Balance of Power:
Perspectives on IRS-Congress Interactions

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Abstract

When the Treasury Inspector General for Tax Administration revealed in 2013 that IRS employees in Cincinnati had been screening tax-exempt status applications for potential political activity by searching on keywords pertaining to the Tea Party, it followed a long history of IRS misconduct and mismanagement. As the agency responsible for collecting the federal income tax—the major source of revenue for the federal government—it is vital that the IRS maintain public trust in its ability to administer the tax code fairly and efficiently. When the IRS has been unable to maintain this image of nonpartisanship, Congress has made repeated efforts to improve how the agency operates and insulate it from political influence.

Despite congressional efforts, attempts to reform the agency have not had any enduring success. Unsuccessful reform is a product of competing interests between Congress and the IRS. Congress desires to control and scrutinize the agency—and makes a public show of it for taxpaying constituents. Conversely, the IRS seeks autonomy and will impede congressional investigations that seek to take it away. This paper presents theoretical perspectives and motivations that produce this cycle of reform, examines how past experiences are prescient of future incidents, and makes recommendations for future attempts at reform.
Section 1. Introduction

Article I Section 8 of the United States Constitution enumerates the various powers of Congress. Upon glancing over Section 8, one would observe that while Congress does pass legislation related to the fulfillment of those tasks, it often does not create all “necessary and proper” laws that aid in their execution. Instead, Congress may delegate authority to an administrative body. As such, Congress dictates the law (as vaguely or specific as it wishes), and the agency interprets and executes law.

Underlying this relationship is a state of mutual dependence in which Congress depends on the agency to faithfully execute laws, while the agency relies on Congress for funding, legitimacy, and a reasonable degree of autonomy. As such, Congress is unburdened from the tedium of legislating every last detail of implementation, and the agency is able to utilize its expertise to ensure the efficient and effective execution of law. In reality, this model rarely matches that ideal. Several factors compound this relationship of mutual dependence, and nowhere is this more evident than the state of affairs between Congress and the Internal Revenue Service (IRS).

As the tax collection agency, the IRS must serve as the symbol of government efficiency. To the American public, it represents peak government interference—the government mandating payment from its citizens. Yet, a majority Americans would agree with the words of Oliver Wendell Holmes: “Taxes are what we pay for a civilized society.” Thus, it is critical that the IRS maintain an image of independence from politics and carry out its operations as efficiently and fairly as possible.1 Ideally, when the IRS fails to maintain apolitical appearances Congress intervenes solely to restore trust in the system of taxation.

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1 See, e.g., opening remarks from Sen. Max Baucus: “The IRS has one of the most direct relationships with Americans of any agency in our government. IRS employees know where we live, where we work, how many
Though Congress must continue to rely on the IRS for tax collection, it has become increasingly critical and suspicious of the IRS. Over the years, the IRS has been privy to numerous instances of severe mismanagement and administrative failure. It is thus unsurprising that Congress members (and their taxpaying constituents) view the agency with suspicion and distrust. Consequently, Congress has taken to dictating in more precise terms how the IRS must be operated and managed in efforts to restore taxpayer trust and boost (or reduce) revenue intake. Furthermore, Congress often gives into the temptation to publicize incidents as a means of undermining the executive branch, winning points with constituents, and promoting certain agenda.

The opposing force to congressional micromanagement is the tendency of the IRS to resist legislative intrusion and maintain autonomy. As past events have suggested, allowing the IRS too much autonomy can result in uneven tax administration and misconduct by IRS agents. In efforts to maintain its autonomy and level of funding, the IRS may obscure information needed by investigative committees. As the IRS is a component of the executive branch, the Treasury and the presidential administration also have an interest in maintaining IRS autonomy. Thus, the executive branch may also assist the IRS in opposing Congress as a means of protecting or extending executive power.

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4 Parnell, 1361.
5 See, e.g., Thorndike, 780: “[T]he two most successful episodes of IRS reform…were marked by Executive Branch cooperation.”
Political struggles between and within both the IRS and Congress interfere with the broader mission and responsibilities of the IRS.\textsuperscript{6} As a result, a cycle is formed in which IRS mismanagement leads to legislative reform or punishment\textsuperscript{7} that ultimately hampers the ability of the IRS to execute its duties. Throughout the years, Congress and the IRS have been unsuccessful in implementing enduring reform. The question is: how can Congress and the IRS work together to end the cycle of mismanagement and reform? To answer this question, this paper puts forth a model of past interactions and attempts to explain why past attempts to reform—and to politically insulate—the IRS have been unsuccessful.

Prior to this, this paper will offer a literature review of administrative reform strategies, budgetary politics, and the political responsiveness of the IRS. Discussion will then move to how these theories have applied in the past and in current affairs. This paper will then examine the cycle of reform in greater detail and the implications of allowing it to continue. To conclude, possible recommendations will be made to end the cycle.

\textbf{Section 2. Literature Review: Challenges in Management}

Several challenges confront the IRS and its reformers as the literature reviewed here will suggest. The first challenge extends to all bureaucratic agencies—the political environment under which all bureaucracies must operate.\textsuperscript{8} The second relates to how to approach administrative reform, in which reformers must choose among several strategies—each with

\begin{footnotesize}
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\item[6] Parnell, 1361.
\item[7] Hereinafter, the use of the term “reform” will imply legislation that results in structural reorganization or a major departure in how the IRS defines its goals. “Punishment” will be used to denote minor interference or budget cuts. In practice, measures of legislative reform and punishment typically overlap.
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\end{footnotesize}
their distinct methods and goals. The third challenge concerns the competing goals within the IRS’ mission and how these goals are balanced. Finally, despite being an agency concerned with maintaining a nonpolitical image, the IRS is highly responsive to the preferences of Congress and the presidency. Each of these challenges influences the agency’s day-to-day operations as well as the dynamics of power between Congress and the IRS.

A. The Bureaucratic Environment

In his seminal work, Bureaucracy, James Q. Wilson discussed the circumstances under which agencies must operate. In contrast to private business, government agencies are constrained by limited funding that is largely determined year-by-year and mandates dictated by congressional overseers. Opposing these constraints is an agency’s desire for autonomy—what Wilson defines as “the freedom to do their work.” Essentially, there is a struggle for power between bureaucracies and their overseers—namely Congress.

Furthermore, the ultimate mission of the agency is often worded vaguely, and in some cases, contains contradicting goals. Problems of administration do not emerge simply because of uncertain goals, but also because of political limitations. When agencies are given the “political freedom” (i.e. autonomy) to decide what those goals should be, the question of goal ambiguity is effectively answered since the agency is able to decide which goals to pursue. Wilson argues that

11 See, e.g., Scholz and Wood (1999); Young, Reksulak, and Shughart.
12 Wilson, 116-122.
13 Ibid, 153.
14 Ibid, 121: “These rules have been imposed on the agencies by external actors, chiefly the legislature.”
15 Ibid, 35: “[P]roblems arise, not from ambiguity about its goals, but from political constraints. These constraints determine how much money is allocated for administration, the salaries it offers to attract key personnel, the identity of the administrator, and the process by which is is allowed to acquire new equipment.”
ambiguous goals become a problem when mixed with political and budgetary constraints. That is, when Congress mandates that an agency pursue one set of goals as opposed to another, the agency may lack the organizational infrastructure, resources, and/or funding to achieve them.\textsuperscript{16}

Budgetary constraints warrant special consideration here. Aaron Wildavsky’s theories on budgetary politics further Wilson’s discussion of agency budgetary constraints. Wildavsky suggests that the federal budgetary process has become much more than the mere allocation of resources.\textsuperscript{17} Congressional appropriations committees use the federal budget as a vehicle to cut funding for unfavorable programs or unfavorable agencies and/or to limit how an agency utilizes its funds.\textsuperscript{18} As such, appropriations committees can significantly influence what agencies do and do not do, in spite of any authorizations Congress may have previously afforded it.\textsuperscript{19}

In sum, agencies must play to congressional preferences to obtain autonomy from political and budgetary constraints. However, if an agency gains a reputation for misconduct or inefficiency, Congress may seek to curb the agency’s autonomy through administrative reform.

B. General Theories of Administrative Reform

Donald F. Kettl and James W. Fesler propose explanations behind the constant reformation of American public administration. They contend that three basic truths guide public management reform. The first is that Americans believe that public administrations can always be made more efficient—the foundation of many a political campaign. The second is the belief that the government should be run more like a business, utilizing private sector management.

\textsuperscript{16} Ibid, 32-36.
\textsuperscript{17} Of course, the politics of the appropriations process has played a smaller role in recent years with the growing popularity of passing continuing resolutions. Despite this, the IRS remains a popular target for budget cuts by appropriations committees as will be discussed later.
\textsuperscript{19} Ibid, 2: “Since funds are limited and have to be divided in one way or another, the budget becomes a mechanism for making choice among alternative expenditures.”
Third, federal administrators tend to derive new public management practices from successful experiments on the state and local levels.\textsuperscript{20}

Given these truths, Kettl and Fesler propose that bureaucratic reformers typically employ three theories: downsizing, reengineering, and continuous improvement.

