While I support the motive behind this legislation and believe ensuring the safety of state and local courthouses is a noble goal, I believe the responsibility to address this issue lies with the state and local governments. I do not believe the federal government has the authority under the Constitution to provide training for local and state law enforcement or to provide security equipment to state and local courthouses at the federal government's expense. Further, I believe the training program this bill authorizes duplicates existing federal training programs.

First, S. 2076 authorizes the Director of the State Justice Institute (SJI) to carry out ''a training and technical assistance program designed to teach employees of State, local, and tribal law enforcement agencies how to anticipate and respond to violent encounters during the course of their duties, including duties relating to security at State, county, and trial courthouses.'' The purpose of SJI is to further the development and adoption of improved judicial administration in state courts in the United States, which is not a federal responsibility under the Constitution. States are responsible for the administration of their courts. Adding an additional allowable purpose to SJI merely broadens the unconstitutional reach of this agency. Further, even though S. 2076 does not provide any additional funding for SJI the agency could use the authorization of additional responsibilities as a basis for requesting future appropriations from Congress.

Second, the SJI training program authorized in this bill potentially duplicates existing federal training programs available to state and local law enforcement. The following programs already exist:

1. U.S. Marshal Service's National Center for Judicial Security, Office of Protective Intelligence; Shares threat information with state and local law enforcement agencies and provides training to state and local law enforcement officers who provide courthouse security. Also, provides guidance and support to district offices and Judicial Security Inspectors (JSIs) conducting high threat proceedings and protective responses.

2. U.S. Marshal Service's National Center for Judicial Security Fellowship Program; Provides a three-month training program for state, local, and international ''court security managers.''

3. FBI's Uniform Crime Reporting (UCR) division and Law Enforcement Officers Killed and Assaulted (LEOKA) programs; UCR and LEOKA collect data on law enforcement officers who have been killed or assaulted in the line of duty. The FBI then conducts LEOKA training programs for state and local law enforcement personnel based on this data.

4. FBI's Law Enforcement Training for Safety and Survival (LETSS) program; Trains FBI, police officers, and international law enforcement personnel in survival techniques.

5. FBI Field Police Training program; Includes firearm training for state and local partners.

6. FBI's Law Enforcement Executive Development Association program; Trains heads of state and local law enforcement agencies with between 50 and 500 personnel.

7. Advanced Law Enforcement Rapid Response Training (ALERRT) program; Trains officers in dealing with violent situations, including those they face outside of buildings and in urban settings. Includes core classes such as ''Basic Active Shooter Level I and II,'' ''Terrorism Response Tactics—Advanced Pistol,'' ''Combat Rifle,'' ''Combat Pistol,'' ''Advanced Rifle Marksmanship,'' and ''DOD Sniped Course.''

8. Community Oriented Policing Services programs (COPS);

9. Department of Homeland Security's Federal Law Enforcement Training Center (FLETC) programs; and The Survival Shooting Training Program (SSTP) under FLETC is an eight and a half day training program that teaches law enforcement officers (LEOs) ''how to employ several types of weapon systems found in most police arsenals (the service handgun, shotgun, submachine gun and rifle). The LEOs will develop marksmanship skills as well as all pertinent gun handling skills (drawing from the holster, reloads, immediate action, movement and more) at a rapid yet controlled pace. Ultimately, the SSTP prepares the LEOs to survive a deadly force confrontation through competent decision making and confident gun handling skills.'' The Reactive Shooting Instructor Training Program (RSITP) under FLETC trains law enforcement instructors in handling their firearms to survive high-stress situations.

10. Bureau of Alcohol, Tobacco, and Firearms' National Firearms Examiner Academy programs. The training program includes training that enables state and local law enforcement officers to identify armed gunmen and increase their ''margin of safety.''

Finally, this bill gives state and local courthouses priority in obtaining excess federal security equipment for free from the Government Services Administration after a short request period is given to federal agencies. The courthouse would only pay the costs of transporting the equipment. Equipment purchased by the federal government—and thereby the American taxpayer—should be utilized by the federal government if at all possible. If not, federal agencies may have to purchase equipment they otherwise could have obtained for free but for the state and local governments taking it. Also, giving states and localities the ability to obtain this equipment for free may lead to situations where they acquire the equipment simply because it is free, not because they truly need it.

