. 6, 2010.

¹⁴⁰ The White House, Remarks by the President at Reception for Alexi Giannoulis (Oct. 7, 2010).

think – there was a recent report that in recent weeks, conservative groups like this have outspent Democratic groups by seven to one. **But I want you to understand this, because this is important. It is estimated that Democratic groups are being outspent seven to one.** In Indiana’s Senate race, it’s nearly six to one. In a House race there, a conservative group has spent nearly as much as both parties combined. In Colorado, they’re outspending the Democratic Party nearly two to one. In Missouri, the Republicans’ Senate Committee hasn’t spent a dime, but outside groups have dropped \$2 million of negative ads to help the Republican candidate.”¹⁴¹

October 8, 2010

IRS Action

Lois Lerner and other IRS official met with Justice Department attorneys Jack Smith and Richard Pilger, as well as an FBI agent, to discuss the “evolving legal landscape” of campaign-finance law after the *Citizens United* decision.¹⁴²

October 10, 2010

President Obama

At a Democratic National Committee event in Philadelphia, Pennsylvania, President Obama said: “**And thanks to a Supreme Court decision called *Citizens United*, they are being helped along this year by special interest groups that are spending unlimited amounts of money on attack ads – attacking folks like [Democratic Congressman] Patrick Murphy, attacking folks like [Democratic Senatorial candidate] Joe Sestak** – just attacking people without ever disclosing who’s behind all these attack ads. You don’t know. It could be the oil industry. It could be the insurance industry. It could even be foreign-owned corporations. You don’t know because they don’t have to disclose.”¹⁴³

October 11, 2010

Senator Durbin

Senator Dick Durbin (D-IL) wrote to IRS Commissioner Douglas Shulman asking him to investigate the conservative nonprofit, Crossroads GPS, for political activity. He wrote: “I write to urge the Internal Revenue Service to examine the purpose and primary activities of several 501 (c)(4) organizations that appear to be in violation of the law. One organization

¹⁴¹ The White House, Remarks by the President at Rally for Maryland Governor Martin O’Malley (Oct. 7, 2010).

¹⁴² Transcribed interview of Richard Pilger, U.S. Dep’t of Justice, in Wash., D.C., at 8 (May 6, 2014).

¹⁴³ The White House, Remarks by the President and the Vice President at a DNC “Moving America Forward” Rally in Philadelphia, Pennsylvania (Oct. 10, 2010).

whose activities appear to be inconsistent with its tax status is Crossroads GPS, organized as a (c)(4) entity in June. The group has spent nearly \$20 million on television advertising specific to Senate campaigns this year. If this political activity is indeed the primary activity of the organization, it raises serious questions about the organization's compliance with the Internal Revenue Code. . . . **I ask that the IRS quickly examine the tax status of Crossroads GPS and other (c)(4) organizations that are directing millions of dollars into political advertising, and respond with your findings as soon as possible.**"¹⁴⁴

E.J. Dionne

Washington Post columnist E.J. Dionne wrote a piece titled, "Shadowy Players in a New Class War," about the upcoming midterm election. He wrote: "The 2010 election is turning into a class war. The wealthy and the powerful started it. . . . **This extraordinary state of affairs was facilitated by the U.S. Supreme Court's scandalous *Citizens United* decision, which swept away decades of restrictions on corporate spending to influence elections.** The Republicans' success in blocking legislation that would at least have required the big spenders to disclose the sources of their money means voters have to operate in the dark. . . . If one side in the debate can overwhelm the political system with clandestine cash, which is what's happening, is there any doubt that the side in question will buy itself a lot of influence? If that's not corruption, what exactly is it?"¹⁴⁵

October 12, 2010

President Obama

During a town hall, President Obama said: "In a big, complicated democracy like ours, it requires resources to get out your message. And there's nothing wrong with that, per se. **But what's happening in this election is unprecedented because what we're seeing, partly as a consequence of a Supreme Court decision called *Citizens United*, is the ability of special interests to mobilize millions of dollars from donors who are undisclosed to run negative ads** at levels that are outspending, in some cases, the candidates themselves or the parties. . . . Eighty-six percent of them are negative ads that are just bombarding candidates all across the country, and we don't know where this money is coming from. We don't know if it's being paid for by oil companies who don't like some of our environmental positions. We don't know if they're being run by banks who are frustrated by some of our financial positions. We don't know if they're being funded by foreign corporations because they're not disclosed. And so this poses an enormous challenge. **And one of the most frustrating things is that these ads, when they run, the names of**

¹⁴⁴ Letter from Dick Durbin, U.S. Senate, to Douglas Shulman, Internal Revenue Serv. (Oct. 11, 2010).

¹⁴⁵ E.J. Dionne, Jr., *Shadowy players in a new class war*, WASH. POST, Oct. 11, 2010.

these groups are all really innocuous sounding, right? There's Americans For Prosperity and Moms For Motherhood. I made that one up. But you get the idea. **So if you're just watching the screen you think, well, gosh, Americans For Prosperity – I'm for prosperity and they're saying all these horrible things about the Democratic candidate. Maybe the Democratic candidate is not for prosperity.**"¹⁴⁶

Washington Post

The *Washington Post* published an editorial titled, "Secret Campaign Money," which read: "The gusher of secret money pouring into the coming election is alarming. It should be plugged for future campaigns – and could be, with the switch of a Senate vote or two. But the rhetoric about this development, from President Obama on down, is irresponsibly alarmist. **And the popular understanding of how this mess arose – generated by the president and other Democrats and abetted in part by media reports – is ill-informed. The fundamental problem is not the Supreme Court's ruling in *Citizens United*, although that reflected wrongheaded judicial activism. The real problem lies in a tax code that permits too much political activity to take place in secrecy. . . .** The problem of this secret spending – and the solution to it – lies in the tax code and its enforcement. **Nonprofit advocacy groups, known as 501(c)(4)s, are permitted to engage in political advocacy as long as that is not their primary purpose. Meanwhile, these groups do not have to reveal the identities of their donors.** IRS regulations bar such organizations from 'direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office,' but as a practical matter, these limits have not made much difference. **One such Republican-leaning group, American Crossroads GPS, has touted its ability to keep donor names confidential even as it runs ads in key races.**"¹⁴⁷

October 14, 2010

President Obama

In response to a question about the Tea Party during a youth town hall, President Obama said: "I think there are a lot of people who are involved in the Tea Party who have very real and sincere concerns about spending that's out of control or generally philosophically believe that the government should be less involved in certain aspects of American life rather than more involved. And they have every right and obligation as citizens to be involved and engaged in this process. **I do think that what has happened is layered on top of some of that general frustration that has expressed itself through the Tea Party, there is an awful lot of corporate money that's pouring into these elections right now. I**

¹⁴⁶ The White House, Remarks by the President at a "Moving America Forward" Town Hall (Oct. 12, 2010).

¹⁴⁷ *Secret Money Campaign*, WASH. POST, Oct. 12, 2010.

mean, you've got tens of millions of dollars in what are called third-party expenditures that are being spent basically on negative ads. I mean, about 86, 90 percent of them are negative ads. And you guys have probably seen them more than I do, because I don't watch that much TV. But if you're in a battleground state right now, you are being bombarded with negative ads every single day and nobody knows who is paying for these ads. They've got these names like 'Americans for Prosperity' or 'Moms for Motherhood' or – actually that last one I made up. But you have these innocuous-sounding names, and we don't know where this money is coming from. I think that is a problem for our democracy. And it's a direct result of a Supreme Court decision that said they didn't have to disclose who their donors are. And so you don't know is there – is an oil company that is unhappy about some environmental rules that we put in place funding these? Are the insurance companies that aren't happy about some of the restrictions we've placed on insurance companies being able to drop your coverage – are they paying for them? We don't know that. And I think it's important for us to make sure that disclosure is available so that you guys can make your own decisions about if you see an ad, you know who is paying for it and you can make your own judgments about whether it's true or not.”¹⁴⁸

DNC

The Democratic National Committee released a memorandum to editorial writers and interested parties about “secretive donations” to Republican campaigns. The memorandum read: “Anonymous special interests and unnamed corporations are pouring tens of millions of dollars into electoral politics this fall, money that has the potential to tip the scales in close races across the country, with the vast majority of such spending by any measure benefiting Republican candidates. Yet the American people have absolutely no way to evaluate the motives behind these ads which are being produced by groups created explicitly to raise unlimited funds and to hide the identities of their special interest sponsors. . . . And all of this, of course, was not unforeseen – **the vast rise in corporate and special interest spending by right wing groups in support of Republican candidates expected to do their bidding in Congress in the aftermath of the *Citizens United* decision** was predicted by everyone from President Obama to neutral observers, pundits and campaign watchdog groups. And, it has played out exactly as predicted: Numerous right-wing groups, many founded by the architects of the failed economic policies of the last decade which benefited the well-to-do and the corporate special interests, grew like weeds. . . . **And now, by a margin of almost nine to one, Republican candidates are benefiting over Democratic candidates**

¹⁴⁸ The White House, Remarks by the President in a Youth Town Hall (Oct. 14, 2010).

from the spending of outside groups that take unlimited funds from secret donors.”¹⁴⁹

October 15, 2010

President Obama

President Obama told an audience at a campaign rally for Democratic Senatorial candidate Chris Coons in Delaware: “Now, right now, the same special interests that would profit from the other side’s agenda, they are fighting hard, they’re fighting back. To win this election, they are plowing tens of millions of dollars into front groups that are running misleading, negative ads all across America. Tens of billions of dollars are pouring in. And they don’t have the courage to stand up and disclose their identities. They could be insurance companies, or Wall Street banks, or even foreign-owned corporations. We will not know because there’s no disclosure. **They’ve got these innocuous-sounding names – ‘Americans for Prosperity,’ and ‘Moms for Motherhood.’ I made that last one up. But this isn’t just a threat to the Democrats. It’s a threat to our democracy.**”¹⁵⁰

October 19, 2010

IRS Action

Lois Lerner spoke to a Duke University crowd about *Citizens United* and political speech by nonprofits. She said: “What happened last year was the Supreme Court – the law kept getting chipped away, chipped away in the federal election arena. The Supreme Court dealt a huge blow, overturning a 100-year old precedent that basically corporations couldn’t give directly to political campaigns. And everyone is up in arms because they don’t like it. The Federal Election Commission can’t do anything about it. They want the IRS to fix the problem. The IRS laws are not set up to fix the problem: (c)(4)s can do straight political activity. They can go out and pay for an ad that says, ‘Vote for Joe Blow.’ That’s something they can do as long as their primary activity is their (c)(4) activity, which is social welfare. So everybody is screaming at us right now: ‘Fix it now before the election. Can’t you see how much these people are spending?’ I won’t know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can’t do anything right now.”¹⁵¹

¹⁴⁹ Memorandum from Brad Woodhouse, Democratic Nat’l Comm., to Editorial Writers and Interested Parties, “Transforming Our Democracy: Secretive Donations and Anonymous Ads (Oct. 14, 2010), available at

http://www.democrats.org/news/press/re_transforming_our_democracy_secretive_donations_and_anonymous_ads

¹⁵⁰ The White House, Remarks by the President and Vice President at an Event for Chris Coons and the DSCC (Oct. 15, 2010).

