



**Statement of David Keating
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**Submitted to the House Ways and Means Committee
United States House of Representatives
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On behalf of the Center for Competitive Politics, we commend the Committee for holding today's hearing and applaud the Chairman and Ranking Member for their strong statements pledging to work to ensure the IRS never again uses ideological criteria to evaluate tax-exempt groups.

The Center for Competitive Politics (CCP) is a nonpartisan, nonprofit 501(c)(3) organization focused on promoting and protecting the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission.

The power of the IRS must never be used in this manner again. To this end, and given the seriousness of the IRS scandal, we strongly urge the Committee to determine the answers to these troubling questions raised by the IRS's actions:

- 1) *How did this happen?* Why and how did the IRS come to inappropriately review certain tax-exempt organizations? The report by The United States Treasury Inspector General for Tax Administration (TIGTA) did not investigate this matter. It needs to be investigated. The reasons for the Service's errors are as important as the errors themselves.

The TIGTA report was very limited in its scope. As noted in the report, the overall objective was "to determine whether allegations were founded that the Internal Revenue Service (IRS): 1) targeted specific groups applying for tax-exempt status, 2) delayed processing targeted groups' applications for tax-exempt status, and 3) requested unnecessary information from targeted groups."¹ We do not know how and why this happened.

¹ "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Treasury Inspector General for Tax Administration. Retrieved on May 16, 2013. Available at: <http://s3.documentcloud.org/documents/700698/i-r-s-inspector-generals-report-on-targeting.pdf> (May 14, 2013), p. 3.

- 2) *Who created the criteria and why?* Who created the criteria that disparately led to Tea Party organizations and other groups of a conservative political orientation to face special scrutiny and unconscionable delays in their application for tax-exempt status? Were the political beliefs of those who made these decisions a factor, either directly or indirectly? Did those political beliefs in some way affect these decisions? After the Exempt Organizations (EO) Director ordered the criteria to be changed, who changed it again, and why did Service employees revert to policies that were still clearly wrong?
- 3) *Congressional Influence.* Did the IRS feel pressure from the many letters sent by some in Congress to investigate the political activity of 501(c)(4) organizations? Did members of Congress contact IRS officials via telephone, in person meetings, or emails, and if so, what were the nature of those communications? Has the IRS reviewed or audited groups based on requests by members of Congress?²
- 4) *The Decision to Audit or Review.* Looking forward, how does the IRS decide which groups to investigate? Is the decision to audit based on complaints from members of Congress or outside groups? If so, does this influence result in bias in the choice of which groups to review?

This scandal involving the IRS provides us with a cautionary tale: the agency is not equipped or structured to do the job it was asked to do in overseeing political activities. For many reasons, the enforcement of campaign finance law is a highly complex issue best left to the agency tasked with its enforcement – the Federal Election Commission. Recent efforts to task other federal agencies like the IRS with additional responsibilities relating to the enforcement of campaign finance laws have created serious problems, as demonstrated here.

In addition to the outrageous violation of free speech rights resulting from the manner in which the IRS reviewed Tea Party and other conservative political groups, the Service has also disclosed confidential tax return information of politically sensitive nonprofit groups on at least three occasions involving an unknown number of organizations.³

Given the nature and gravity of both this scandal and the release of sensitive donor information, Congress should need no further instruction that neither the IRS nor any other federal agencies should be granted power to enforce campaign finance law. Such a task is best left to the Federal Election Commission.

² Garance Franke-Ruta, "Congress Put Pressure on the IRS to Investigate Conservative Tax-Exempt Groups," *The Atlantic*. Retrieved on May 16, 2013. Available at: <http://www.theatlantic.com/politics/archive/2013/05/congress-put-pressure-on-the-irs-to-investigate-conservative-tax-exempt-groups/275814/> (May 13, 2013).

³ Kim Barker and Justin Elliott, "IRS Office That Targeted Tea Party Also Disclosed Confidential Docs From Conservative Groups," *ProPublica*. Retrieved on May 16, 2013. Available at: <http://www.propublica.org/article/irs-office-that-targeted-tea-party-also-disclosed-confidential-docs> (May 13, 2013).