1. Downsizing emerges from the desire to cut down bureaucracy and make government more cost-effective. It assumes government is inherently wasteful and overly bureaucratic. Usually, downsizing entails reducing the number of employees. However, the focus of downsizing often becomes a question of how to do more with less rather than long-term strategy. Furthermore, little planning typically goes into downsizing, which often results in fewer employees having little idea how to creatively manage increased workload.\textsuperscript{21}

2. Reengineering is a complete overhaul of the agency dictated from the top-down and aims to boost efficiency by focusing on competition with other organizations. It has its roots in the private sector, and having proven successful there, governments have begun to reengineer their operations as well. The key issue with reengineering is that private firms operate in a vastly different environment from government, rendering many private sector management strategies inappropriate when applied to public management.\textsuperscript{22}

3. Continuous improvement suggests that efforts must be consistently made to improve the quality of a product or service. Continuous improvement aims to raise responsiveness of the government to its “customers”--its citizens--and thus lower costs by both providing quality services and by keeping employee morale high. While appropriate for managing quality of

\textsuperscript{20} Kettl and Fesler, 113-114.  
\textsuperscript{21} Ibid, 115-121.  
\textsuperscript{22} Ibid, 121-127.
customer service, continuous improvement strategies may be ill-fitted to an organization in need of top-down guidance.23

Frequently, reformers attempt to mix these strategies—picking and choosing favorable aspects of each—to produce “hybrid reform.”24 Therein lies an issue, as mixing strategies creates contradictions. For instance, combining aspects of reengineering and continuous improvement leads to upper management dictating the direction of reform while simultaneously relying on lower level employees to lead the reform effort. Mixed goals and processes breed confusion over expected outcomes, rendering administrators unable to envision new processes, much less boost administrative performance.25

C. Goals of the IRS: The Enforcement-Services Tradeoff

Conforming to Wilson’s theories on goals of bureaucracy, the mission statement of the IRS contains competing provisions. The mission statement of the IRS, as redefined under the IRS Restructuring and Reform Act of 1998, reads as such:

Provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.26

When the IRS focuses on the services aspect of its mission statement, greater allocation of resources is directed towards taxpayer services and education programs. A focus on taxpayer

23 Ibid, 127-129.
24 Ibid, 131: “[N]o organization adopts any reform in its pure form. Elected officials and managers shop around among the reform ideas, selecting the elements that most attract them.”
25 Ibid, 131: “The combination of such antithetical reform plans sends out contradictory signals to workers and creates conflicting expectations about results.” Also, see Kettle and Fesler 132: “Citizens and elected officials alike find alluring the promise of a smaller government, engineered with better processes and devoted to greater responsiveness to citizens and quality.”
services generally implies that the IRS seeks to boost rates of voluntary compliance.\textsuperscript{27} Arguments for focusing on voluntary compliance emphasize the relative cost-efficiency of garnering the cooperation of a vast majority of taxpayers as compared to conducting more audits. Typically, higher rates of voluntary compliance are a product of better quality (and widely available) taxpayer assistance and education programs. The assumption is that when taxpayers are more educated, they are more likely to be compliant as the process of filing returns is less cumbersome.\textsuperscript{28}

The second half of the IRS mission statement focuses on tax enforcement.\textsuperscript{29} Although the IRS can focus its efforts on taxpayer services and education to raise voluntary compliance, some degree of enforcement is still needed to collect taxes from the remaining noncompliant taxpayers. Furthermore, the theory behind enforcement activities suggests (and studies support\textsuperscript{30}) that higher rates of auditing deter noncompliance and increase revenue collection,\textsuperscript{31} which competes with the notion of deterring noncompliance through quality taxpayer assistance.

In this competition of goals, one not only observes the trade-off between services and enforcement, but also the central conflict facing IRS leadership: how should compliance be elicited? This section has discussed the two different schools of thought in how the IRS should be operated—as a tax law “help center” or a tax law enforcement agency. As the subsequent

\textsuperscript{27} As defined by the IRS, the voluntary compliance rate is the “percentage of total tax revenues paid on a timely basis.”
section will argue, the fundamental direction the IRS takes is not often an internal decision but one heavily influenced by the legislative and executive branches.

**D. Political Responsiveness of IRS: The Politics of Auditing**

Legislative and executive branch influences impact not only the central direction of IRS operations, but also further complicate efforts by the IRS to appear nonpartisan. The final issue complicating IRS operations is the extent to which the agency must be responsive to the preferences of its political overseers. As discussed earlier, legislative overseers (such as congressional appropriations and oversight committees) are the source of political and budgetary constraints. In order for agencies to avoid further constraints, agency executives must develop strategies to counteract congressional criticism and demonstrate some degree of overlap between its own interests and those of its overseers.32

Bureaucratic responsiveness to executive and legislative preferences combats the notion that agencies act with great independence in their operations.33 This is of critical importance to the IRS, which has been roundly criticized for the seemingly independent (and inappropriate) behavior of its employees34—an issue that will be discussed in a later section. The extent to which the IRS is politically responsive (and to whom) is detailed in this section as a review of the literature on the politics of auditing.

Initial attempts to model the political responsiveness of the IRS made some surprising finds. Several studies corroborate the contention that the IRS is responsive to the preferences of

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32 See Wildavsky Chapter 2 for thorough discussion on strategies used by agencies and appropriations committees in the budgetary process.
33 “The consistent finding that a broad range of agencies respond to partisan changes serves as a useful counterweight for the exaggerated popular belief that public bureaucracies follow their own independent course with little control from elected officials.” (Scholz, John, and Dan Wood. "Controlling the IRS: Principals, Principles, and Public Administration." *American Journal of Political Science.* 42.1 (1998): 142. Web. 27 Mar. 2014.)
34 David Burnham, a former reporter for *The New York Times*, has written extensively on the subject of IRS power and perceived independence. The scope of this paper does not include discussion of Burnham’s theories, but his works merit reference.
its various congressional oversight committees and the President. James Scholz and Dan Wood expand upon initial models\(^{35}\) by including variables for current economic conditions and the preferences of the presidential administration. Using audit rate data covering years 1971 through 1992, Scholz and Wood conducted a regression analysis based on the odds of a corporate audit versus an individual audit with the assumption that Democrats would be more likely to audit corporations than Republicans.\(^{36}\) For the presidential variable, Scholz and Wood found that corporate audits were more frequent during the Carter Administration than during the Reagan and Bush Administrations.\(^{37}\) Variance in auditing rates across states was also found to be linked to whether representatives served on any IRS oversight committees.\(^{38}\)

The following year, Scholz and Wood expanded on their 1998 study by weighing the relative impacts of efficiency, equity, and political responsiveness on auditing rates across districts (as opposed to states) for the periods 1963-1980 and 1982-1991. This study found that relative to political responsiveness, efficiency\(^{39}\) was the greater influence on IRS auditing.\(^{40}\) As Scholz and Wood note, efficiency may also be a product of Congress.\(^{41}\) Beyond averting IRS auditors from certain districts, Congress is also able to easily enforce efficiency on IRS operations due to its nature as a “production organization.” As a production organization, the inputs (tax enforcement or services provided) and outputs (federal revenue) of the IRS are easily

\(^{35}\) See, e.g., Toma and Toma; Hunter and Nelson.
\(^{36}\) Scholz and Wood (1998), 148-152.
\(^{37}\) Ibid, 155.
\(^{38}\) Ibid, 155-157.
\(^{39}\) Here, efficiency is defined as being the ease of conducting an audit. If the IRS were more focused on efficiency, it would be more likely to allocate enforcement resources to districts where audits can be more readily conducted. Scholz and Wood contrast this to equity, which is defined as enforcing tax law such that similarly situated taxpayers face similar rates of enforcement. (Scholz and Wood, 1999)
\(^{41}\) The thesis of Scholz and Wood’s (1999) research is that political responsiveness defines whether the IRS focuses on efficiency (reflecting a Republican majority) or equity (reflecting a Democratic majority). See Scholz and Wood (1999), 1172 for further detail.
measured.\textsuperscript{42} Therefore, Congress can calculate how much revenue it needs for the fiscal year and derive the appropriate amount of IRS funding necessary to reach that goal, as well as evaluate how well the IRS meets those goals.

The most recent and most comprehensive model comes from Young, Reksulak, and Shugart. Using data from 1992 to 1997, the authors propose three sets of equations in determining the political responsiveness of the IRS: a congressional model, a Senate model, and a House model. In the congressional equation, the percentage of audits in an IRS district (which do not completely overlap with political districts) is a function of the total number of congressional members on an IRS oversight committee, the years those members have been in Congress (as opposed to any oversight committees), the electoral importance of the IRS district to the president (including “toss-up” districts), the number of auditors per capita, and taxpayer compliance. The congressional model is an aggregate of the Senate and House models, which distinguishes district audit rates between senators and representatives. The results of the regression analysis are consistent with the Hunter-Nelson and Scholz-Wood models, in that the percentage of audits in an IRS district are significantly lower when the district is represented by an oversight committee member and/or is electorally important to the incumbent president.\textsuperscript{43}

One issue with the Young, Reksulak, and Shughart models (and they freely admit so in their findings) is the increasing use of the IRS discriminant function (DIF) score, which automatically evaluates returns for accuracy and consistency based on past returns. DIF scores picked out 24.7 percent of audited returns in 1995 and 34.3 percent the following year. Despite the increase, IRS employees must have initiated the remaining two-thirds of audits.\textsuperscript{44}

\textsuperscript{42} Wilson, 161.
\textsuperscript{44} Ibid, 209-210.
Furthermore, the data evaluated encompassed only years that Clinton held the presidency,\textsuperscript{45} though it is consistent with the conclusions made by Scholz and Wood (1998) that covered a larger span of time.