¹⁵¹ See “Lois Lerner Discusses Political Pressure on IRS in 2010,” www.youtube.com (last visited May 13, 2014) (transcription by Committee).

DOJ Action

Richard Pilger, Director of the Justice Department's Election Crimes Branch, wrote to the IRS asking for a "good IRS contact re criminal tax enforcement against tax exempt organizations."¹⁵² The IRS selected an employee in its Criminal Investigation unit to serve as a liaison with the Justice Department on criminal enforcement relating to nonprofit political speech.¹⁵³

October 21, 2010

President Obama

During a campaign event for Senator Patty Murray (D-WA), the President stated: "**So to win this election, they are plowing tens of millions of dollars into front groups that are running misleading negative ads all across America.** You've seen them. You've seen them. . . . Just flooding the airwaves with negative ads. And they don't have the courage to stand up and disclose the identity of the donors. They could be insurance companies. They could be Wall Street banks. We don't know. We don't know who it is. **But understand, this kind of politics, that's not just a threat to Democrats. It's a threat to our democracy.** And the only way to fight it – the only way to match their millions of dollars in negative ads is with the millions of voices who are ready to stand up and finish what we started in 2008."¹⁵⁴

October 22, 2010

President Obama

At a campaign stop for Senator Barbara Boxer (D-CA), President Obama proclaimed: "But you know what – right now the same special interests that fought us every inch of the way, they are fighting just as hard in this election. They want to roll back the clock. Here in California, oil companies and the other special interests are spending millions on a campaign to gut clean air standards and clean energy standards, jeopardizing the health and prosperity of this state. **All across America, special interests have poured millions of dollars into phony front groups – you've seen them. They're called 'Americans for Prosperity,' or 'Moms for Motherhood.' I made that last one up. They don't have the guts to say, we're funding this. So they hide behind these front groups. You don't know who these groups are. You don't know who's funding it – although we have a pretty good**

¹⁵² E-mail from Joseph Urban, Internal Revenue Serv., to Nancy Marks & Janet Johnson, Internal Revenue Serv. (Oct. 19, 2010). [IRSC 38452]

¹⁵³ E-mail from Nancy Marks, Internal Revenue Serv., to Joseph Urban & Janet Johnson, Internal Revenue Serv. (Oct. 19, 2010). [IRSC 38452]

¹⁵⁴ The White House, Remarks by the President at a Rally for Senator Murray in Seattle, Washington (Oct. 21, 2010).

idea. Smearing Democratic candidates. This is thanks to a gigantic loophole. They can spend without limit, keep their contributions secret. It could be oil companies, Wall Street speculators, insurance companies. You don't know. They won't tell you. They won't say. **And by the way, those of you who don't think that the Supreme Court is important, this is a direct result of a ruling called *Citizens United*, which is why when Barbara and I make sure that we've got people like Sonia Sotomayor and Elena Kagan on the bench – the only way we're going to do that is if we've got a Senate majority that is serious. These rulings are not just a threat to Democrats. They're a threat to our democracy.**"¹⁵⁵

President Obama

During a subsequent campaign event in Los Angeles, California, the President stated: "You've seen what they're trying to do here in California, trying to roll back laws that will keep California at the cutting-edge. **And now that we've got special interests spending millions of dollars out there to gut these clean air standards and clean energy standards, and they're doing the same thing all across the country – millions of dollars in special interest money, using phony front groups. You don't know their names. They call themselves 'Americans for Prosperity,' or 'Mothers for Motherhood.'** I made that last one up, but it might as well be. And you don't know who's behind it. You don't know, is it an insurance company? Is it a bank? Who is financing all these negative ads against Jerry Brown? Who's financing all these negative ads against Barbara Boxer? **And you know how they're able to do this without disclosing their donors is because of a Supreme Court ruling called *Citizens United* – which shows you how important it is who's making appointments on the Supreme Court. I'm proud I appointed Sonia Sotomayor. I appointed Elena Kagan. All this money pouring into these elections by these phony front groups – this isn't just a threat to Democrats; it's a threat to our democracy.**"¹⁵⁶

President Obama

During a campaign stop in Las Vegas, Nevada, the President declared: "We've got some big problems because the same special interests that we've been battling for the last two years, they're fighting back hard. They want to roll back the clock. **And all across America they are pouring hundreds of millions of dollars into a bunch of phony front groups running negative ads. Have you seen some negative ads out here? You don't even know who's sponsoring these ads. They have all these names like 'Americans for Prosperity,' 'Mothers for Motherhood.'** Actually, I made that last one up, but they're spending without limit, keeping their contributions secret. They don't even have the guts to stand up for what they say they believe in. And we don't know who's funding them. Is it the oil industry? Is it the insurance companies? Is it

¹⁵⁵ The White House, Remarks by the President at an Event for Senator Boxer in Los Angeles, California (Oct. 22, 2010).

¹⁵⁶ The White House, Remarks by the President at Los Angeles "Moving America Forward" Rally (Oct. 22, 2010).

speculators? They won't tell you. They won't say. They don't want you to know who's bankrolling all these negative ads. **This is not just a threat to Democrats, this is a threat to our democracy.**"¹⁵⁷

Dan Pfeiffer

In a post to the White House blog posting titled, "What Do They Expect in Return?," White House Communications Director Dan Pfeiffer wrote: **"Ever since the *Citizens United* ruling opened the floodgates to unlimited and undisclosed special interest and corporate spending in our elections, President Obama has repeatedly warned that these undisclosed contributions will give special interests even more power over politicians.** And, with that power, they plan to return to the days when lobbyists wrote the laws in Washington to benefit special interests at the expense of the American people."¹⁵⁸

IRS Action

The IRS transmitted 21 disks containing 1.1 million pages of nonprofit tax information – including confidential taxpayer information – to the FBI.¹⁵⁹

October 23, 2010

President Obama

During a campaign event in Minneapolis, Minnesota, the President said: "But right now, the same special interests that we've battled on your behalf, they're fighting back hard. [Democratic gubernatorial candidate] Mark [Dayton] mentioned that they are spending millions of dollars. They want to roll back the clock. **And they are pouring millions of dollars through a network of phony front groups, flooding the airwaves with misleading attack ads, smearing fine public servants like Mark. And thanks to a gigantic loophole, these special interests can spend unlimited amounts without even disclosing where the money is coming from.** We don't know where it's coming from. We don't know if it's from the oil industry. We don't know if it's from banks. We don't know if it's insurance companies. Could be coming overseas – we don't know. They won't tell you. They don't want you to know. They won't stand behind what they do. **This isn't just a threat to Democrats. This is a threat to our democracy.**"¹⁶⁰

Speaker Pelosi

Introducing President Obama at the campaign event, Speaker Nancy Pelosi decried the influence of conservative nonprofits. She said: "Everything was going great and all of a sudden secret money from God knows where — because they won't disclose it — is pouring in."¹⁶¹

¹⁵⁷ The White House, Remarks by the President at Las Vegas "Moving America Forward" Rally (Oct. 22, 2010).

¹⁵⁸ The White House, Dan Pfeiffer, What Do They Expect in Return? (Oct. 22, 2010).

¹⁵⁹ E-mail from David Hamilton, Internal Revenue Serv., to Sherry Whitaker, Internal Revenue Serv. (Oct. 22, 2010). [IRSC 38436]

¹⁶⁰ The White House, Remarks by the President at a Rally in Minneapolis, Minnesota (Oct. 23, 2010).

¹⁶¹ John McArdle, *Pelosi bemoans 'secret money from God knows where,'* ROLL CALL, Oct. 23, 2010.

October 25, 2010

President Obama

At a campaign event in Rhode Island, the President declared: “But understand, the other side is fighting back. **The same special interests we’ve been battling on your behalf over the last two years, they are fighting back hard. And they are now using these phony front groups to funnel hundreds of millions of dollars in negative ads all across the country, distorting the records of Democrats.** And you know what? They are not even willing to disclose where the money is coming from. You don’t know. Could be from insurance companies. Could be from oil companies. Could be from Wall Street banks. You don’t know. **This is all the consequence of a Supreme Court decision, so don’t let anybody tell you the Supreme Court doesn’t matter.** That’s why I put Sonia Sotomayor and Elena Kagan there. We need to have some Supreme Court justices who are looking out for you. But because of this campaign finance loophole, you’ve got hundreds of billions of dollars. It’s not just a threat to Democrats. It’s a threat to our democracy. I mean, imagine if you can – if special interests can just spend as much money as they want and you don’t know who they are. **They’ve got these innocent-sounding names: ‘Americans for Prosperity’ or ‘Moms for Motherhood.’** No, I made the last one up. But you don’t know. And that cheapens our discourse. It hurts our democracy.”¹⁶²

October 26, 2010

President Obama

President Obama said during a private campaign dinner in Rhode Island: “That’s what’s at stake in this election. But it’s going to be hard. The only way we succeed is if we’ve got the ability to get out the message, particularly in this last week. **Because we are getting snowed under by unsupervised spending, undisclosed spending through these front groups that so many of you have read about: ‘Americans for Prosperity’ and ‘Moms for Motherhood’ – that last one I made up. But there are a whole bunch of groups out there mostly run and coordinated by Republican operatives as a consequence of the Supreme Court *Citizens United* decision that are just spending millions of dollars . . . and these ads completely distort Democrats’ records.**”¹⁶³

¹⁶² The White House, Remarks by the President at DCCC General Reception (Oct. 25, 2010).