Article I, Section 8 of the Constitution enumerates the limited powers of Congress, and nowhere are we tasked with funding or becoming involved with state and local court security. I firmly believe this issue is the responsibility of the states and not the federal government. However, if Congress does act in this area, we should evaluate current programs, determine any needs that may exist, and prioritize those needs for funding by cutting from the federal budget programs fraught with waste, fraud, abuse, and duplication.

Congress must start making tough decisions rather than continuing to kick the can down the road, leaving our children and grandchildren to clean up the mess. It is irresponsible for Congress to jeopardize the future standard of living of our children by borrowing from future generations. The U.S. national debt is now over $16 trillion. That means over $50,000 in debt for each man, woman and child in the United States. A year ago, the national debt was $14.3 trillion. Despite pledges to control spending, Washington adds billions to the national debt every single day. In just one year, our national debt has grown by $1.7 trillion or 11.8%. We cannot continue to support federal funding for programs and initiatives that are not federal responsibilities as dictated by our Constitution. Otherwise, we will never get our fiscal house in order.

Sincerely,

TOM A. COBURN, M.D.,
U.S. Senator.

INTERNAL REVENUE SERVICE AND 501(c)(4) ORGANIZATIONS

Mr. LEVIN. Mr. President, our representative form of government is based on the premise that citizens who vote in our elections are informed about who is seeking to influence elections. Sadly, we continue to see that information obscured by organizations who are misusing our tax code for political gain.

As we have discussed on this floor many times, the Supreme Court opened our campaign finance system to a torrent of unlimited and secret special-interest money in Citizens United. But even the Supreme Court acknowledged in Citizens United that disclosure is important:

''[P]rompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are in the pocket of so-called moneyed interests.'' Citizens United v. FEC, 130 S. Ct. 876, 916 (2010).

Yet, according to the Center for Responsive Politics, as of September 13, spending on political advertising by groups that either do not disclose, or only partially disclose their donors, has increased four-fold, from $32 million in the 2008 election to more than $135 million at the same point in the current election.

These groups are exploiting our tax code by organizing as tax-exempt ''social welfare'' groups and then spending tens of millions of undisclosed dollars on political campaigns.

The Internal Revenue Service (IRS)—the organization that grants these groups their tax-exempt status in the first place—should be protecting the voting public from these groups that pretend to be acting in the social welfare but are instead engaging in partisan politics.

The law in this area is clear. 26 U.S.C. §501(c)(4) states that ''Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes'' are exempt from taxation. The word ''exclusively'' is in the tax code for a reason. Congress didn't say ''partially,'' or ''primarily.'' We said that these groups had to be operated ''exclusively'' for the promotion of social welfare. The IRS, in writing the implementing regulations to the statute, said that, ''An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare.'' [emphasis added] By substituting the word ''primarily'' in the regulation with the word ''exclusively'' in the statute, the IRS essentially redefined what Congress required a social welfare organization to be.

Mr. President, I asked the IRS for an explanation as to why they have not

responded to the increasing growth of groups that parade as social welfare groups but are obviously organized for politically partisan purposes. In my letters, I asked the IRS how they interpret the explicit language in the tax code which says that entities must operate ''exclusively'' for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations. Their response? That the regulation has been in place for over 50 years. That is not an excuse if new abuses require a review of an IRS regulation.

I also asked the IRS if they are fulfilling their enforcement function by notifying these groups that are obviously engaged primarily in political activity that they are violation of the law. Again, the IRS response was inadequate. During the past 6 months, according to the IRS letter, no notices of proposed or final revocation have been issued to section 501(c)(4) organizations. None. So even under the ''primarily'' test the IRS is not enforcing the law in the face of the avalanche of evidence that our laws are being flouted.

The law is clear. Even the watered-down IRS regulation is clear. It is time that the IRS enforces the law, or at least its own regulation.

I ask unanimous consent that the correspondence with the IRS be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC, July 27, 2012.