Overall, the current literature suggests that the IRS is responsive to the political preferences of IRS oversight committees and the incumbent president. Although several of the studies conclude that auditing efficiency is a greater influence on who the IRS audits, efficiency is arguably a product of congressional oversight as well.\textsuperscript{46}

\section*{E. Conclusion}

To summarize, the IRS, much like other bureaucratic organizations as characterized by Wilson, operates in an environment in which it must anticipate the preferences of Congress and the president or risk a loss in autonomy through political and budgetary constraints. IRS operations are further complicated by competing goals of serving taxpayers and enforcing tax law. All the while, the IRS must maintain an appearance as an independent agency separate from politics. Typically—as future sections will examine—the IRS is unable to maintain this image, resulting in further complications.

The challenges outlined in this section demonstrate the difficulty which political overseers and IRS leadership must overcome in order to produce an efficient and fair tax collection process. The following section examines in further detail the dynamics of power between Congress, the IRS, and (to a limited extent) the presidential administration.

\textsuperscript{45} Ibid, 217.

\textsuperscript{46} “IRS actions generate objective performance measures for the additional taxes collected and audit hours that can be expected from an efficiency-oriented agency. These measures provide a means for political overseers to demand more efficient service provision.” (Scholz and Wood (1999), 1173.)
Section 3. Motivations, Control, and Resistance

Coupled with the challenges examined in the previous section are competing interests from Congress, the IRS, and the presidential administration. Congress, as a body responsive to public desire for efficiency, continuous improvement, and accountability from the IRS, attempts to dictate how the IRS operates.

Conversely, the IRS desires autonomy and is often supported in this endeavor by the presidential administration as it resists encroaching congressional power or attempts to extend executive authority. To maintain autonomy, the IRS attempts to throw off oversight investigations, which it may view as frivolous or overly intrusive. This section will examine these competing motivations and how they shape IRS-Congress interactions.

A. Congressional Motivations

Congress must balance several competing interests in regards to the IRS: the collection of adequate federal revenue, the proper administration (or lack thereof) of other tax-related provisions, and holding the tax agency accountable for misconduct or mismanagement. In efforts to penalize the IRS for mismanagement, Congress typically pursues this through budget cuts, though in severe cases it may seek more comprehensive organizational reform. During this process, Congress is prone to holding “trumped up hearings”\(^{47}\) as a means of achieving broader political goals.\(^{48}\)

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\(^{47}\) See opening remarks by Sen. Orrin Hatch: “A senior White House official said Republicans are on a ‘partisan fishing expedition’ and that were are conducting ‘trumped up hearings’…” (Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny.)

a. Political Punishment and Publicity Stunts

The most common vehicle for penalizing the IRS is budget cuts.\(^49\) To Congress, cuts to the IRS’ budget accomplish two things: deficit reduction and the appearance of forced efficiency. **Deficit reduction and forced efficiency.** One of the main issues confronting the 113\(^{th}\) Congress is the size of government spending, consequently driving the political desire for deficit reduction. Because federal revenue intake is part of the equation in deficit reduction, one would expect the IRS to play a larger role. Though IRS Commissioner John Koskinen has repeatedly argued to Congress that the IRS produces $4 in federal revenue for every dollar in appropriations,\(^50\) Congress is resistant to the idea of allocating more funding to an agency prone to misconduct.\(^51\) One can observe this resistance in the FY 2014 Financial Services Appropriations bill, in which Congress seemingly approaches the IRS budget as an easy cut that both punishes the agency for misconduct as well as forcing the tax collectors to be more efficient with the money they collect.\(^52\)

**Publicity Stunts.** In the past, Congress has been vocal in its efforts to hold the agency accountable. The last time the IRS experienced severe administrative failure in the 1990s, House Republicans seized the incident as an opportunity to promote broader tax reform and to

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49 IRS budget cuts have been especially pronounced since FY 2010, according to the National Taxpayer Advocate’s 2013 Annual Report to Congress. Total IRS appropriations have decreased nominally by 8% between FY 2010 and FY 2013 with inflation further reducing the value of IRS funds by 6%. (United States. National Taxpayer Advocate. 2013 Annual Report to Congress. 2013. 25. Web.)


51 See, e.g., quote from IRS Commissioner John Koskinen: "I say that and [Congress] shrugs and goes on about their business...I have not figured out either philosophically or psychologically why nobody seems to care whether we collect the revenue or not." (Ohlemacher)

52 "To help curb potential illegal and unethical activities at the IRS, the bill prohibits funds to target groups for regulatory scrutiny based on their ideological beliefs...The legislation also requires extensive reporting on IRS spending, training, and bonuses, and prohibits funding for inappropriate videos." (United States. House of Representatives. FY 2014 Omnibus-Financial Services Appropriations. Washington, D.C.:, 2014. Web.)
“dramatize” cases of taxpayer mistreatment. In highly publicized hearings, Congress members lamented the complexity of the tax code and argued that the IRS would function better if tax law were simpler, pushing for implementation of a flat tax and even the outright abolition of the income tax.

Indeed, the present Congress appears to have its own tax reform wish list. Ways and Means Chairman Dave Camp has recently introduced legislation to simplify the tax code. Camp hopes to harness public frustration with the IRS in light of the latest episode (as well as recent instances of lavish expenditures by the agency) to gain public support for tax code simplification. Although public anger over the IRS incident is high, it is likely derived more from lack of significant IRS accountability and punishment rather than tax code complexity. In the past, this has driven organizational reform, but it is Camp’s hope that he can convince taxpayers that IRS mismanagement can be instead mitigated through simplified tax code rather than (or in addition to) another bout of organizational reform. It hardly seems coincidence that Camp has also taken the initiative to refer Lois Lerner, the former IRS employee at the center of the 2013 501(c)(4) incident, to the Department of Justice for criminal investigation.

b. Undermining the Presidency

Recently, the IRS has taken on more responsibilities, such as the implementation of Affordable Care Act (ACA) provisions and increased monitoring of political activities by

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54 Ibid.
56 This is in reference to the findings that the IRS spent $4.1 million on a single conference in August 2010. Acting Commissioner Danny Werfel admitted that although the conference served a legitimate purpose, many of the expenses were highly inappropriate. (O’Keefe, Ed. “IRS faces new scrutiny for excessive spending on conferences.” The Washington Post 1 June 2013: Web.)
57 Weisman, A15.
501(c)(4) organizations. Though Commissioner Koskinen and President Obama argue that additional resources are needed to fund these legislative mandates, Congress has been unconvinced. In fact, because of its association with the Affordable Care Act, the IRS is even less likely to see any sort of funding restoration as Congress stands now. The Republican-controlled House of Representatives has sufficiently demonstrated its opposition to ACA by holding over fifty votes on repealing or defunding the law. Some House Republicans, such as Representative Jim Jordan, suspect that the enactment of ACA spurred the IRS’ targeting of Tea Party organizations. Jordan’s view is that the Obama Administration, seeking to safeguard its hallmark legislation, instructed the IRS to impede the processing of Tea Party organization applications for tax-exempt status as a means of silencing political opposition. As such, House Republicans stand to achieve two major goals by hindering the IRS’ implementation of ACA tax provisions through budget cuts: punishing the IRS for targeting Tea Party organizations and setting the stage for potential administrative failure related to implementing ACA tax provisions.

During negotiations of the FY 2014 Budget Omnibus bill, House Republicans retaliated against both the Obama Administration and the IRS by proposing significant cuts to the IRS’ budget. These cuts served a dual political purpose for House Republicans (especially the Tea

501(c)(4) organizations are more familiarly known as “social welfare organizations” and is one of the paths an organization can take to receive tax-exempt status. The 501(c)(4) laws are notoriously vague on the amount of political activity a 501(c)(4) organization can pursue, which has become a pertinent issue following the Citizens United decision. (“Senate Committee Examines Enforcement of Campaign Finance Laws.” Sheldon Whitehouse: United States Senator for Rhode Island. N.p., 9 Apr 2013. Web. 6 May 2014.)


62 See, e.g., comments by Rep. Jim Jordan: “This administration, this agency, the very agency charged with enforcing Obamacare, systematically targeted groups who came into existence because they opposed Obamacare, and they started the targeting the very month, March 2010, that Obamacare became law, expects us to believe it was just the work of two rogue agents.” (United States. House of Representatives. The IRS: Targeting Americans for their Political Beliefs. Washington, D.C.: Government Printing Office, 2013. Web.)
Party faction): as retaliation for the IRS targeting Tea Party organizations\textsuperscript{63} as well as an attempt to elicit a shutdown attributed to Democrats and President Obama.\textsuperscript{64}

c. Conclusion

From discussion of congressional motivations, one can generalize Congress’ attitude towards the IRS as both a political ends unto itself (in which reforming or penalizing the tax agency is an attractive goal) as well as a means for greater political gains (in which congressional criticism of the agency serves to promote tax reform or undermine the presidency).

B. IRS Motivations and Tactics

In opposition to congressionally-imposed constraints, the IRS is driven to maintain autonomy in its operations.\textsuperscript{65} Oddly enough, in pursuit of autonomy, the IRS must be responsive (or appear to be responsive) to congressional and presidential preferences. Being responsive to Congress curbs the likelihood that Congress will cut the agency’s budget if the IRS is performing services in line with congressional motivations.\textsuperscript{66} Similarly, as the President holds the power to appoint the IRS Commissioner, leadership can be easily changed in the face of IRS resistance to executive preferences.