¹⁶³ The White House, Remarks by the President at a DCCC Dinner (Oct. 26, 2010).

October 27, 2010

David Axelrod

Senior White House advisor David Axelrod discussed *Citizens United* during a “Tuesday Talks” feature on the White House website. In response to the question “what is the White House doing to reverse *Citizens United*,” Mr. Axelrod said: “[T]here was a decision early this year by the United States Supreme Court that reversed generations of precedent and said that corporations had First Amendment rights and could advertise in political campaigns, participate in political campaigns, advocate for the election or defeat of candidates. And that, coupled with a loophole in the law that allows certain organizations to take unlimited contributions and run political advertising without disclosing where that money is coming from, has opened up the floodgates. **And we’ve seen hundreds of millions of dollars of campaign commercials running almost entirely against Democratic candidates.** . . . What we see now are people from the oil industry, Wall Street, and other interest . . . **making million-dollar and more contributions . . . to these organizations that run negative ads under benign-sounding names like the Crossroads GPS organization and the American Action Network and Americans for Prosperity, but there are essentially front groups for interests who want to influence our government and hijack the national agenda.**”¹⁶⁴

October 31, 2010

Speaker Pelosi

Speaker Nancy Pelosi (D-CA) appeared on an MSNBC television program to discuss the 2010 midterm election. In response to a question from host Keith Olbermann about how to “fix our laws” after *Citizens United*, Speaker Pelosi said: “Well, first, let me just say, as you read those names, it’s clear that there are those on Wall Street who want to block Wall Street reform—some of the greatest reforms in decades and for consumer protections, the biggest in our nation’s history. . . . So, they have an agenda that is counter to the reforms that we have put forth. What we have to do is say to them, stand by your ad. You’re so proud of yourself, identify yourself. . . . And that’s what the DISCLOSE Act in Congress would have done. We have passed it in the House. There are 59 votes in the Senate. We couldn’t get one Republican to say, disclosure is the right thing to do. **The court made a terrible decision. It was contrary to the fundamentals of our democracy.** But at least people should be able to know where this money is coming from. . . . [T]he president mentioned this in the State of the Union address. **So, this goes back a long way. That was very, I think, important for him to do. And he, again, has kept that beat going.** Because it is essential and fundamental to our

¹⁶⁴ The White House, What You Missed: Tuesday Talk with David Axelrod (Oct. 27, 2010) (transcription by Committee).

democracy that we not have it be wholly owned subsidiary of these corporations.”¹⁶⁵

November 2010

November 2, 2010

The congressional midterm election was held. Republican candidates gained six seats in the United State Senate and 63 seats in the United States House of Representatives, shifting control of the House from the Democratic Party to the Republican Party. President Obama famously called the electoral outcome a “shellacking.”¹⁶⁶

The IRS’s awareness of political rhetoric to fix the problem of *Citizens United*

The Committee’s investigation confirms that the IRS was well aware of the prevailing political rhetoric in 2010 against *Citizens United* and nonprofit political speech. Like any other agency, the IRS was attentive and responsive to public statements and media reports that touched upon the laws and regulations it oversaw. As the Committee has already documented, the initial test cases were identified and elevated precisely due to media attention surrounding the Tea Party.¹⁶⁷ New evidence shows that the Justice Department met with the IRS in 2010 after also growing concerned about potential criminal aspects of nonprofit political speech through national news sources.¹⁶⁸ Other evidence available to the Committee shows that the IRS was acutely aware of – and even influenced by – the President’s political rhetoric against *Citizens United* and nonprofit political speech.

The IRS’s awareness of media interest in nonprofit political speech

Throughout 2010, as President Obama publicly and repeatedly criticized the *Citizens United* decision, the IRS acknowledged media attention about nonprofit political speech. In February 2010, a supervisor in the IRS’s Cincinnati office suggested elevating a “potentially politically embarrassing case involving a ‘Tea Party’ organization” to Washington due to media

¹⁶⁵ *Countdown with Keith Olbermann* (MSNBC television broadcast Oct. 31, 2010) (interview with Speaker Nancy Pelosi).

¹⁶⁶ Laura Meckler & Jonathan Weisman, *Obama takes blame for losses, reaches out to GOP*, WALL ST. J., Nov. 3, 2010.

¹⁶⁷ See Memorandum from Majority Staff, H. Comm. on Oversight & Gov’t Reform, to Members, H. Comm. on Oversight & Gov’t Reform, “Interim update on the Committee’s investigation of the Internal Revenue Service’s inappropriate treatment of certain tax-exempt applicants” (Sept. 17, 2013)

¹⁶⁸ Transcribed interview of Richard Pilger, U.S. Dep’t of Justice, in Wash., D.C. (May 6, 2014).

attention.¹⁶⁹ She wrote: “Recent media attention to this type of organization indicates to me that this is a ‘high profile’ case.”¹⁷⁰

Figure 1: E-mail from Sharon Camarillo to Cindy Thomas, Feb. 25, 2010

From: Camarillo Sharon L
Sent: Thursday, February 25, 2010 5:19 PM
To: Thomas Cindy M
Subject: FW: Case # [REDACTED] 8103
Importance: Low

Cindy: Please let 'Washington' know about this potentially politically embarrassing case involving a 'Tea Party' organization. Recent media attention to this type of organization indicates to me that this is a "high profile" case. In addition to 501(c)(4) typical legislative activities, the applicant, in answer to Part II, item 15 of the of the 1024 application indicates possible future political candidate support. Shown below are excerpts from the application describing its legislative and possible future political activities.

The case is currently being held in the Screening group, pending a response from EOT.

In early August 2010, an IRS media relations employee e-mailed senior IRS officials – including Deputy Commissioner Steve Miller, Tax Exempt and Government Entities (TEGE) Commissioner Sarah Hall Ingram, Exempt Organizations Director Lois Lerner, and Chief of Staff Jonathan Davis – about a forthcoming *Washington Post* article on 501(c)(4) groups engaged in political activity.¹⁷¹ She wrote:

Washington Post reporter . . . is working on a story that as he explains it, is about the new importance of IRS regulations covering campaign/election-related activity for section 501c4 and 527 groups in light of a recent Supreme Court decision freeing corporations to run campaign ads. The premise of his story, in his words, is that the IRS has a harder time regulating money in politics than the FEC because it is primarily a bill collector and not an enforcement agency.¹⁷²

Later in August, Lerner e-mailed Ingram an article that the Democratic Congressional Campaign Committee had filed a complaint with the IRS about the conservative group, Americans for Prosperity.¹⁷³ Lerner opined: “We won’t be able to stay out of this – we need a plan!”¹⁷⁴

¹⁶⁹ E-mail from Sharon Camarillo, Internal Revenue Serv., to Cindy Thomas, Internal Revenue Serv. (Feb. 25, 2010). [IRSR 428451]

¹⁷⁰ *Id.*

¹⁷¹ E-mail from Michelle Eldridge, Internal Revenue Serv., to Steven Miller et al., Internal Revenue Serv. (Aug. 6, 2010). [IRSR 452184]

¹⁷² *Id.*

¹⁷³ E-mail from Lois Lerner, Internal Revenue Serv., to Sarah Hall Ingram, Internal Revenue Serv. (Aug. 31, 2010). [IRSR 632342]

¹⁷⁴ *Id.*

Figure 2: E-mail from Michelle Eldridge to Steven Miller et al., Aug. 6, 2010

From: Eldridge Michelle L
Sent: Friday, August 06, 2010 4:24 PM
To: Miller Steven T; Ingram Sarah H; Lerner Lois G; Davis Jonathan M (Wash DC); Campbell Carol A; Keith Frank; Potter Clarissa C; Marks Nancy J
Cc: Lemons Terry L; Pyrek Steve J; Patterson Dean J
Subject: Washington Post inbound re: 501 c4 and 527 groups/supreme court ruling

Washington Post reporter, [REDACTED] is working on a story that as he explains it, is about the new importance of IRS regulations covering campaign/election-related activity for section 501c4 and 527 groups in light of a recent Supreme Court decision freeing corporations to run campaign ads. The premise of his story, in his words, is that the IRS has a harder time regulating money in politics than the FEC because it is primarily a bill collector and not an enforcement agency.

We have been working with TE/GE on this inbound and provided him with a few links to existing data/stats on the web for his story. Beyond that--we did not touch this issue. We expect his story to run over the weekend. Thanks.
--Michelle

Figure 3: E-mail from Lois Lerner to Sarah Hall Ingram, Aug. 31, 2010

From: Lerner Lois G
Sent: Tuesday, August 31, 2010 6:36 PM
To: Ingram Sarah H
Subject: FW: New York Times: Group Is Accused on Tax Exemption

We won't be able to stay out of this--we need a plan!