Hon. DOUGLAS H. SHULMAN,
Commissioner, Internal Revenue Service, Washington, DC.

DEAR COMMISSIONER SHULMAN: I am writing to express my concern about how the IRS interprets the law regarding the extent to which 501(c)(4) ''social welfare'' organizations can engage in partisan political activity. The July 13, 2012 response by Lois G. Lerner, Director of Exempt Organizations, to my June 13, 2012 letter was unsatisfactory.

In the response, Ms. Lerner stated that ''The IRS takes steps to continually inform organizations of their responsibilities as social welfare organization to help them avoid jeopardizing their tax-exempt status,'' and ''*actively educates* section 501(c)(4) organizations at multiple states in their development about their responsibilities under the tax law.'' [Emphasis added.]

Her discussion does not describe an IRS initiative to ''continually inform'' or ''actively educate.'' Rather, it shows the IRS is passively making some information available once a 501(c)(4) entity is already in existence. Further, her discussion of the explanatory materials available to the public, and the materials themselves, are confusing. This leads to a predictable result: organizations are using Internal Revenue Code Section 501(c)(4) to gain tax exempt status while engaging in partisan political campaigns. There is an absurd tangle of vague and contradictory materials that the IRS provides. Making the problem worse is that the IRS knows there is a problem because of the public nature of the activity, but has failed to address it.

First, the law.

26 U.S.C. §501(c)(4) states that ''Civic leagues or organizations not organized for profit but operated *exclusively for the promotion of social welfare,* or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes'' are exempt from taxation. [Emphasis added.] Merriam-Webster defines ''exclusively'' as ''single, sole; whole; undivided.'' Therefore, it would appear that the law prevents entities that organize under Section 501(c)(4)from any activity that is not operated exclusively for the promotion of social welfare or an association of employees.

Consistent with the law is a 1997 letter from the IRS denying tax-exempt status to a group called the National Policy Forum. The letter indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that ''partisan political activity does not promote social welfare as defined in section 501(c)(4),'' and that the applicant ''benefit[s] select individuals or groups, instead of the community as a whole.

One part of Internal Revenue Service Publication 557 in its guidance states, consistent with the law, that:

''If your organization is not organized for profit and will be operated *only* to promote social welfare to benefit the community, you should file Form 1024 to apply for recognition of exemption from federal income tax under section 501(c)(4).'' [Emphasis added]

Another part of Internal Revenue Service Publication 557 starts off by agreeing with the law and states, ''Promoting social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.'' The IRS is accurately and clearly stating, in some places at least, that ''social welfare'' advocacy does not include campaigning for or against a candidate or candidates.

So far, so good—until that same Publication 557 states: ''However, if you submit proof that your organization is organized exclusively to promote social welfare, it can obtain an exemption [from taxes] even if it participates legally in some political activity on behalf of or in opposition to candidates for public office.''

That language seems inconsistent with the other referenced parts of Publication 557 (as well as being inconsistent with law and precedent), unless it means that the exemption isn't available for the political activity portion funded by 501(c)(4) receipts.

Further, an IRS regulation that interprets Section 501(c)(4) states that, ''An organization is operated exclusively for the promotion of social welfare if it is *primarily engaged* in promoting in some way the common good and general welfare of the people of the community.'' [Emphasis added.]

So the IRS regulation says the law's requirement of ''exclusively'' really means ''primarily,'' something very different from ''exclusively.''

The IRS webpage cites an internal training article which states:

'''[S]ocial welfare' is inherently an abstruse concept that continues to defy precise definition. Careful *case-by-case analyses* and close judgments are still required.'' [Emphasis added.]

Fair enough.

In its Compliance Guide for Tax-Exempt Organizations, the IRS gives direction regarding how to make a case-by-case evaluation whether a communication is political. That Guide says that the following factors indicate that an advocacy communication is political campaign activity:

The communication identifies a candidate for public office;

The timing of the communication coincides with an electoral campaign;

The communication targets voters in a particular election;

The communication identifies the candidate's position on the public policy issue that is the subject of the communication;

The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and

The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

The guide further lays out the factors that indicate when an advocacy communication is not political campaign activity:

The absence of anyone or more of the factors listed above;

The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;

The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);

The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and

The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

It is clear from the application of those factors that what is going on in the U.S. with certain 501(c)(4) organizations in their television advertisements are political campaign activities.