Political responsiveness is not the end all, however, as was discussed in the prior section on congressional motivations. The IRS must maintain an image of political independence, which

\textsuperscript{63} See FY 2014 Omnibus - Financial Services Appropriations: “To help curb potential illegal and unethical activities at the IRS, the bill prohibits funds to target groups for regulatory scrutiny based on their ideological beliefs or to target citizens for exercising their First Amendment rights. The legislation also requires extensive reporting on IRS spending, training, and bonuses, and prohibits funding for inappropriate videos.”

\textsuperscript{64} See Gleckman, Howard. "IRS Gets Hammered in the 2014 Budget Agreement ." Forbes. 14 Jan 2014: n. page. Web. 2 May. 2014. “[N]either congressional Democrats nor the White House seemed to have made much of an effort to defend the [IRS]. In their haste to get a budget deal—any budget deal—nobody was prepared to take the blame for threatening another government shutdown to protect the IRS.”

\textsuperscript{65} Wilson, 153.

\textsuperscript{66} Wildavsky, 1-5.
correlates with public trust in the income tax.67 Were the public to express discontent with the apparent partisanship of the IRS, Congress would again be forced to take action through budget cuts or reform. In short, to maintain autonomy is to resist Congress.

It is worth noting that for all its dramatization and politicization, congressional attempts to reform the agency and curtail its autonomy are not all frivolous “power grabs.” The IRS has access to confidential information on over 200 million Americans, and its employees have not always acted as indifferent public servants.68 As demonstrated in the 501(c)(4) incident, despite numerous congressional attempts to contain the politics of IRS employees, lower rung employees still have significant discretion in initiating audits and arguably can incentivize certain “social activities” over others.69

a. Presidential Alliance

In attempts to resist congressionally-imposed change, the IRS may find an occasional alliance in the presidential administration. In the cases of IRS reforms in the 1950s and the 1990s, the president played an important role in initially keeping Congress at bay. Truman was at first reluctant to promote action against the IRS until Republicans threatened to reclaim a majority in Congress in the next election.70 Clinton similarly resisted congressional efforts to take away executive power to appoint the IRS Commissioner, when Congress proposed the

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67 See, e.g., opening statement by Sen. Orrin Hatch: “[I]t is vital that the IRS maintain its credibility. The American people should be able to trust that the IRS will enforce our nation’s tax laws without bias or prejudice. Any hint of impropriety on the part of the IRS or its leadership damages its credibility and that of our entire government.” (Senate Committee on Finance. Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny.)


69 See Burnham: “The I.R.S. can grant or refuse tax-exempt status to various kinds of educational and charitable organizations, which means the agency’s decisions can affect a broad range of social activities…”

70 See Thorndike, 760: “The White House was not eager to fuel the inquiry, sensing that it might threaten the party’s long string of electoral successes. Critics…chastised the president for inaction, suggesting that Democrats would pay the price in 1952 elections.”
power instead be vested in the newly-created IRS Oversight Board.\textsuperscript{71} Furthermore, Clinton waited nearly a year before making the initial appointments to the Board.\textsuperscript{72}

One can also see the beginnings of an alliance between President Obama and Commissioner Koskinen. As stated earlier, many congressional Republicans have an interest in undercutting the hallmark legislation of the Obama Administration, the Affordable Care Act. Of course, the Obama Administration wishes to see the ACA smoothly implemented, especially the tax provisions slated to begin next year. As such, the President’s Budget for FY 2015 proposed a 10\% increase in IRS funding with an additional $56 million allocated to ACA provisions.\textsuperscript{73} Given Congress’ past disregard for IRS budget requests, this is highly unlikely to occur.\textsuperscript{74}

The Obama-Koskinen alliance also has its limitations. In early 2014 when Congress was negotiating the budget deal for continuing government funding through FY 2014, neither Obama nor congressional Democrats objected to the severe cuts to IRS funding. Having done so, they would have risked another government shutdown over increasing funding for the IRS. Needless to say, the fallout from an IRS-induced government shutdown would have been politically catastrophic to Democrats and the Obama Administration.\textsuperscript{75}

From those anecdotes, one can garner that, in general, the president wishes to “protect his turf,”\textsuperscript{76} whether in the form of maintaining a political majority in Congress, guarding executive power, or protecting any hallmark legislation. Applied to current affairs, the Obama Administration may view an IRS alliance as a means of maintaining a Democratic majority in

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\textsuperscript{71} Ibid, 773: “[Clinton] Administration officials rejected the suggestion that the new Board appoint the IRS commissioner, removing the White House from the equation entirely. [It was] unreasonable, and possibly unconstitutional, revisions of executive branch responsibilities…”

\textsuperscript{72} Young, Reksulak, Shughart, 217.


\textsuperscript{74} IRS Oversight Board 2013 Report, 11.

\textsuperscript{75} Gleckman.

\textsuperscript{76} Wilson, 28.
\end{flushright}
the Senate and protecting the Affordable Care Act. Similarly, the IRS seeks a presidential alliance in order to more forcefully resist congressionally imposed reforms or constraints and to act as an advocate for increased funding.

**b. Thwarting Oversight, or Why There Are No IRS Historians**

It was in response to congressional legislation to limit the release of taxpayer information following Watergate that gave rise to IRS “secrecy.” Perhaps in fear of repercussions if it were to release information that ought to have been kept private or in order to obscure its internal operations to overseers, the IRS has “taken an overly broad view of the legislation.” Thus, the IRS releases very little in regards to its internal practices.\(^7\)

Attempts to investigate the IRS by the Government Accountability Office (GAO) and the Treasury Inspector General for Tax Administration (TIGTA) have been limited by availability of internal data.\(^8\) In a sense, the IRS may be doing this to thwart oversight and maintain autonomy, or it may be genuinely hesitant to release information for fear of political consequences.

To use a present example, the focus of the investigations into the 2013 incident is on the Exempt Organizations (EO) division. Congressional investigations into EO have been stalled by former EO Director, Lois Lerner, who has repeatedly invoked her Fifth Amendment right against self-incrimination. Naturally, this has raised conservative suspicion and spawned a multitude of theories.\(^9\) Efforts to elicit testimony from Lerner are currently underway, as Chairman Darrell

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\(^8\) "[T]he Commission found Congress and stakeholders skeptical of the IRS ability to measure and track much of the information necessary for its managers, as well as executive and legislative branch overseers, to make long-term strategic decisions and hold the agency accountable." (IRS Restructuring Commission Report 58)

\(^9\) Most theories suggest that Lerner acted under direction from the White House or out of personal favoritism to the Obama Administration. One piece of evidence is that Lerner’s husband’s law firm hosted a voter registration event for the 2012 Obama re-election campaign. (Howley, Patrick. "Embattled IRS official Lois Lerner’s husband’s law firm has strong Obama connections." *The Daily Caller*, N.p., 16 May 2013. Web. 7 May 2014.) Another is that Lerner appeared to seek a job with Organizing for Action, a 501(c)(4) organization affiliated with the 2012 Obama
Issa of the House Committee on Oversight and Government Reform attempts to put Lerner in contempt of Congress.\(^{80}\)

Nor is this the first effort by the IRS and executive branch to obscure or delay investigations related to the incident. Congress has criticized TIGTA, the very office that ultimately uncovered EO mismanagement, of having knowledge that political criteria was being used nearly a year before releasing its report to Congress.\(^{81}\)

It is this sort of resistance to oversight makes the job of IRS reformers considerably more difficult. Without proper information on internal practices, Congress can only begin to guess at underlying causes. As such, Congress may legislate reforms that solve (or appear to solve) the surface issue—completely ignorant of the root source. Thus, lack of enduring success of IRS reform efforts is partially a product of the IRS concealing information from its overseers.

C. Conclusion

In its quest for autonomy, the IRS must maintain a very fine balance between political responsiveness and political independence. In managing its image, the IRS may ally with the presidency to oppose certain legislative proposals or simply obscure information from its overseers.

Efforts to conceal information may prove to be fruitless as Congress is already aware of the problematic nature of an unbridled IRS. Furthermore, concealing information can later prove injurious when Congress decides that the agency’s problems warrant reformative legislation.

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Without adequate information on internal IRS practices, Congress cannot hope to effectively fix underlying issues.

Section 4. Past Reform Efforts

From the broader theories and motivations previously discussed, this section will examine past interactions and how each reform has fallen short in addressing many chronic agency problems, including: inadequate human capital, repeated instances of administrative failure, and employee misconduct. As historian Joseph Thorndike has posited in Reforming the Internal Revenue Service: A Comparative History, when these issues become severe to the point that public trust in the agency is eroded, Congress leads efforts to reform the IRS and restore trust. As previous sections have suggested (and this section will support), the process of reform does not occur in a vacuum void of political opportunism.

Congress has implemented two major overhauls since the inception of the IRS, one under Truman and another under Clinton. Although Thorndike contends that both reforms succeeded at correcting underlying causes, this section will argue that the Truman reforms, by virtue of affording IRS leadership with more freedom in implementation, were considerably more successful than the Clinton reforms, which restricted the discretion of IRS management. Through comparison of the two reforms, this section suggests the following conclusion: As Congress and the IRS battle over levels of IRS autonomy, an ideal balance is eventually reached in which Congress insulates the politics of IRS employees while allowing the IRS freedom to implement congressional mandates and reform as it sees fit.