Lois G. Lerner
Director, Exempt Organizations

Days later, Lerner took action. In response to a tax-law journal article, Lerner initiated a “c4 project” to assess the political activity of certain nonprofits in wake of *Citizens United*.¹⁷⁵ She told her subordinates: “We need to have a plan. We need to be cautious so it isn’t a *per se* political project. More a c4 project that will look at levels of lobbying and pol. activity along with exempt activity.”¹⁷⁶ Lerner later wrote about the need to “fix the darn law!”¹⁷⁷

Figure 4: E-mail from Lois Lerner to Cheryl Chasin, Sept. 16, 2010

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

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

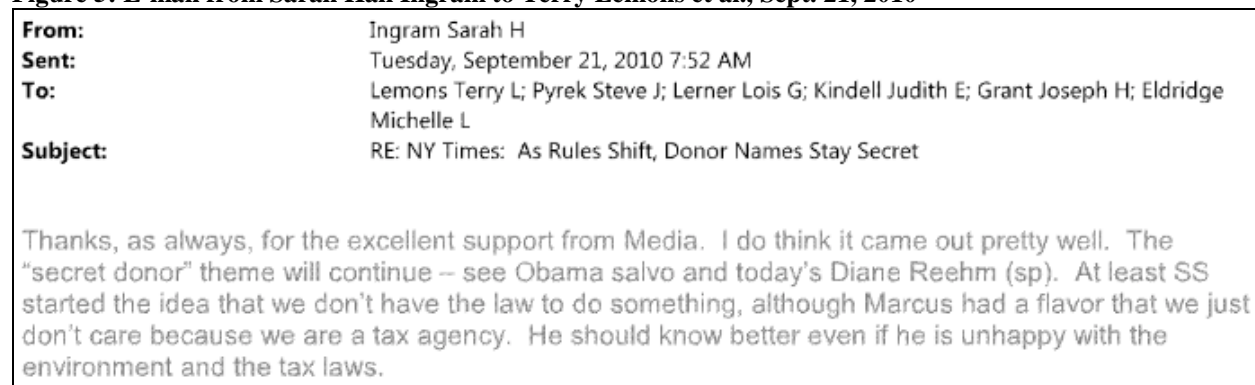
¹⁷⁵ E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191032]

¹⁷⁶ E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Laurice Ghogasian, & Judith Kindell, Internal Revenue Serv. (Sept. 16, 2010). [IRSR 191030]

¹⁷⁷ E-mail from Lois Lerner, Internal Revenue Serv., to Robert Stern (June 11, 2012). [IRSR 679362-64]

In late September 2010, around the same time that President Obama was criticizing *Citizens United* almost daily in stump speeches for Democratic congressional candidates, the IRS received a media inquiry from the *New York Times* about “a large upswing in the money donated to 501(c)(4)’s [and] that the IRS has too few resources to monitor and deal with compliance and enforcement issues in this area.”¹⁷⁸ The article was published on the front page of the *Times* on September 21, 2010.¹⁷⁹ In an e-mail that day, TEGE Commissioner Sarah Hall Ingram told her colleagues to expect that the “‘secret donor’ theme will continue – see Obama salvo and today’s Diane Reehm [sic].”¹⁸⁰ Entitled “Campaign Spending,” that day’s *Diane Rehm Show* discussed the *Citizens United* decision and nonprofit political speech, and featured an interview with Representative Chris Van Hollen (D-MD) discussing the shortcomings of the campaign finance law.¹⁸¹

Figure 5: E-mail from Sarah Hall Ingram to Terry Lemons et al., Sept. 21, 2010



Days later, an IRS media official circulated another front-page *New York Times* article titled, “Hidden Under Tax-Exempt Cloak, Political Dollars Flow.”¹⁸² Echoing almost verbatim the rhetoric of President Obama, the article stated in part:

With every election cycle comes a shadow army of benignly titled nonprofit groups like Americans for Job Security, devoted to politically charged “issue advocacy,” much of it negative. But they are now being heard as never before — in this year of midterm discontent, Tea Party ferment and the first test of the Supreme Court decision allowing unlimited, and often anonymous, corporate political spending. Already they have spent more than \$100 million — mostly for Republicans and more than twice as much as at this point four years ago.¹⁸³

¹⁷⁸ E-mail from Michelle Eldridge, Internal Revenue Serv., to Doug Shulman et al., Internal Revenue Serv. (Sept. 20, 2010). [IRSR 250053]

¹⁷⁹ See Michael Luo & Stephanie Strom, *Donor Names Remain Secret as Rules Shift*, N.Y. TIMES, Sept. 21, 2010.

¹⁸⁰ E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Terry Lemons et al., Internal Revenue Serv. (Sept. 21, 2010). [IRSR 508974]

¹⁸¹ *The Diane Rehm Show* (Nat’l Public Radio radio broadcast Sept. 21, 2010), transcript available at <http://thedianerehmshow.org/shows/2010-09-21/campaign-spending/transcript>.

¹⁸² E-mail from Steve Pyrek, Internal Revenue Serv., to Lois Lerner et al., Internal Revenue Serv. (Sept. 24, 2010). [IRSR 230887]

¹⁸³ Mike McIntire, *Hidden Under Tax-Exempt Cloak, Political Dollars Flow*, N.Y. TIMES, Sept. 23, 2010.

The publication of two front-page *New York Times* articles about nonprofit political speech within days of each other demonstrates just how successfully the President pushed his political rhetoric. The internal IRS e-mails show, moreover, that as the President made *Citizens United* and nonprofit political speech a high-profile issue in 2010, the IRS received and internalized the President's political rhetoric.

The Justice Department meets with Lois Lerner in the wake of media attention about nonprofit political speech

Like the IRS, the Justice Department also received and internalized the President's political rhetoric lambasting *Citizens United* and nonprofit political speech. In particular, the Department became interested in potential criminal aspects of nonprofit political speech after the chief of the Public Integrity Section read one of the front-page *New York Times* articles – an article the IRS assisted in preparing. As a result of the Justice Department's engagement, the IRS sent 1.1 million pages of nonprofit tax-return information, including confidential taxpayer information protected by federal law, to the Federal Bureau of Investigation.

On September 21, 2010, Justice Department Public Integrity Section Chief Jack Smith e-mailed his senior leadership, writing:

Check out [the] article on front page of ny times [*sic*] regarding misuse of nonprofits for indirectly funding campaigns. This seems egregious to me – could we ever charge a [18 U.S.C. §] 371 conspiracy to violate laws of the USA for misuse of such non profits to get around existing campaign finance laws + limits? I know 501s are legal but if they are knowingly using them beyond what they are allowed to use them for (and we could prove that factually)? IRS Commissioner sarah ingram [*sic*] oversees these groups. Let's discuss tomorrow but maybe we should try to set up a meeting this week.¹⁸⁴

Incidentally, the IRS assisted in drafting the *New York Times* article that Smith read, with Ingram and Lerner even speaking to the reporter on background to explain the rules for 501(c)(4) organizations.¹⁸⁵ After the article was published, Ingram commented: "I do think it came out pretty well. The 'secret donor' theme will continue At least [the article's author] started the idea that we don't have the law to do something"¹⁸⁶ The idea that the IRS had limited enforcement abilities contributed to the Justice Department's engagement on the issue.¹⁸⁷

¹⁸⁴ E-mail from Jack Smith, U.S. Dep't of Justice, to Raymond Hulser, U.S. Dep't of Justice (Sept. 21, 2010). [OGR IRS 1]

¹⁸⁵ See E-mail from Michelle Eldridge, Internal Revenue Serv., to Doug Shulman et al., Internal Revenue Serv. (Sept. 20, 2010). [IRSR 250053]

¹⁸⁶ E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Terry Lemons et al., Internal Revenue Serv. (Sept. 21, 2010). [IRSR 508974] See also *supra* note 180 and accompanying text.

¹⁸⁷ Transcribed interview of Jack Smith, U.S. Dep't of Justice, in Wash., D.C., at 39 (May 29, 2014) ("I don't remember it word for word, but I remember there being a concern in the article that there was[n't] appropriate enforcement here, and I wanted to discuss the issue.").

Figure 6: E-mail from Jack Smith to Raymond Hulser et al., Sept. 21, 2010

From:	Smith, Jack
Sent:	Tuesday, September 21, 2010 9:52 PM
To:	Hulser, Raymond; Shur, Justin; Pilger, Richard
Subject:	501 non profits

Check out article on front page of ny times regarding misuse of nonprofits for indirectly funding campaigns. This seems egregious to me - could we ever charge a 371 conspiracy to violate laws of the USA for misuse of such non profits to get around existing campaign finance laws + limits? I know 501s are legal but if they are knowingly using them beyond what they are allowed to use them for (and we could prove that factually)?

IRS Comssioner sarah ingram oversees these groups. Let's discuss tomorrow but maybe we should try to set up a meeting this week.

In the ensuing weeks, the Public Integrity Section began to discuss possible actions on nonprofits engaged in political speech. Smith convened several meetings with his senior leadership, including Richard Pilger, Director of the Department's Election Crimes Branch.¹⁸⁸ One meeting characterized the Department's actions as a "possible 501/campaign finance investigation."¹⁸⁹

At Smith's direction, Pilger arranged a meeting with Lerner and other IRS employees to discuss the "evolving legal landscape" of campaign-finance law after the *Citizens United* decision.¹⁹⁰ Pilger testified that the Department's agenda for the meeting was to engage with Lerner about being "more vigilant to the opportunities from more crime in the . . . 501(c)(4) area."¹⁹¹ He also testified that he was interested in the "practicalities" relating to the criminal enforcement of nonprofit political speech, such as whether the IRS could review donor lists of 501(c)(4) organizations for potential violations of campaign-finance law.¹⁹²

On the IRS side, Ingram reported to Deputy Commissioner Steve Miller that a meeting with the Justice Department had been arranged. She informed Miller that Lerner "knows at least some of these folks from her years" working in the Justice Department.¹⁹³ Ingram also wrote to Miller that the IRS's "plan is to walk [the Justice Department] through the basic civil rules within our jurisdiction and find out what if anything else they are looking for. . . . These are not tax people so [Lerner] may also take [IRS employee] Joe Urban to do clear perimeters about tax info should they want to do any 6103 fishing (as opposed to public record 6104 info)."¹⁹⁴ Finally, Ingram notified Miller that she and Lerner were prepared to meet with him about Senator Baucus's request that the IRS crack down on nonprofit political speech.¹⁹⁵

¹⁸⁸ *Id.* at 43.

¹⁸⁹ Meeting among Jack Smith, Justin Shur, Nancy Simmons, Richard Pilger, & Raymond Hulser, U.S. Dep't of Justice, "Possible 501/Campaign Finance Investigation (Sept. 30, 2010). [OGR IRS 16]

¹⁹⁰ Transcribed interview of Richard Pilger, U.S. Dep't of Justice, in Wash., D.C., at 8 (May 6, 2014).

¹⁹¹ *Id.* at 101.

¹⁹² *Id.* at 159-60.

¹⁹³ E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Steven Miller et al., Internal Revenue Serv. (Sept. 29, 2010). [IRSC 38466]

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

Figure 7: E-mail from Sarah Hall Ingram to Steve Miller et al., Sept. 29, 2010

From: Ingram Sarah H
Sent: Wednesday, September 29, 2010 5:29 PM
To: Miller Steven T; Song Victor S O; Raven Rick A
Cc: Lerner Lois G
Subject: DOJ Meeting

Importance: High

This is to heads-up you about the 10/8 meeting we have been invited to at the Criminal Division of Justice. Lois will take the lead for us as I will be out of town. Lois knows at least some of these folks from her years working in this office (a while back and before she worked at Fed Election Commission).