Below are two transcripts of advertisements that were put on television by 501(c)(4) organizations. As you can see, the subject of Advertisement #1 is a Democratic Senator, and the subject of Advertisement #2 is a Republican Senator. This is not a partisan issue.

Television Advertisement #1:

''It's time to play: Who is the biggest supporter of the Obama agenda in Ohio. It's Sherrod Brown. Brown backed Obama's agenda a whopping 95 percent of the time. He voted for budget busting ObamaCare that adds $700 billion to the deficit. For Obama's $453 billion tax increase. And even supported cap-and-trade which could have cost Ohio over 100,000 jobs. Tell Sherrod Brown, for real job growth, stop spending and cut the debt. Support the new majority agenda at newmajorityagenda.org.''

Television Advertisement #2:

''Before Wall Street gave him $200,000 in campaign cash. . . . Before he voted to let bank CEOs take millions in taxpayer funded bonuses. . . . Dean Heller was a stockbroker. No wonder he voted against Wall Street reform; against holding the big banks accountable. Heller even voted to risk your Social Security here, in the stock market. Dean Heller: he votes like he still works for Wall Street, and that's bad for you.''

Those ads, and so many like them, clearly fit the factors the IRS has laid out in its guide for what constitutes a political campaign activity. The advertisements make no pretense at nonpartisanship; they are blatantly and aggressively partisan communications.

Entities that file under Section 501(c)(4) of the Internal Revenue Code and take advantage of its tax exemption benefits should have to make a choice: either lose their exempt status (and pay taxes) or eliminate the partisan political activity.

The IRS needs to immediately review the activities of 501(c)(4) entities engaging in running partisan political ads or giving funds to Section 527 organizations that run such ads. The IRS needs to advise 501(c)(4) entities of the law in this area and the factors it will look at in reviewing 501(c)(4) status and tax exemption issues.

Please provide me with the following information no later than August 10, 2012:

1. How can the IRS interpret the explicit language in 26 U.S.C. 501(c)(4), which provides that ??510??(c)(4) entities must operate ''exclusively'' for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations?

2. Since partisan political activity does not meet the IRS definition of ''promoting social welfare,'' how can an organization that participates in any partisan political activity be''organized exclusively to promote social welfare?''

3. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states: ''As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention.''

a. Typically, how long after a complaint to the IRS does a compliance review begin?

b. What approximate time does it take to review the complaint?

c. How many persons are involved in the enforcement of the 501(c)(4) rules?

4. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states that 501 (c)(4) organizations ''can declare themselves tax-exempt without seeking a determination from the IRS. EO will review organizations to ensure that thel have classified themselves correctly and that they are complying with applicable rules.''

a. Why does the IRS allow 501(c)(4) organizations to self-declare?

b. When an organization ''self declares'' as a 501(c)(4) organization, how does the IRS get notice and how long does it take the IRS to conduct the review to ensure that that organization has classified itself correctly?

5. The IRS Compliance Guide for Tax-Exempt Organizations states:

''When a 501(c)(4), (5) or (6) organization's communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to its net investment income for the year or the aggreate amount expended on political campaign activities during the year, whichever is less.''

a. How does the IRS keep track of these explicit communications and ensure that the organization pays this tax?

b. What is the reason for the requirement that the tax will be based on ''whichever is less'' between its net investment income for the year or the aggregate amount expended on political campaign activities?

c. What tax would an organization have to pay if it spends all of its income on political advertising (therefore it has NO net investment income)?

6. Ms. Lerner's letter quotes the IRS webpage on Social Welfare Organizations:

''The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in *some* political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f)?'' [Emphasis added]

a. What is the statutory basis of the language that allows 501(c)(4) organizations to engage in *some* political activities?

b. How does the IRS keep track of these political activities and ensure that the organization pays the tax under section 527(f)?