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82 Thorndike, 718.
83 Ibid, 779.
A. The Truman Reforms

1952 marked the first year in which the IRS (then Bureau of Internal Revenue or BIR) underwent significant organizational restructuring. As per Thorndike’s criteria, impetus for reform spawned from allegations of employee misconduct, waning support for the income tax, and administrative problems.\(^\text{84}\)

The expansion of the income tax during World War II drastically increased the workload of individual BIR employees—with employees lagging behind in processing wartime returns long after the war ended. Coupled with administrative lagging were allegations of BIR employees conspiring with organized crime in San Francisco, which resulted in numerous high-level BIR officials resigning.\(^\text{85}\) With World War II over, taxpayers were becoming disenchanted with the expanded income tax.\(^\text{86}\)

The Truman Reforms were the bipartisan product of the King Committee (an ad hoc committee formed by the Democrat-controlled House) and the Kean Committee (the Republican successor to the King Committee).\(^\text{87}\) Along with the other issues listed above, the committees noted problems in retaining qualified human capital—a result of low salaries. Inadequate payment opened the door for employees to conspire in tax fraud, as was the case in the San Francisco office. Additionally, the large number of politically appointed positions further eroded the development of human capital.\(^\text{88}\)

Though first reluctant to support the reform effort, Truman eventually released Reorganization Plan No. 1, which proposed strategies to overhaul the agency. The plan abolished all but two politically appointed positions, and reorganized the agency by function (collection,

\(^\text{84}\) Ibid, 753.
\(^\text{85}\) Ibid, 755-757
\(^\text{86}\) Ibid, 753
\(^\text{87}\) Ibid, 764
\(^\text{88}\) Ibid, 759
intelligence, audit, administration, and appellate) instead of by type of tax. The end goal was creating a more efficient agency consisting of only competent, professional career staff. Congress enthusiastically adopted this plan, in the process changing the name of the agency to the Internal Revenue Service. 89

a. Provisions of Reorganization Plan No. 1

The 1952 Report of Commissioner of Internal Revenue portrays the significant difficulty of implementing Reorganization Plan No. 1 (“Plan”)—a product of the broad language and brevity of the Plan. 90 Due to the complete reorganization from function to tax, civil service positions had to be completely revamped and existing employees reassigned. 91 The Plan’s abolition of most politically appointed positions necessitated that these positions be reclassified as civil service positions with new job descriptions. 92 Even the minutest of details needed to be addressed, such as changing the letterhead from Bureau of Internal Revenue to Internal Revenue Service. 93

The Commissioner’s Report illuminates many of the goals of the Plan. Of particular importance is the emphasis on enforcement activities. The Commissioner’s Report champions the reorganization by function, as it assigns one division the task of auditing, rather than the responsibility for auditing being divided across divisions. 94 Also of note is the degree of discretion afforded to IRS management in implementing reorganization. As described in the

89 Ibid, 760-763
90 As noted in the Commissioner’s Report 1952, the Plan was only five paragraphs long.
92 Ibid, 56-57.
93 Ibid, 59.
94 “[L]ack of sufficient enforcement personnel is one of the most serious problems of the [IRS], and bring together these slender resources in the new Audit Division makes it possible to apply these resources more effectively.” (Ibid, 63).
Commissioner’s Manual, IRS leadership established ten separate task force groups, composed of
subject matter experts that were given “complete freedom to proceed in its own way and do the
job as rapidly as possible.”

Although Congress and the IRS succeeded in enacting and implementing a major
reorganization effort, the IRS still lacked sufficient staffing and funding to navigate a flood of
returns. Furthermore, the focus on enforcement led to employee performance being evaluated
on the basis of the number of audits conducted and additional revenue collected. This practice
remained intact until the 1990s, in which allegations of taxpayer harassment (a consequence of
what Wilson refers to as “overzealous enforcement”) drove Congress to again shift the focus of
the agency back to taxpayer rights and services.

B. Restructuring and Reform Act of 1998

The next major overhaul of the IRS did not occur for another 40 years and was primarily
a response to much needed advances in information technology. The IRS Restructuring and
Reform Act of 1998 (RRA 98) was again a congressional attempt to correct for administrative
failure, to respond to allegations of taxpayer abuse by IRS agents, and to appease the taxpaying
population’s growing weariness of progressive taxation.

Impetus for reform arose after the IRS botched implementing the Tax Systems
Modernization (TSM) program, which aimed to overhaul IRS information technology
infrastructure. Soon after the collapse of TSM, allegations of IRS agents harassing taxpayers

96 Thorndike, 766.
97 Wilson, 161.
98 Thorndike, 765-766.
came to light.\textsuperscript{99} In response to this series of missteps, Congress formed the National Commission on Restructuring the IRS and tasked the Commission with proposing recommendations to remedy chronic IRS maladies.\textsuperscript{100}

\textbf{a. Provisions of RRA 98}

Recommendations from the Commission yielded RRA 98. Of particular interest is that RRA 98 marked a return to organizing the IRS by type of tax (or rather, “type of taxpayer”) rather than by function, similar to its organization before the Truman reforms. In response to allegations of taxpayer abuse, RRA 98 sharply curtailed the IRS’ power to audit and enforce by imposing several taxpayer protection provisions. Moreover, the practice of evaluating employees based on the number of audits conducted was discontinued. As such, the focus of the IRS shifted from enforcement to taxpayer services.\textsuperscript{101}

RRA 98 also established the National Taxpayer Advocate office, a branch of the IRS that promoted taxpayer interests, and the IRS Oversight Board, which has the responsibility of monitoring IRS management practices and suggesting strategies for the long-term. In doing so, Congress hoped these organizations would be able to provide feedback and guidance to prevent future administrative malfunctioning.\textsuperscript{102}

Commissioner Charles Rossotti led the RRA 98 implementation effort, which involved administering 71 new taxpayer protection provisions. In order to shift IRS priorities away from auditing, Rossotti devised the Balanced Measures System (BSM). BSM measured organizational

\begin{itemize}
\item \textsuperscript{99} Ibid, 765.
\item \textsuperscript{100} Ibid, 767.
\item \textsuperscript{101} Rainey and Thompson (2006), 596.
\item \textsuperscript{102} Thorndike, 770.
\end{itemize}
performance as a function of taxpayer satisfaction, employee morale, and business operations results.  

b. RRA 98: Prelude to Reform

With a renewed focus on taxpayer services, William Hoffman of *Tax Analysts* contends that RRA 98 actually helped set the stage for the 2013 tax-exempt status incident. Because more IRS resources were devoted to taxpayer services, less attention was given to processing tax-exempt applications for organizations.

What Hoffman misses is that RRA 98 set the stage for 2013 in one more key area. In the spirit of taxpayer protections and public desire for continuous improvement, Congress refused to allocate the agency additional resources to carry out these provisions as a means of forced efficiency and political punishment in spite of the Restructuring Commission’s recommendations for stable funding. As a result, the IRS was subject to providing higher quality of service with fewer resources—a classic mixture of Kettl-Fesler’s downsizing and continuous improvement strategies.

C. Conclusion

When comparing the two reforms, one immediately takes note of the significant leap in legislative detail—from five paragraphs to 184 pages. Also notable is the disparity in outcome—

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103 Rainey and Thompson (2006), 598.
why did the Truman reforms stay intact for 40 years while scholars cannot agree on the overall effectiveness of RRA 98?\textsuperscript{107}

Part of the answer lies in the vast difference in legislative detail. The Truman Plan presented only a framework for reform, allowing IRS leadership significant autonomy in implementation. As such, the IRS was able to defer to the expertise of its ad hoc committees. Compared to the Truman Plan, RRA 98 was a series of nagging provisions and unfunded mandates. Furthermore, implementation of RRA 98 was left primarily to Commissioner Rossotti, whose top-down rhetoric was misaligned with the notion of bottom-rung employees holding the key to better agency performance.

\section*{Section 5. The Cycle of Reform and Application to 2013 Tax-Exempt Status Incident}

The most recent IRS incident emphasizes the resilience of poor internal management (see Appendix B for lengthy background of 2013 tax-exempt status incident). Despite undergoing two major reforms, the issue of employee misconduct remains unsolved—especially in relation to processing tax-exempt status applications. Deriving from past interactions, this section first presents a model of Congress-IRS interactions and applies this model to predict future reform efforts.

\textsuperscript{107} See Rainey and Thompson (2006), Mikesell and Birskyte, and Rainey and Thompson (2007)
A. Cycle of Reform

The cycle of reform derives from the theories discussed in the first section of this paper and the prior section on reform history. First, as suggested by the Thorndike model, Congress typically leads reform efforts. Reform usually occurs after multiple instances of employee misconduct, administrative failure, and in times of disenchantment with progressive taxation.108 Second, drawing from the Kettl-Fesler theories, reform is often a hybrid of downsizing and either reengineering or continuous improvement strategies. Third, while reform is being considered, the presidential administration may ally itself with the IRS as a means of defending executive power. Congress must then convince the reluctant presidency to support reform. Simultaneously, the IRS resists congressional probing as a means of protecting its autonomy. Fourth, as a result of poorly structured reform—a function of both mixing administrative reform strategies and IRS secrecy—more instances of mismanagement ensue.