The plan is to walk them through the basic civil law rules within our jurisdiction and find out what if anything else they are looking for. If they need more than the primer then we would need to assign carefully to preserve the civil – criminal wall.

These are not tax people so she may also take Joe Urban to do clear perimeters about tax info should they want to do any 6103 fishing (as opposed to public record 6104 info).

Would IRS-CI like to send anyone with us? Anyone want to be pre-briefed? We would report back on the meeting and any follow-up issues.

PS. Steve: Lois and I are on your calendar this Friday on the Baucus letter.

The meeting occurred on October 8, 2010.¹⁹⁶ An IRS memorandum summarizing the meeting confirms that the discussion resulted from recent media attention on “the political activity of exempt organizations.”¹⁹⁷ This document also demonstrates that the President’s political rhetoric contributed to the Justice Department’s examination of nonprofit political speech. Using the same words used by the President on the campaign trail, the memorandum explained: “The [Public Integrity] section’s attorneys expressed **concern that certain section 501(c) organizations are actually political committees ‘posing’ as if they are not subject to FEC law**, and therefore may be subject to criminal liability.”¹⁹⁸

According to this memorandum, the Justice Department’s Public Integrity took an active interest in how to proactively address nonprofit political speech. The Justice Department proposed “whether a three-way partnership among DOJ, the FEC, and the IRS is possible to prevent prohibited activity by these organizations,” and they discussed “several possible theories to bring criminal charges under FEC law.”¹⁹⁹ According to Pilger, however, Lerner expressed skepticism about the practicality of using criminal law to address political speech by 501(c)(4) organizations.²⁰⁰

¹⁹⁶ Internal Revenue Serv., Untitled Meeting Memorandum (undated). [IRSC 38438]

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* (emphasis added).

¹⁹⁹ *Id.*

²⁰⁰ Transcribed interview of Richard Pilger, U.S. Dep’t of Justice, in Wash., D.C., at 94-95 (May 6, 2014).

Figure 8: Internal IRS Memorandum on Justice Department Meeting about Nonprofit Political Speech

On October 8, 2010, Lois Lerner, Joe Urban, Judy Kindell, Justin Lowe, and Siri Buller met with the section chief and other attorneys from the Department of Justice Criminal Division's Public Integrity Section, and one representative from the FBI, to discuss recent attention to the political activity of exempt organizations.

The section's attorneys expressed concern that certain section 501(c) organizations are actually political committees "posing" as if they are not subject to FEC law, and therefore may be subject to criminal liability. The attorneys mentioned several possible theories to bring criminal charges under FEC law. In response, Lois and Judy eloquently explained the following points:

- Under section 7805(b), we may only revoke or modify an organization's exemption retroactively if it omitted or misstated a material fact or operated in a manner materially different from that originally represented.
 - If we do not have these misrepresentations, the organization may rely on our determination that it is exempt. However, the likelihood of revocation is diminished by the fact that section 501(c)(4)-(c)(6) organizations are not required to apply for recognition of exemption.
 - We discussed the hypothetical situation of a section 501(c)(4) organization that declares itself exempt as a social welfare organization, but at the end of the taxable year has in fact functioned as a political organization. Judy explained that such an organization, in order to be in compliance, would simply file Form 1120-POL and paying tax at the highest corporate rate.

Lois stated that although we do not believe that organizations which are subject to a civil audit subsequently receive any type of immunity from a criminal investigation, she will refer them to individuals from CI who can better answer that question. She explained that we are legally required to separate the civil and criminal aspects of any examination and that while we do not have EO law experts in CI, our FIU agents are experienced in coordinating with CI.

The attorneys asked whether a change in the law is necessary, and whether a three-way partnership among DOJ, the FEC, and the IRS is possible to prevent prohibited activity by these organizations. Lois listed a number of obstacles to the attorneys' theories:

- Definitions of the following terms are not clear to a jury:
 - A "political committee"
 - "Advocacy"
 - "Lobbying"
 - "Political intervention"
 - "Express advocacy"
- There is confusion over the difference between political campaign activity and lobbying, which we see in the referrals we receive.
- We receive Forms 990 long after the activity has concluded.
- There is public fatigue over this discussion.
- In a case like this, the defense will go through each of the organization's expenditures and explain why it is not political.

Judy also explained that the political activity definitions of sections 501(c)(3) and 527 both apply to section 501(c)(4) organizations, but we have no Chief Counsel ruling on whether they are different definitions. She pointed to Revenue Ruling 2004-6, which was drafted in light of the electioneering communication rules before they were litigated.

Despite Lerner’s apparent skepticism with using criminal law to address nonprofit political speech, the IRS and Justice Department continued to engage on nonprofit political speech. On October 19, 2010 – the same day Lerner spoke at Duke University about the pressure on the IRS to “fix the problem” of *Citizens United* – Pilger asked the IRS for a “good IRS contact re criminal tax enforcement against tax exempt organizations.”²⁰¹ The IRS selected an employee in its Criminal Investigation unit to serve as a liaison with the Justice Department on criminal enforcement relating to nonprofit political speech.²⁰²

Figure 9: E-mail exchange between Joseph Urban & Nancy Marks, Oct. 19, 2010

From:	Marks Nancy J [REDACTED]
Sent:	Tuesday, October 19, 2010 12:19 PM
To:	Urban Joseph J; Johnson Janet J - CT
Cc:	Kindell Judith E
Subject:	RE: Contact Point/501(c)(4)
Categories:	NUUU

Thanks and yes Janet is the right contact. I'd let him know that we've given her a heads up but also let him know that because this has not been an area in which we've seen activity that rises to the level of criminal investigation it is pretty unfamiliar ground for anyone in the criminal tax enforcement area thereby laying the foundation that we'll be with Janet in any exploration of the issues in order to provide the EO context.

From:	Urban Joseph J [REDACTED]
Sent:	Tuesday, October 19, 2010 1:14 PM
To:	Marks Nancy J; Johnson Janet J - CT
Cc:	Kindell Judith E
Subject:	Contact Point/501(c)(4)

We received an e-mail today from Richard Pilger, who was an attorney in the meeting we had with the DOJ folks on election issues. He gives his title as Director, Election Crimes Branch & Senior Trial Attorney Public Integrity Section Criminal Division. He asked whether we “had a chance to identify a good IRS contact re criminal tax enforcement against tax exempt organizations?” I wanted you to know the request was here and to confirm that it was still OK to offer Janet as the contact.

Additional documents show that Lerner worked with Pilger to arrange for the transmittal of 1.1 million pages of nonprofit tax-return information to the FBI.²⁰³ These documents further confirm that the Justice Department’s interest was in nonprofit political speech. On October 5, 2010 – in advance of the October 8th meeting – an IRS employee e-mailed Lerner and her senior technical advisor Judith Kindell about sending nonprofit tax return forms, known as Form 990s, to the Justice Department. She wrote: “Diane told me you wanted a couple 990s to show to DOJ. Is there something specific you want to show them, in terms of size, activities, etc? **Or should I**

²⁰¹ E-mail from Joseph Urban, Internal Revenue Serv., to Nancy Marks & Janet Johnson, Internal Revenue Serv. (Oct. 19, 2010). [IRSC 38452]

²⁰² E-mail from Nancy Marks, Internal Revenue Serv., to Joseph Urban & Janet Johnson, Internal Revenue Serv. (Oct. 19, 2010). [IRSC 38452]

²⁰³ E-mail from Richard Pilger, U.S. Dep’t of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010) [HOG IRS 22]; E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep’t of Justice (Oct. 5, 2010). [HOG IRS 19]

guess based on current events?”²⁰⁴ Kindell responded: “If we can provide a set, that would be best. Otherwise, if we can get a sample of orgs that reported political campaign expenditures.”²⁰⁵

Figure 10: E-mail exchange between Cheryl Chasin & Judith Kindell, Oct. 5, 2010

From:	Kindell Judith E
Sent:	Tuesday, October 05, 2010 7:31 AM
To:	Chasin Cheryl D; Lerner Lois G
Subject:	Re: 501(c)(4) 990s

What are the procedures for getting DVDs of the Forms 990? If we can just provide a set, that would be best. Otherwise, if we can get a sample of orgs that reported political campaign expenditures.

From:	Chasin Cheryl D
To:	Lerner Lois G; Kindell Judith E
Sent:	Tue Oct 05 08:25:31 2010
Subject:	501(c)(4) 990s

Diane told me you wanted a couple of 990s to show to DOJ. Is there something specific you want to show them, in terms of size, activities, etc? Or should I guess based on current events?

Lerner later wrote separately to Chasin, Kindell, and others about the urgent “DOJ request” for tax return information about nonprofits engaged in political speech. She wrote: “I am meeting with DOJ on Friday. They would like to begin looking at 990s from last year from c4 orgs. **They are interested in the reporting for political and lobbying activity.** How quickly could I get disks to them on this?”²⁰⁶

Figure 11: E-mail from Lois Lerner to Sherry Whitaker et al., Oct. 5, 2010

From:	Lerner Lois G
Sent:	Tuesday, October 05, 2010 1:38 PM
To:	Whitaker Sherry L; Chasin Cheryl D; Ghougasian Laurice A
Cc:	Kindell Judith E
Subject:	DOJ Request
Importance:	High

I am meeting with DOJ on Friday. They would like to begin looking at 990s from last year for c4 orgs. They are interested in the reporting for political and lobbying activity. How quickly could I get disks to them on this? Also, would 990 EZ filers have information on lobbying and political activity on the EZ? Do we have disks for those--I guess I should know by now, shouldn't I?! Cheryl/Laurice, if I can't get anything soon, could we pull a "sample of the? Thanks

Lois J. Lerner
Director, Exempt Organizations

²⁰⁴ E-mail from Cheryl Chasin, Internal Revenue Serv., to Lois Lerner & Judith Kindell, Internal Revenue Serv. (Oct. 5, 2010) (emphasis added). [IRSC 38408]

²⁰⁵ E-mail from Judith Kindell, Internal Revenue Serv., to Cheryl Chasin & Lois Lerner, Internal Revenue Serv. (Oct. 5, 2010). [IRSC38408]

²⁰⁶ E-mail from Lois Lerner, Internal Revenue Serv., to Sherry Whitaker et al., Internal Revenue Serv. (Oct. 5, 2010) (emphasis added). [IRSC 38415]

Later that day, Lerner wrote to Pilger that the IRS was working “on getting you the disks we spoke about” and asked whether the Department had a formatting preference.²⁰⁷ Pilger sent the e-mail to an FBI agent, writing: “This is incoming data re 501c4 issues. Does FBI have a format preference?”²⁰⁸ Pilger later responded to Ms. Lerner, writing: “Thanks Lois – FBI says Raw format is best because they can put it into their systems like excel.”²⁰⁹ The disks were apparently transmitted on October 22, 2010 – days before the midterm election.²¹⁰

Figure 12: E-mail exchange between Lois Lerner & Richard Pilger, Oct. 6, 2010

From:	Pilger, Richard
Sent:	Wednesday, October 06, 2010 2:05 PM
To:	Lerner Lois G
Cc:	Whitaker Sherry L; Simmons, Nancy; [REDACTED] (FBI)
Subject:	RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Thanks Lois – FBI says Raw format is best because they can put it into their systems like excel.

From:	Lerner Lois G [REDACTED]
Sent:	Tuesday, October 05, 2010 5:52 PM
To:	Pilger, Richard
Cc:	Lerner Lois G; Whitaker Sherry L
Subject:	DATA FORMAT ISSUE -- TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc Sherry Whitaker on your response as she is likely to see your response before I do. Thanks

²⁰⁷ E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep’t of Justice (Oct. 5, 2010). [HOGR IRS 19]

²⁰⁸ E-mail from Richard Pilger, U.S. Dep’t of Justice, to unnamed FBI agent, Fed. Bureau of Investigation (Oct. 5, 2010). [HOGR IRS 20]

²⁰⁹ E-mail from Richard Pilger, U.S. Dep’t of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010). [HOGR IRS 22]

²¹⁰ E-mail from David Hamilton, Internal Revenue Serv., to Sherry Whitaker, Internal Revenue Serv. (Oct. 22, 2010). [IRSC 38436]

Figure 13: E-mail from Richard Pilger to Unnamed FBI Agent, Oct. 5, 2010

From:	Pilger, Richard
Sent:	Tuesday, October 05, 2010 8:01 PM
To:	[REDACTED] (FBI)
Subject:	Fw: DATA FORMAT ISSUE -- TIME SENSITIVE

This is incoming data re 501c4 issues. Does FBI have a format preference?
Richard C. Pilger
Director, Election Crimes Branch &
Senior Trial Attorney
Public Integrity Section
Criminal Division
United States Department of Justice
Washington, D.C. 20530
202 [REDACTED]
202 [REDACTED] (f)

The Justice Department stated in a letter to the Committee that the material transmitted from the IRS to the FBI in October 2010 amounted to 21 disks of 1.1 million pages of nonprofit tax return information.²¹¹ Although the Department first asserted that this material is publicly available and never used for any investigatory purpose,²¹² the Department later notified the Committee that the 21 disks did, in fact, contain confidential taxpayer information protected by federal law.²¹³ This startling revelation suggests that the FBI compiled a massive database of the lawful political speech of thousands of American citizens, mere weeks before the 2010 midterm elections, working with Lois Lerner and the IRS to receive confidential taxpayer information. Indeed, Public Integrity Section Chief Jack Smith testified to the Committee that his team continued an investigatory “dialogue” with the FBI about nonprofits engaged in political speech.²¹⁴

It is clear in the wake of *Citizens United* and in response to media attention surrounding nonprofit political speech, the Justice Department engaged with Lerner and the IRS about possible criminality related to nonprofit groups. The Justice Department explicitly labeled its work an “investigation” and the IRS went so far as to provide 1.1 million pages of potentially evidentiary material – including confidential taxpayer information – to federal law-enforcement officials. The entirety of these actions stemmed from the media attention surrounding *Citizens United* and nonprofit political speech. Just like the IRS, the Justice Department responded to the political pressure generated by the rhetorical campaign orchestrated by the President and congressional Democrats.

Lois Lerner articulates the prevailing political pressure on the IRS

Lois Lerner best summarized the resonant political rhetoric that existed in fall 2010 pressuring the IRS to take action on nonprofit political speech. Lerner spoke to an audience at

²¹¹ Letter from Peter Kadzik, U.S. Dep’t of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov’t Reform (May 29, 2014).

²¹² *Id.*

²¹³ Letter from Peter Kadzik, U.S. Dep’t of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov’t Reform (June 4, 2014).

²¹⁴ Transcribed interview of Jack Smith, U.S. Dep’t of Justice, in Wash., D.C., at 99-105 (May 29, 2014).

Duke University on October 19, 2010 – right as President’s Obama rhetorical campaign against *Citizens United* reached its crescendo and right after President Obama’s Justice Department pressured Lerner to be vigilant about nonprofit groups’ possible campaign-finance crimes. Borrowing from the President’s rhetoric, Lerner told the crowd about the pressure on the IRS to “fix the problem” of 501(c)(4) groups engaging in political speech.²¹⁵ She stated:

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

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

So everybody is screaming at us right now: “Fix it now before the election. Can’t you see how much these people are spending?” I won’t know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can’t do anything right now.²¹⁶

In February 2011, Lerner made another illuminating statement. In an e-mail to her subordinates, she wrote that the applications filed by conservative, politically active nonprofits groups “could be the vehicle to go to court on the issue of whether Citizen’s [*sic*] United overturning ban on corporate spending applies to tax exempt rule.”²¹⁷ She accordingly ordered the applications to be reviewed by her office and the IRS Chief Counsel’s office, a “multi-tier” review that one veteran IRS employee said was unprecedented.²¹⁸

Lerner’s statements succinctly captured the mood within the IRS Exempt Organizations Division in wake of *Citizens United*. Lerner spoke of the Court overturning a “100-year old precedent” – nearly identical to the President’s declaration during the State of the Union that the decision “reversed a century of law”²¹⁹ – and noted that “everyone” disliked the decision. She stressed that “everybody” was “screaming” at the IRS to remedy the *Citizens United* decision before the midterm election. Those “screaming” at the IRS during this time, of course, were the President, his Administration, and high-profile Democrats who decried alleged campaign groups “posing” as nonprofits and implored the tax collector to investigate them. Out of concern for *Citizens United*, Lerner ordered conservative nonprofit applications through an unprecedented multi-tier review. More than any other evidence, Lerner’s candid remarks show just how the

²¹⁵ John Sexton, *Lois Lerner Discusses Political Pressure on the IRS in 2010*, BREITBART.COM, Aug. 6, 2013.

²¹⁶ See “Lois Lerner Discusses Political Pressure on IRS in 2010,” www.youtube.com (last visited May 13, 2014) (transcription by Committee).

²¹⁷ E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRS 161810]

²¹⁸ Transcribed interview of Michael Seto, Internal Revenue Serv., in Wash., D.C. (July 11, 2013); Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

²¹⁹ The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).

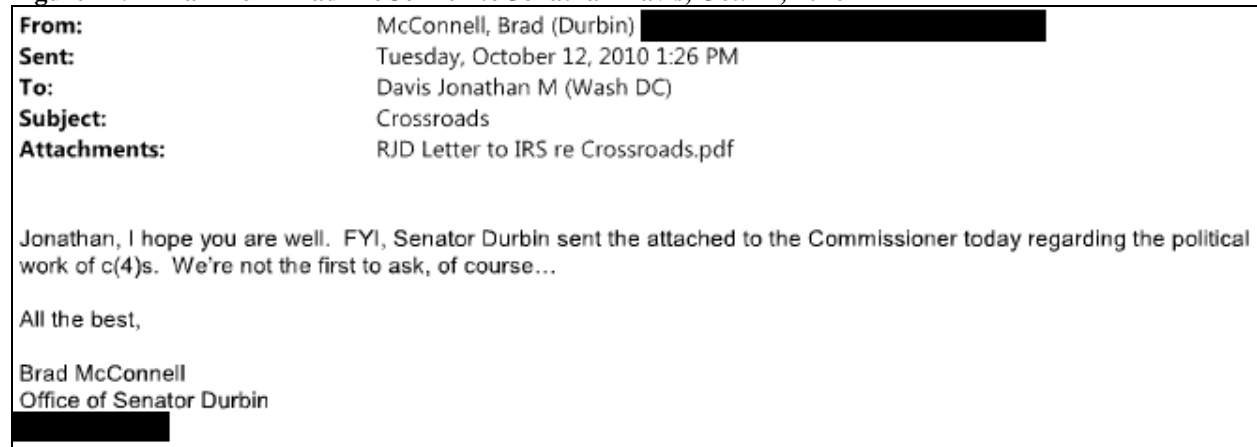
President’s political rhetoric against *Citizens United* affected the IRS’s treatment of tax-exempt groups.

The IRS’s receptiveness to political pressure from Congress

Evidence obtained by the Committee in its investigation demonstrates that the IRS was very attuned to political pressure exerted by congressional Democrats on the tax agency to address the perceived shortcomings of *Citizens United*. As the President led the drumbeat against the decision, his allies in Congress turned the President’s rhetorical campaign into real calls for action. The IRS internalized this pressure and responded in kind.

In 2010, the IRS took note as prominent Democrats publicly pressed the tax agency to investigate politically active nonprofits. In October 2010, an IRS employee circulated the press release from Senator Dick Durbin announcing that he had urged the IRS to investigate the conservative group, Crossroads GPS.²²⁰ In a separate e-mail to IRS Chief of Staff Jonathan Davis, a staff member for Senator Durbin emphasized that Senator Durbin was not the only elected official to pressure the IRS to scrutinize nonprofits. He wrote: “FYI, Senator Durbin sent the attached [letter] to the Commissioner today regarding the political work of c(4)s. We’re not the first to ask, of course...”²²¹

Figure 14: E-mail from Brad McConnell to Jonathan Davis, Oct. 12, 2010



Senator Durbin was not alone in pressing the IRS to investigate Crossroads GPS. In March 2012, 32 Democratic Members of Congress – led by Representative Peter Welch (D-VT) and including Representative Chris Van Hollen (D-MD) and Representative Bruce Braley (D-IA) – wrote to IRS Commissioner Doug Shulman urging an investigation into politically active nonprofits.²²² Representative Welch’s press release announcing the letter singled out Crossroads

²²⁰ E-mail from Joseph Urban, Internal Revenue Serv., to Joseph Urban, Internal Revenue Serv. (Oct. 20, 2010). [IRS 1810]

²²¹ E-mail from Brad McConnell, U.S. Senate, to Jonathan Davis, Internal Revenue Serv. (Oct. 12, 2010). [IRSR 459311]

²²² See Letter from Peter Welch et al., U.S. House of Rep., to Douglas Shulman, Internal Revenue Serv. (Mar. 28, 2012).