B. Scenarios of Reform

Though there is agreement between political parties109 and IRS leadership110 that targeting organizations based on their politics was inappropriate, it cannot yet be agreed upon what caused it and what should be done to prevent future incidents. In this section, three possible scenarios will be outlined. The first will be reflective of the conservative position, the second of the liberal position, and the third the most likely to occur given circumstance and prior experience.

108 Thorndike, 718.
109 See, generally, The IRS: Targeting Americans for their Political Beliefs.
110 See prepared statement of former IRS Commissioner Douglas Shulman: “Utilizing a list with keywords to select applications for review based upon the organizations’ names or policy positions is, in my view, inappropriate and damaging.” (The IRS: Targeting Americans for their Political Beliefs)
a. Scenario 1: Distrust Breeds Overhaul

In the past, restoration of taxpayer trust was one of the underlying factors in each reform attempt. In this scenario, Republicans are successful in implementing broader tax reform through instead instilling public distrust in the agency. How this is achieved may be a function of findings of ongoing investigations (i.e. the White House is implicated in the incident) or success in publicly demonizing key IRS officials (e.g. former EO Director Lois Lerner and former Commissioner Douglas Shulman). Overarching goals (similar to congressional motivations examined earlier) may be tax rate reduction, tax code simplification, and general attempts to undermine the Obama Administration.

In general, key Republican committee members, such as Senator Orrin Hatch and Representative Darrell Issa, have already begun stoking the fire of distrust. Others, such as Representative Jim Jordan attempt to preempt findings of investigations by making connections between the incident and President Obama’s interest in the success of ACA. Doing so, Jordan portrays a paranoid Obama Administration that used the IRS to antagonize and silence conservative groups opposed to ACA.

If Representative Jordan’s contentions prove correct, the subsequent fallout would parallel that of the Nixon Administration. Nixon’s use of the IRS to harass his political opponents and to obtain confidential taxpayer information constituted one of several “high crimes and misdemeanors” listed in his Articles of Impeachment. Any possibility of impeachment over the current incident depends on a definite link made between the White House

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111 See opening remarks by Sen. Orrin Hatch: “The IRS is one of the most powerful agencies in our government. Consequently, it is both feared and loathed by millions of Americans.” (of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny)

112 See footnote 62.


and IRS actions among other circumstances. Given the rarity of impeachment trials throughout the American history, and claims that previous presidents allegedly targeted political groups without ever being criminally charged, the likelihood of impeachment is extremely slim. Much more likely, Republicans will make Nixonian comparisons to discredit the Obama Administration.

Republicans have also sought to undermine the nonpartisan image of certain key IRS officials by attempting to draw ties between them and the White House. In the House Oversight Hearing entitled “The IRS: Targeting Americans For Their Political Beliefs,” exchanges between Representative Jordan and former IRS Commissioner Douglas Shulman focused on the number of White House visits Shulman made between 2010 and 2011. At the end of the exchange, Jordan concludes:

A hundred and eighteen times you were at the White House; 132 Members of Congress contact you about this information; 42 major news stories about this very subject. And you told Congress a year ago, I can give you assurances, nothing is going on, everything’s wonderful, we’re not targeting conservative groups.

The other important individual that is currently under intense Republican criticism is former EO director Lois Lerner, who has repeatedly invoked her Fifth Amendment Right against self-incrimination under advisement of her legal counsel. To Republicans, Lerner is the personification of IRS resistance and noncooperation. Significant attempts by Republicans have been made to portray Lerner as a politically motivated, self-interested Obama loyalist.

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116 Nixon comparisons have already emerged. See, e.g., observations of Rep. Elijah Cummings “Our chairman [Darrell Issa] led the charge, saying this was, ‘targeting of the President’s political enemies.’ Other Republicans followed suit. They cited, ‘the enemies list out of the White House.’ They argued that President Obama, ‘doesn’t have clean hands.’ They invoked the specter of disgraced former President Richard Nixon.” (*The IRS: Targeting Americans for their Political Beliefs.*)
117 Ibid.
118 See footnote 80 for examples.
Republicans may have some fuel for greater reform through discrediting the Obama Administration and criticizing IRS leadership through oversight hearings. The likelihood of funneling public frustration towards Camp’s tax reform plan or defunding ACA is low as the connection between IRS misconduct and need for tax reform is thin,\textsuperscript{119} and the public appears to have lost interest in ACA repeal.\textsuperscript{120} Moreover, such hyperpartisan legislation (ACA repeal and defunding in particular) stands little chance of passing the Democratic-controlled Senate.

\textbf{b. Scenario 2: Funding Mandates and Political Organization Watchdogs}

In recognition of the increased number of legislative mandates the IRS must now carry out, it may be (though equally improbable as the first scenario) that Congress restores adequate funding and resources to ensure successful implementation of its new responsibilities. In order for this scenario to occur, the results of the investigations must not be significantly detrimental to the credibility of the Obama Administration.

This is a scenario favored by Democrats, President Obama, and IRS leadership. As examined earlier, one sees a variety of like-interests at play: Democrats want the IRS to enforce the prohibition of political organizations obtaining 501(c)(4) tax-exempt status,\textsuperscript{121} President Obama wants to ensure that the IRS implements the Affordable Care Act provisions smoothly, and the IRS wants to balance these external interests as a means of maintaining (or obtaining) autonomy.

Democrats view “inadequate guidance” on proper determination of 501(c)(4) tax-exempt status and an increase in the number of 501(c)(4) applications as root causes to the IRS

\begin{itemize}
\item\textsuperscript{119} Weisman, A15.
\item\textsuperscript{120} James, Frank. "The Energy Behind Repealing Obamacare May Be Ebbing." \textit{NPR}. N.p., 5 May 2014. Web. 7 May 2014.
\end{itemize}
mishandling applications. In fact, pressure from Senate Democrats resulted in IRS efforts to pursue criminal charges against Crossroads GPS, a conservative 501(c)(4) organization alleged to have been formed to circumvent campaign finance restrictions. Senate Democrats, such as Sheldon Whitehouse, have pushed for the IRS to work with Department of Justice to pursue criminal charges against politically-motivated 501(c)(4) organizations.

Democratic desire for the IRS to be a 501(c)(4) campaign finance watchdog is not feasible without formalized regulations on how to process 501(c)(4) applications, which can be remedied by either Congress changing the law or the IRS creating regulations.

Despite preliminary research on the impact of IRS budget cuts by the nonpartisan Government Accountability Office (GAO), the IRS is unlikely to see any increases in funding. With the IRS still reeling from the political criteria incident and congressional hesitation towards increasing IRS funding, it is highly dubious that any of these proposals will be able to pass both chambers.

c. Scenario 3: Taxpayer Bill of Rights 2014

Given the unlikelihood that one political party (or faction thereof) will dominate the reform process, the most likely outcome will be a product of bipartisanship as was the case with the Truman Plan and RRA 98. Because RRA 98 focused primarily on taxpayer protections and the National Taxpayer Advocate has recently been pushing for a formalized “Taxpayer Bill of

122 Rep. Elijah Cummings: “Part of the reason for this mismanagement is inadequate guidance on how to process [501(c)(4)] cases.” (The IRS: Targeting Americans For Their Political Beliefs)
123 In contrast to Super PACs, 501(c)(4) organizations are not required to disclose names of its donors. (“Senate Committee Examines Enforcement of Campaign Finance Laws.”)
124 Ibid.
Rights,” it is reasonable to expect that any attempts to reform the agency in the future will be focused on taxpayer rights.

The Taxpayer Advocate Service (TAS), an independent IRS office tasked with handling taxpayer complaints about the IRS, has repeatedly pushed for a formalized Taxpayer Bill of Rights (TBOR). Although the Internal Revenue Code contains numerous protective taxpayer provisions, taxpayers are largely unaware of their rights and thus unable to take advantage of them.\textsuperscript{127}

Similar to the rationale behind RRA 98, the TAS believes that when taxpayers are knowledgeable of their rights, they are more trusting in the tax system and therefore more compliant.\textsuperscript{128}

The first indications of a possible Taxpayer Bill of Rights are contained in the 2014 IRS appropriations language. As a direct response to the 2013 incident, the following provision was included:

“To help curb potential illegal and unethical activities at the IRS, the bill prohibits funds to target groups for regulatory scrutiny based on their ideological beliefs or to target citizens for exercising their First Amendment rights.”\textsuperscript{129}

Congressional hearings on the incident have also focused on this aspect—that the use of political criteria to determine tax-exempt status constitutes a violation of taxpayer rights to free speech. In fact, the head of the Taxpayer Advocate Service, Nina Olson, has testified in numerous oversight and appropriations committee hearings.\textsuperscript{130}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{128} Ibid, 5.
\item\textsuperscript{130} See, e.g., U.S. Senate Subcommittee on Financial Services and General Government Hearing on Internal Revenue Service FY 2014 Budget Request, U.S. House of Representatives Subcommittee on Financial Services and General Government Hearing on Internal Revenue Service Oversight, \textit{and} U.S. Senate Committee on Finance Hearing on Protecting Taxpayers from Incompetent and Unethical Return Preparers.
\end{itemize}
\end{footnotesize}
Under the current circumstances, a Taxpayer Bill of Rights (TBOR) would be an easy fix in restoring credibility and trust in the IRS. A TBOR holds the IRS accountable by enumerating the rights taxpayers have when dealing with the IRS. As a result, taxpayers would feel empowered rather than “targeted.”