GPS as the focus of the request to the IRS. The release read in part: “Welch and his colleagues are calling on the Internal Revenue Service (IRS) to investigate whether nonprofit 501(c)(4) organizations affiliated with Super PACs – such as Crossroads GPS, the Karl Rove-backed group spending millions of dollars in campaigns across the country – are in violation of federal law and IRS regulations.”²²³

Documents released by the House Ways and Means Committee pursuant to its authority to examine confidential taxpayer information show that the IRS took action relating to Crossroads GPS following the pressure from congressional Democrats. In January 2013, Lerner wrote to the head of the Exempt Organization audit unit about Crossroads GPS, reciting the concerns of Democratic lawmakers that the group was “funneling” money to political campaigns. Lerner wrote:

I reviewed the information last night and thought the allegations in the documents were really damning, so wondered why we hadn’t done something with the org. **The first complaint came in 2010 and there were additional ones in 2011 and 2012.** . . . I don’t know where we go with this – as I’ve told you before – I don’t think your guys get it and the way they look at these cases is going to bite us some day. **The organization at issue is Crossroads GPS, which is on the top of the list of c4 spenders in the last two elections. It is in the news regularly as an organization that is not really a c4, rather it is only doing political activity – taking in money from large contributors who wish to remain anonymous and funneling it into tight electoral races.** . . . I know the org is now in the ROO [Review of Operations] – based on allegations sent in this year, but this is an org that was a prime candidate for exam when the referrals and 990s first came in.

You should know that we are working on a denial of the application, which may solve the problem because we probably will say it isn’t exempt.²²⁴

Lerner was also receptive to attempts by Democratic Members of Congress to pass legislation requiring the disclosure of donors to nonprofits engaged in political speech. In an e-mail from February 2012, Lerner commented on Representative Chris Van Hollen’s (D-MD) reintroduction of the DISCLOSE Act. She wrote to her colleagues in support of the bill’s disclosure requirement, writing: “Wouldn’t that be great? And I won’t hold my breath.”²²⁵

²²³ Press Release, Representative Peter Welch, Welch leads 32 Democrats in effort to crack down on wild west campaign atmosphere in post-*Citizens United* world (Mar. 28, 2012).

²²⁴ E-mails from Lois Lerner, Internal Revenue Serv., to Nanette Downing, Internal Revenue Serv. (Jan. 4, 2013). [IRS 122549-50]

²²⁵ E-mail from Lois Lerner, Internal Revenue Serv., to Joseph Urban et al., Internal Revenue Serv. (Feb. 13, 2012). [IRSR 694708]

Figure 15: E-mail from Lois Lerner to Joseph Urban et al., Feb. 13, 2012

From: Lerner Lois G
Sent: Monday, February 13, 2012 2:50 PM
To: Urban Joseph J; Fish David L; Miller Thomas J; Light Sharon P; Kindell Judith E; Grant Joseph H; Daly Richard M; Medina Moises C; Giosa Christopher P; Malone Robert; Paz Holly O; Marks Nancy J; Lowe Justin
Cc: Zarin Roberta B
Subject: Re: #10 2012 TNT 29-10 LEGISLATION WOULD REQUIRE DONOR DISCLOSURE BY POLITICALLY ACTIVE EXEMPT ORGANIZATIONS.

Wouldn't that be great? And I won't hold my breath.
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Urban Joseph J
Sent: Monday, February 13, 2012 07:25 AM
To: Lerner Lois G; Fish David L; Miller Thomas J; Light Sharon P; Kindell Judith E; Grant Joseph H; Daly Richard M; Medina Moises C; Giosa Christopher P; Malone Robert; Paz Holly O; Marks Nancy J; Lowe Justin
Cc: Zarin Roberta B
Subject: #10 2012 TNT 29-10 LEGISLATION WOULD REQUIRE DONOR DISCLOSURE BY POLITICALLY ACTIVE EXEMPT ORGANIZATIONS.

ABSTRACT: Tax-exempt organizations that engage in political campaign activities would face new disclosure requirements -- including identification of donors -- under legislation Rep. Chris Van Hollen, D-Md., and other House Democrats introduced February 9.

Likewise, in 2012, the staff of Senator Charles Schumer (D-NY), the sponsor of the DISCLOSE Act in the Senate, tipped the IRS off about a forthcoming *New York Times* article on nonprofit political speech and a letter from the Senate calling for “immediate administrative changes.”²²⁶ The IRS legislative affairs employee who received this information dutifully passed it along to senior IRS executives, including Commissioner Doug Shulman, then-Deputy Commissioner Steve Miller, and Exempt Organizations Director Lois Lerner.²²⁷

Figure 16: E-mail from Floyd Williams to Doug Shulman et al., Mar. 8, 2012

From: Williams Floyd L
Sent: Thursday, March 08, 2012 05:41 PM
To: Shulman Doug; Davis Jonathan M (Wash DC); Keith Frank; Lemons Terry L; Eldridge Michelle L; Miller Steven T; Flax Nikole C; Barre Catherine M; Lerner Lois G; Paz Holly O; Urban Joseph J
Cc: Norton William G Jr
Subject: FW: campaign finance letter / proposal

FYI--I received this from Senator Schumer's office.

Heads up NY times will do a follow up piece on IRS campaign finance on 501(c)(4) and senate is sending you another letter asking for immediate administrative changes. I will send letter late tomorrow.

²²⁶ E-mail from Floyd Williams, Internal Revenue Serv., to Doug Shulman et al., Internal Revenue Serv. (Mar. 8, 2012). [IRSR 15399]

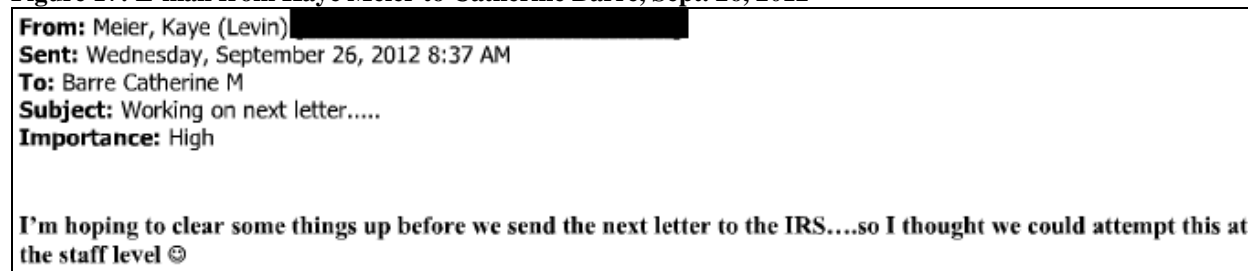
²²⁷ *Id.*

Senator Carl Levin (D-MI), the Chairman of the Senate’s Permanent Subcommittee on Investigations, also levied pressure on the IRS to fix the problems of *Citizens United*. In one floor speech in July 2012, Senator Levin stated:

A Supreme Court ruling has opened our system to a flood of unlimited and secret special-interest money. . . We have in recent months seen the dangerous consequences of the Court’s ruling: a deluge of unregulated funds that has threatened to upend the election campaign for our nation’s highest office, a flood whose organizers vow will upend congressional campaigns across the nation this summer and fall. This ruling, combined with the IRS’s failure to strictly enforce our laws on the operation of nonprofit groups organized as social welfare organizations under Section 501(c)(4) of the Internal Revenue Code, allows them to seek this influence with spending that is not only unlimited, but also secret, because there is no requirement that donations to those 501(c)(4) organizations be disclosed to the public. . . . **I have expressed my concern to the IRS about this.**²²⁸

Evidence suggests that the IRS may have aided Senator Levin in articulating his calls for reforms to political speech by nonprofits. As Senator Levin exchanged letters with the IRS about section 501(c)(4) organizations in 2012, IRS personnel discussed providing information to assist the Senator in drafting the correspondence. For example, in one e-mail, with the subject “[w]orking on the next letter,” Senator Levin’s staff sought answers from the IRS about six tax-exempt groups, including Crossroads GPS, American Action Network, and the Club for Growth.²²⁹ Catherine Barre, the head of the IRS Legislative Affairs office, forwarded the e-mail to Lois Lerner and IRS Chief of Staff Nikole Flax, writing “Let’s discuss.”²³⁰ It is unknown what information the IRS provided to Senator Levin, but Deputy Commissioner Miller testified to the Committee that “Senator Levin [was] complaining bitterly” to the IRS, which led the agency to consider changes to regulations governing political speech of nonprofits.²³¹

Figure 17: E-mail from Kaye Meier to Catherine Barre, Sept. 26, 2012



Perhaps the most compelling evidence of the IRS’s responsiveness to pressure from Democrats in Congress is how it responded to Ranking Member Elijah Cummings’s request for

²²⁸ Press Release, Senator Carl Levin, Sen. Levin Floor Statement on DISCLOSE Act (July 16, 2010).

²²⁹ E-mail from Kaye Meier, U.S. Senate, to Catherine Barre, Internal Revenue Serv. (Sept. 26, 2012). [IRSR 182403-04]

²³⁰ E-mail from Catherine Barre, Internal Revenue Serv., to Nikole Flax & Lois Lerner, Internal Revenue Serv. (Sept. 26, 2012). [IRSR 182403]

²³¹ Transcribed interview of Steven Miller, in Wash., D.C., at 117 (Nov. 13, 2013).

information about the conservative group, True the Vote. On Friday, January 25, 2013, Catherine Barre e-mailed several IRS officials, including Lois Lerner, that “House Oversight Committee Minority staff” sought information about True the Vote.²³² By the following Monday, Lerner herself wrote to Paz: “Did we find anything?”²³³ When Paz informed her minutes later that she had not heard back about True the Vote’s information, Lerner replied: “thanks – check tomorrow please.”²³⁴ The IRS assembled material on True the Vote for the Ranking Member days later,²³⁵ but it is unclear what information the IRS provided. Nonetheless, it is clear that Lerner and the IRS were eager to comply with Ranking Member Cummings’s request for information about True the Vote.

Figure 18: E-mail from Catherine Barre to Lois Lerner, Jan. 25, 2013

From: Barre Catherine M
Sent: Friday, January 25, 2013 02:58 PM Eastern Standard Time
To: Lerner Lois G; Paz Holly O; Marks Nancy J
Subject: House Oversight Committee Minority Staff

The house oversight committee (not the subcommittee of ways and means) has requested any publicly available information on an entity that they believe has filed for c3 status.

They do not have a waiver.

The entity is KSP True the Vote EIN [REDACTED].

They believe the entity has filed tax returns in the past and would like copies of those if they are publicly available in addition to any other information that is publicly available about the entity’s tax-exempt status.

Taken together, this evidence shows that the IRS was receptive and responsive to the calls to action from congressional Democrats that accompanied the President’s rhetorical barrage against *Citizens United* and nonprofit political speech. As is evident from Lerner’s e-mails about Crossroads GPS, these calls to action even led to the IRS’s inappropriate treatment of conservative tax-exempt applicants.

Transcribed interviews confirm the IRS’s awareness of the political pressure

The Committee’s transcribed interviews with senior-level IRS official confirm that the IRS was well aware of the political pressure generated by the President to address nonprofit political speech. For example, former IRS Chief of Staff Nikole Flax testified that she was aware both of inquires from Members of Congress on particular nonprofit groups and of general public discussions about the nonprofit political speech. She testified:

²³² E-mail from Catherine Barre, Internal Revenue Serv., to Lois Lerner et al., Internal Revenue Serv. (Jan. 25, 2013). [IRSR 180906]

²³³ E-mail from Lois Lerner, Internal Revenue Serv., to Holly Paz, Internal Revenue Serv. (Jan. 28, 2013). [IRSR 557133]

²³⁴ E-mail from Lois Lerner, Internal Revenue Serv., to Holly Paz, Internal Revenue Serv. (Jan. 28, 2013). [IRSR 557133]

²³⁵ E-mail from Holly Paz, Internal Revenue Serv., to Catherine Barre, Internal Revenue Serv. (Jan. 31, 2013). [IRSR 557181]

- Q Were you aware of any inquiries from Members of Congress about the potential illegality or inappropriateness of (c)(4) status for certain groups engaged in political activity?
- A I'm aware of inquiries from Members of Congress where they asked about the status of particular organizations. I don't know if that is answering your question.
- Q About particular organizations –
- A Yes.
- Q By name?
- A Yes.
- Q Were you ever aware of any public discourse or debate about the appropriateness of 501(c)(4) status for certain conservative oriented groups?
- A I mean, I have seen, you know, public articles where folks have talked about that, but just like stuff in the press.
- Q Were you ever aware of any requests for the IRS to crack down on 501(c)(4)s engaged in political activity?
- A There were Congressional requests that asked what we were doing in the area, that kind of thing.²³⁶

Similarly, Joseph Grant, who served as Lois Lerner's boss as the Commissioner for Tax Exempt and Government Entities, talked about his awareness of the "public conversation" about nonprofit political speech. He testified:

- Q Were you ever aware of any public discourse or debate of the appropriateness of 501(c)(4) status for certain groups involved in political advocacy?

- A Well, I believe that some of the clips that would come across had Members of Congress talking about it, and there were editorials in the papers about it, and to the extent that I read newspapers and look at the comments, I'm aware that there's a public conversation going on, yes.²³⁷

²³⁶ Transcribed interview of Nikole Flax, Internal Revenue Serv., in Wash., D.C. (Oct. 22, 2013).

²³⁷ Transcribed interview of Joseph Grant, in Wash., D.C. (Sept. 25, 2013).

Judith Kindell, Lerner's senior technical advisor, also testified that she came across public comments about "secret" money in political and public requests for the IRS to take action on politically active nonprofits. She testified:

Q Ms. Kindell, were you ever aware of any public discourse or debate about the appropriateness of 501(c)(4) status for certain groups involved in political activity?

A Yes.

Q Were you ever aware of requests for the IRS to crack down on 501(c)(4)s engaged in political activity?

A Yes.

Q Were you ever aware of any public comments from politicians of the potential illegality of secret money in politics?

A Yes.²³⁸

Moreover, former Acting Commissioner Steve Miller discussed how political pressure placed on the IRS by congressional Democrats resulted in the agency's consideration of greater regulation of political speech by nonprofits. He testified:

Q And, sir, what did you see as the problem that needed to be addressed through either a regulatory change or a legislative change?

A So I'm not sure there was a problem, right? I mean, I think we were – we had, you know, Mr. Levin complaining bitterly to us about – Senator Levin complaining bitterly about our regulation that was older than me, where we had read "exclusively" to mean "primarily" in the 501(c)(4) context. And, you know, we were being asked to take a look at that. And so we were thinking about what things could be done.²³⁹

The evidence gathered to date demonstrates that the IRS was well aware of the prevalent political rhetoric against *Citizens United* and nonprofit political speech. Lois Lerner's comments in October 2010 suggest that this political rhetoric affected how the IRS viewed these groups. Lerner's subsequent comment in February 2011 further suggests that the IRS subjected these applications to enhanced scrutiny and delay out of concern that they would extend the *Citizens United* holding to nonprofit political speech. There is, therefore, a clear line from the President's public condemnation of *Citizens United* and nonprofit political speech to the IRS's treatment of conservative tax-exempt applicants.

²³⁸ Transcribed interview of Judith Kindell, Internal Revenue Serv., in Wash., D.C. (Oct. 29, 2013).

²³⁹ Transcribed interview of Steven Miller, in Wash., D.C., at 117 (Nov. 13, 2013).

Conclusion

Congressional Democrats have claimed that there was no political element to the IRS targeting scandal. They argue that the wrongdoing was confined to a local office and poor decision-making by well-meaning civil servants. They distance the President, his senior advisors, and other prominent national Democrats. Using straw-man arguments, they assert that the IRS targeting is a “phony” scandal, the “case is solved,” and the American people should move on.

The fact is, however, that the President played a large role in the genesis of the targeting. Using the power of his office, the President engaged in a prolonged rhetorical campaign throughout 2010 against the Supreme Court’s *Citizens United* decision and nonprofits engaged in political speech. The President’s rhetoric makes imminently clear that his concern was about anonymous donors giving to groups that support Republican candidates. He repeatedly accused these groups of “posing” as nonprofits, and he even declared their existence a “threat to our democracy.” His senior advisors, Democrats in Congress, and Democratic campaign committees hammered home these themes in the weeks leading up to November. Throughout the 2010 election cycle, President Obama made *Citizens United* and nonprofit political speech a high-profile political issue.

The IRS was well aware of the President’s discourse. In addition to media inquiries, the agency received requests from Democratic Members of Congress and others to investigate the actions of conservative nonprofit groups. Lois Lerner spoke of the political pressure on the IRS to “fix the problem” created by *Citizens United*. She later ordered conservative applications to proceed through an unprecedented multi-tier review because she was concerned about extending the decision’s holding to federal tax law. With the President decrying the abuse of federal tax law by “phony” conservative-leaning “front groups” in wake of *Citizens United*, Lerner and the IRS took steps to respond. Their response resulted in the systematic scrutiny and delay of conservative tax-exempt applicants engaged in political speech.

For as much as some argue that the IRS’s targeting was not political, it abundantly clear that the targeting initiated and progressed in the context of a fierce rhetorical campaign by the President to delegitimize *Citizens United* and nonprofit political speech. To be certain, the President and congressional Democrats have an absolute right to express legitimate policy concerns and advocate for policy changes. But the causal relationship between this rhetoric and the IRS targeting should not be ignored. Using his Bully Pulpit, the President spoke. He declared repeatedly that these conservative groups “posing” as nonprofits with “benign-sounding” names were “a threat to our democracy.” The IRS listened and, in turn, it subjected these groups to systematic scrutiny and delay.

Appendix: A timeline of the genesis of the IRS targeting

February 25, 2010	First Tea Party application is identified in Cincinnati and elevated to Washington due to media attention surrounding the Tea Party.
March 17, 2010	Washington official Holly Paz asks Cincinnati to transfer two more Tea Party applications to be worked in Washington as “test” cases. Paz tells Cincinnati to hold the remainder of Tea Party cases.
April 2, 2010	Tea Party “test” cases are assigned to Washington official Carter Hull to be developed as templates for the other cases in Cincinnati.
April 5, 2010	Washington official Steven Grodnitzky directs his subordinates to create a “sensitive case report” to inform high-level IRS officials about the Tea Party cases.
April 28, 2010	Steven Grodnitzky sends a sensitive case report chart to Lois Lerner, writing: “Of note, we added one new SCR concerning 2 Tea Party cases that are being worked here in DC. Currently, there are 13 Tea Party cases out in EO Determinations and we are coordinating with them to provide direction as to how to develop those cases based on our development of the ones in DC.”
August 31, 2010	Lois Lerner writes to her boss, Sarah Hall Ingram, in response to article about a Democratic complaint against the conservative group, Americans for Prosperity: “We won’t be able to stay out of this – we need a plan!”
September 15, 2010	Lois Lerner initiates a “c4 project” to assess the level of political activity by 501(c)(4) groups. She tells her subordinates to “be cautious so it isn’t a <i>per se</i> political project.”
October 19, 2010	Lois Lerner speaks to a Duke University crowd about the political pressure on the IRS to “fix the problem” posed by <i>Citizens United</i> . She tells the audience that “everyone is up in arms” about the decision and that “everybody is screaming at [the IRS] right now: ‘fix it now before the election.’”
February 1, 2011	Lois Lerner calls the Tea Party cases “very dangerous” and directs Washington official Michael Seto to put the Tea Party cases through an unprecedented “multi-tier” review by Lerner’s office and the IRS Chief Counsel’s office.
April 7, 2011	Lois Lerner’s senior technical advisor, Judith Kindell, reviews the Tea Party test cases.
July 5, 2011	Lois Lerner holds a meeting in which she is fully briefed on the Tea Party cases; she orders the cases to be called “advocacy cases” and orders the BOLO criteria to be changed because she believes the term “Tea Party” is pejorative.