Following the political criteria incident, the House passed a Taxpayer Bill of Rights similar to an earlier version proposed by TAS, though the Senate has not yet considered the bill.\(^\text{131}\) As investigations progress, similar legislation may make a reappearance. Of all of the scenarios discussed (though it may still have a low chance of passing both chambers), it is still the most likely to occur. Whether or not any substantive reform legislation is actually considered depends on the conclusions of the investigations.

**Section 6. Implications of Continued Interactions**

Continued hostility between Congress and the IRS hold dire consequences for tax administration. As this paper has suggested, congressional grandstanding and IRS secrecy lead to IRS inefficiencies. This is particularly troublesome due to the recent influx of legislation the IRS is charged with enforcing. The following are examples of IRS services and legislative mandates that would be affected by continued declines in administrative efficiency.

To preface, the one IRS responsibility that will likely not be affected by lack of funding and congressional opposition is administering the ACA tax provisions.\(^\text{132}\) Because the IRS has focused its minimal resources on preparing for the ACA, the rest of its services are suffering...
from lack of staffing and funding. The distribution of IRS budget cuts has disproportionately fallen on taxpayer services and employee training in efforts to allocate the majority of its resources to administering the ACA.\textsuperscript{133}

As suggested throughout this paper, budget constraints have impacted the quality and quantity of taxpayer services provided. According to a GAO audit released April 2014, budget cuts have compromised the ability of the IRS to provide adequate taxpayer services and implement technological improvements. Budget cuts have resulted in an 8\% reduction in workforce\textsuperscript{134} and an 83\% cut in the IRS employee training budget.\textsuperscript{135} Workforce and training budget cuts have resulted in the IRS scaling back many of its services. For instance, IRS correspondents are limited to answering only basic tax law questions, and IRS walk-in centers no longer provide free return preparation.\textsuperscript{136} The audit concludes that budget cuts, though meant to force efficiency and savings on the agency, are projected to exceed savings.\textsuperscript{137}

The IRS’ inability to provide quality taxpayer services constitutes a failure to follow through on its mission statement, thus undermining its legitimacy as a tax collector and increasing the incentive for noncompliance. If taxpayers are unable to acquire tax assistance from the very organization responsible for administering tax law, the temptation to cheat is certainly high.\textsuperscript{138} Given that the IRS is unable to provide even the most basic of services, it is

\begin{thebibliography}{9}
\bibitem{133} GAO (2014), 2.
\bibitem{135} Ibid, 22
\bibitem{136} Ibid, 20
\bibitem{137} Ibid, 19. This point requires some clarification. In other words, budget cuts have impaired the ability of the IRS to implement cost-efficient projects. Because the IRS has been forced to delay two major IT projects, the potential savings and efficiencies from those projects are lost.
\bibitem{138} Rainey and Thompson (2006), 596-597.
\end{thebibliography}
certain that the IRS lacks the resources to persecute non-compliers. In fact, as of April 2014, IRS auditing rates have hit their lowest since the 1980s.139

Another pressing concern is the inability of the IRS to prevent tax refund fraud. By stealing identities of taxpayers, thieves can file returns under stolen identities and claim their refunds. The extent to which this happens is unknown, but the IRS was able to identify over 600,000 refund fraud cases in 2012 alone.140

Implications for campaign finance are also uncertain, but logically it follows that with reduced staffing, lack of clear 501(c)(4) guidance, and training budget cuts,141 the IRS will be unable to accurately flag potential political cases when processing 501(c)(4) applications. In fact, the 2013 TIGTA audit reported that the IRS had failed to refer 298 political cases for further review.142 However, the role the IRS will play in monitoring 501(c)(4) political activity in the future is not yet clearly defined.

In sum, adversity between Congress and the IRS directly impacts the quality of service the IRS is able to provide taxpayers. Congressional adversity results in giving the IRS additional responsibilities and fewer funds with which to complete them. Though it is easy to see the IRS as the victim in this situation, one must also bear in mind the current public stigma it carries as a seemingly partisan agency.

139 Ohlemacher.
141 According to GAO (2014) p. 31, the training budget for the Tax Exempt and Government Entities division has been cut by 96% between FY 2009 and FY 2013.
142 TIGTA, 9-10.
Section 7. Recommendations

Currently, the IRS is struggling with its public image of being a partisan agency. The IRS must maintain an image of being insulated from the electrical storm of presidential and congressional influence to regain public trust. In the past, IRS reformers simply eliminated many of the politically appointed positions,\textsuperscript{143} but with few remaining, this is no longer a viable option. Thus, reconciling its public image and regaining trust now demands more comprehensive action.

To begin repairing public relations, one of the first things the IRS can do is be more transparent about its internal practices. Increasing transparency and cooperating in the ongoing investigation both work against the public conception of the IRS as a “secretive” organization.

Furthermore, emphasis on taxpayer services should continue. An easy—though superficial—way to address this issue is by adopting the TAS recommendations for a Taxpayer Bill of Rights. As the first contact the public has with the IRS is through its tax law toll line or through its website,\textsuperscript{144} the quality and availability of these services must also be ameliorated.

Though the connection between IRS operations and tax code complexity is thin, congressional Republicans may have a legitimate point in saying that the work of the IRS is compounded by the complexity of its work. Indeed, if IRS employees are unable to answer questions beyond the most basic of tax law,\textsuperscript{145} it follows that a simpler tax code would make answering taxpayer correspondence easier.

Finally, the tendency of Congress and the IRS to set lofty goals for reform is admirable from a public perspective, but unrealistic from an administrative view. Furthermore, IRS reformers need to resist the urge to combine administrative reform strategies, especially

\textsuperscript{143}The politically appointed position of assessor was eliminated in 1872. (Thorndike, 734) Later, the Truman Plan eliminated the position of collector, leaving only two politically appointed positions in the IRS. (Thorndike, 761)
\textsuperscript{145}Ibid.
downsizing. RRA 98 might have had a more enduring success had proper resources been allocated for implementation.\footnote{Rainey and Thompson (2007), 580.}

Section 8. Conclusion

Though the likelihood of any of these recommendations being considered (let alone implemented) is low, the purpose of this paper is not to induce change but to examine the struggle for power between Congress and executive agencies. In a sense, the competition for control or autonomy is a bit ironic, given that Congress delegates legislative authority to agencies and is thus free to abolish them at any time. Yet, Congress competes for influence over the agencies despite being their very creator.

Furthermore, one may also observe how the competition for power between Congress and agencies dilutes policy. Though Congress relies on the recommendations made by ad hoc commissions, GAO, TIGTA, and TAS reports, it typically does not implement these recommendations in their pure form. Instead, Congress succumbs to the temptation to publicly dramatize IRS misconduct in order to push broader political goals. Similarly, though the IRS is put in a place of “great trust,”\footnote{See footnote 1.} both in its discretion in administering the tax code and maintaining privacy of taxpayer information, it has repeatedly proven its inability to rein in the politics of its employees.

Although it is likely that none of the recommendations proposed will be heeded, Congress and the IRS will continue as they have—adversarial, but ultimately with the most basic of governmental goals uniting them.
Bibliography


Appendix

A. Literature Review: In-depth discussion of regression models

Most of the research on the politics of the IRS has focused on the theory of congressional dominance, in which Congress withholds (or threatens to withhold) appropriations in order to influence agency decisions. The first point of contention among administrative theorists is to what extent Congress actually influences federal agencies. Archie Parnell, former Senior Staff Counsel to the House Ways and Means Oversight Subcommittee, asserts that Congress holds dominance over the IRS by including restrictive provisions in appropriations legislation. Parnell argues that Congress interferes with efficient tax administration by both restricting the IRS’ discretion in creating administrative rulings and increasing congressional oversight.148

Specifically, Parnell cites the Dornan and Ashbrook Amendments, which superseded IRS Rulings that were simple restatements of existing Supreme Court rulings. Essentially, Congress attempted to prohibit the IRS from administering a ruling based in federal case law, leading to an administrative conundrum in which the IRS had to determine “how not to administer a revenue ruling that simply restates a court decision.”149 Allowing Congress to overrule administrative rulings creates confusion and inconsistencies, and as Parnell argues, constitutes a violation of the separation of powers doctrine. Parnell concludes, “It is for the courts, not Congress, to say when an existing law has been misinterpreted.”150

However, Parnell’s argument suffers from a few oversights corrected in later research. Parnell attributes Congress as the sole political influence on the IRS, ignoring other notable oversight bodies such as the then-General Accounting Office (GAO) and the Office of Management and Budget (OMB). Additionally, Parnell makes the fallacious assertion that such

148 Parnell, 1360-1361.
149 Ibid, 1382.
150 Ibid, 1379.
congressional interference is unconstitutional. As the authority to create administrative law is a
delegation of legislative power, Congress does not infringe upon the separation of powers
doctrine by restricting or superseding IRS rulings.

Subsequent models of the political responsiveness of the IRS make some surprising finds.
One study by Eugenia Toma and Mark Toma suggests that congressional oversight members
attempt to reconcile competing interests between taxpayer protections and revenue maximization
by legislating tax breaks for their constituents. Eugenia Toma and Mark Toma study considers an
alternative form of congressional control that signals a lingering interdependence between
Congress and the IRS. IRS oversight committee members, who are motivated by reelection
campaigns, push for tax loopholes for their constituents. To offset the loss in revenue, additional
funding is appropriated to the Treasury for tax enforcement, thus ensuring higher effective rates
for all other taxpayers.\textsuperscript{151}

Toma and Toma make a few broad assumptions that, if proven erroneous, invalidate their
findings. The first assumption is that the IRS oversight committees have enough clout to pass tax
breaks solely for their constituents in both chambers of Congress. In fact, Terry Moe\textsuperscript{152}
makes that very argument, which is later supported by the empirical findings of John Scholz and Dan
Wood (1999) and Marilyn Young, Michael Reksulak, and William Shughart. Both studies
concluded that the IRS is responsive to the political preferences of congressional oversight
committees and the presidential administration, but not necessarily to Congress as a whole.\textsuperscript{153}
Essentially, Toma and Toma predicate their conclusion on the spurious correlation that the
Treasury was appropriated additional enforcement funding in years when tax loopholes were

\textsuperscript{151} Toma and Toma, 141-154.
\textsuperscript{152} Moe, 475-520.
\textsuperscript{153} See Scholz and Wood (1999); Young, Reksulak, and Shughart.
William J. Hunter and Michael A. Nelson correct for the Toma and Toma assumption that Congress would legislate tax breaks for constituents of oversight committee members. Without the need for legislation, oversight committee members could compel the IRS to conduct more audits in non-politically important states. Using the Weingast/Moran model, Hunter and Nelson conclude that IRS audit rates varied across states between the years of 1971 and 1981 because of both auditing efficiency (i.e. residents of State A are more difficult to audit than residents of State B, so State A faces lower auditing rates) and responsiveness to preferences of congressional oversight committees. Their equation is modeled such that the percentage of audits in a given state is a function of congressional membership of the Senate Finance Committee and the House Ways and Means Committee, average taxpayer income, percentage of groups with high potential to submit inaccurate returns (e.g. farmers and self-employed individuals), and number of high-income taxpayers.\footnote{Toma and Toma, 149.}

Despite their improvements to Toma and Toma’s research, Hunter and Nelson’s model fails to adequately account for current economic conditions. Scholz and Wood (1998) further test this assumption in two studies: the first (1998) being a study of the democratic controls affecting IRS actions and the second (1999) an expansion on the first study. The 1998 study focused on the causes of varying rates of auditing across states. Using audit rate data covering years 1971 through 1992, Scholz and Wood conducted a regression analysis based on the odds of a corporate audit versus an individual audit with the assumption that Democrats would be more likely to audit corporations than Republicans. For the presidential variable, Scholz and Wood found that corporate audits were more frequent during the Carter Administration than during the

\footnote{Hunter and Nelson, 57.}
Reagan and Bush Administrations. Corporate audit rates were also lower in states represented by oversight committee members. Furthermore, Scholz and Wood determine that preferences of state-level officials and media coverage do not have a significant impact on where the IRS conducts audits.\textsuperscript{156}

The following year, Scholz and Wood expanded on their 1998 study by weighing the relative impacts of efficiency, equity, and political responsiveness on auditing rates across districts (as opposed to states) for the periods 1963-1980 and 1982-1991. This study found that relative to political responsiveness, efficiency was the greater influence on IRS auditing.\textsuperscript{157} Arguably, efficiency may too be a product of Congress. Beyond averting IRS auditors from certain districts, Congress is able to easily enforce efficiency on IRS operations due to its nature as a “production organization.” As a production organization, the inputs (tax enforcement) and outputs (federal revenue) of the IRS are easily measured.\textsuperscript{158} Therefore, Congress can simply calculate how much revenue it needs for the fiscal year and derive the appropriate amount of funding dedicated to tax collection necessary to reach that goal, as well as evaluate how well the IRS meets those goals.

Using data from 1992 to 1997, Young, Reksulak, and Shughart (2001) propose three sets of equations in determining the political responsiveness of the IRS: a congressional model, a Senate model, and a House model. In the congressional equation, the percentage of audits in an IRS district (which do not completely overlap with political districts) is a function of the total number of congressional members on an IRS oversight committee, the years those members have been in Congress (as opposed to any oversight committees), the electoral importance of the IRS district to the president (including “toss-up” districts), the number of auditors per capita, and

\textsuperscript{156} Scholz and Wood (1998), 160.
\textsuperscript{157} Scholz and Wood (1999), 1176-1181.
\textsuperscript{158} Wilson, 161.
taxpayer compliance. The congressional model is an aggregate of the Senate and House models, which distinguishes district audit rates between senators and representatives. The results of the regression analysis are consistent with the findings of Hunter and Nelson and Scholz and Wood (1999), in that the percentage of audits in an IRS district are significantly lower when the district is represented by an oversight committee member and/or is electorally important to the incumbent president.¹⁵⁹

One issue with the Young, Reksulak, and Shughart models (and they freely admit so in their findings) is the increasing use of the IRS discriminant function (DIF) score, which automatically evaluates returns for accuracy and consistency based on past returns. DIF scores picked out 24.7 percent of audited returns in 1995 and 34.3 percent the following year. Despite the increase, IRS employees must have initiated the remaining two-thirds of audits.¹⁶⁰ Furthermore, the data evaluated encompassed only years that Clinton held the presidency, though it is consistent with the earlier research done by Scholz and Wood (1998) that covered a larger span of time.

Overall, the current literature on this topic suggests that the IRS is responsive to the political preferences of IRS oversight committees and the incumbent president. Although several of the studies conclude that auditing efficiency is a greater influence on who the IRS audits, efficiency is arguably a product of congressional oversight as well. Because Congress is able to readily evaluate the efficiency of tax collection and enforcement, the IRS must also anticipate Congress’s reaction to auditing efficiency and other areas of management.

¹⁵⁹ Young, Reksulak, and Shughart, 201.
¹⁶⁰ Ibid, 209.
B. Background of 2013 Incident

The Exempt Organizations (EO) Rulings and Agreements subunit of the IRS is tasked with reviewing and approving applications for tax-exempt status of charitable and social welfare organizations. Based in Washington, D.C., the EO Rulings and Agreements Technical Unit coordinates with the Determinations Unit in Cincinnati to determine appropriate criteria used to approve or deny applications for tax-exempt status.³

Organizations may apply for tax-exempt status under Internal Revenue Codes (I.R.C.) § 501(c)(3) charitable organizations, § 501(c)(4) social welfare organizations, § 501(c)(5) agricultural and labor organizations, or § 501(c)(6) business league organizations. Depending on the type of tax-exempt organization, the organization may engage in limited political advocacy. 501(c)(3) charitable organizations are precluded from endorsing certain political candidates or legislation, but charitable contributions from donors are tax deductible. The other three types—social welfare, agricultural and labor, and business league organizations—may engage in political advocacy provided that it is not the primary function of the organization.⁴

Since fiscal year (FY) 2009, the number of applications for 501(c)(4), 501(c)(5), and 501(c)(6) status have nearly doubled as shown in Table 1.⁵ This drastic increase in applications was coupled with an equally drastic reduction in IRS workforce beginning in 2010. From its 2010 levels, the IRS workforce has been cut by 9%.⁶ Consequently, each individual IRS agent must handle higher workloads.

⁴ Ibid.
⁵ Ibid.
⁶ Ibid.
Table 1: Number of Applications for I.R.C. §§ 501(c)(3)–(6) Tax-Exempt Status Received by the IRS

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<thead>
<tr>
<th>Fiscal Year</th>
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<tr>
<td></td>
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<tr>
<td>2009</td>
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<td>59,486</td>
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<td>2011</td>
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</tr>
<tr>
<td>2012</td>
<td>66,543</td>
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Source: Treasury Inspector General for Tax Administration

In order to process the large influx of applications, Determinations Unit employees began designating organizations with specific political terms in their name (e.g. “Tea Party” and “Patriots”) as “potential political cases.” To ensure political organizations were not granted tax-exempt status, any application deemed a potential political case was forwarded to specialists for further review.\(^{165}\)

This practice was first semi-formalized in the “Be On the Look Out” (BOLO) listing in 2010, which contained the political criteria used to initially review applications. Included in the BOLO listing were terms associated with the Tea Party, conservative policy issues, and criticism of current political leaders. Usage of BOLO criteria continued until after the 2012 elections, at which point Congress commissioned the Treasury Inspector General for Tax Administration (TIGTA) to conduct an audit based on allegations from Tea Party organizations that their applications for tax-exempt status were being unduly scrutinized and subject to long delays.\(^{166}\)

After conducting the audit, TIGTA concluded that the IRS had used inappropriate means to process applications for tax-exempt status. Furthermore, several applications that should have


\(^{166}\) *Ibid.*
been designated as potential political cases (i.e. organizations that were primarily political in nature) were overlooked. Poor management practices, TIGTA stated, undermines public confidence in the IRS and in the administration of tax policy.¹⁶⁷

In response to TIGTA’s report, Congress’s various IRS oversight committees held numerous hearings on the subject. Hearings highlighted the chronic problem of management within the IRS, and Congress members criticized the IRS for violating the First Amendment rights of organizations by purposefully delaying their application processing. As means of punishment, Congress has cut the IRS FY 2014 budget down to its FY 2009 levels.

¹⁶⁷ Ibid.