7. In her July 13 letter, Ms. Lerner states that the IRS also addresses the issue of political activities in the Forms 990 and 990–EZ.

Are Forms 990 and 990–EZ made public? If so, where can they be accessed?

8. Internal Revenue Service Publication 557 states that, if a 501(c)(4) entity can ''submit proof that [the] organization is organized exclusively to promote social welfare, it can obtain an exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office.''

Have the following 501(c)(4) organizations a) applied for; and if so, b) received the described exemption for political activity from the IRS?

a. Crossroads Grassroots Policy Strategies
b. Priorities U.S.A.
c. Americans Elect
d. American Action Network
e. Americans for Prosperity
f. American Future Fund
g. Americans for Tax Reform
h. 60 Plus Association
i. Patriot Majority USA
j. Club for Growth
k. Citizens for a Working America Inc.
l. Susan B. Anthony List

9. Have you reminded 501(c)(4)s which publicly seem to be operating in the partisan political arena as to the factors you will consider in determining whether they are engaging in partisan political activity? If not, why not?

I have enclosed a copy of Ms. Lerner's letter. If you have any questions, please contact me, or have your staff contact Kaye Meier of my staff at kaye_meier@ievin.senate.gov or 202/224–9110. Again, it is urgent that I receive your answers by August 10, 2012.

Sincerely,

CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC., August 24, 2012.

Hon. CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations, U.S. Senate, Washington, DC.

DEAR SENATOR LEVIN: I am responding to your letter to Commissioner Shulman dated July 27, 2012, requesting additional information about section 501(c)(4) organizations. This response supplements the previous responses dated June 4, 2012 and July 13, 2012, and addresses the additional questions raised in your recent letter.

Question 1. How can the IRS interpret the explicit language in 26 U.S.C. §501(c)(4), which provides that 510(c)(4) entities must operate ''exclusively'' for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations?

We note that the current regulation has been in place for over 50 years. Moreover, unlike Internal Revenue Code section 501(c)(3), which specifically provides that organizations may ''not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office.''), section 501(c)(4) does not contain a specific rule or limitation on political campaign intervention by social welfare organizations.

Question 2. Since partisan political activity does not meet the IRS definition of ''promoting social welfare,'' how can an organization that participates in any partisan political activity be ''organized exclusively to promote social welfare?''

As stated above, longstanding Treasury Regulations have interpreted ''exclusively'' as used in section 501(c)(4) to mean primarily. Treasury Regulation §1.501(c)(4)–1(a)(2)(i), promulgated in 1959, provides: ''An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and general welfare of the people of the community.'' Applying this Treasury Regulation, Revenue Ruling 81–95, 1981–1 C.B. 332, concluded that ''an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare.''

Question 3. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states: ''As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention.''

a. Typically, how long after a complaint to the IRS does a compliance review begin?

b. What approximate time does it take to review the complaint?

The IRS routinely receives examination referrals from a variety of sources including the public, media, Members of Congress or their staff, and has a longstanding process for handling referrals so that they receive an impartial, independent review from career employees. When the IRS receives a referral about a particular organization, it is promptly forwarded to the Classification unit of the Exempt Organizations (EO) Examination office in Dallas, Texas. Pursuant to IRM 4.75.5.4(1), within 30 days of receiving the referral, the Classification staff begins evaluating whether the referral has examination potential, should be considered in a future year, needs additional information to make a decision, or falls within the categories of matters that are referred for EO Referral Committee review. Although IRM 4.75.5.4(1) sets a goal of 90 days to complete reviews of referrals, the time it takes to fully review a particular referral varies, depending on such factors as the issues involved and the availability of relevant information (i.e. organization's Forms 990, external sources such as media reports, internet searches, etc.).

In those cases in which the IRS needs additional information about the subject of a referral that is not readily available, such as its Form 990 that has not been filed yet for the tax year at issue, Classification may suspend classifying the referral and places it in the follow-up category until the additional information is available. Once the additional information is received, reviewed, and supports the referral being classified as having examination potential, the referral is sent to unassigned inventory, until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to conduct an examination.

Once in inventory, there are numerous factors that can affect how long it takes to

complete the examination process. While it is difficult to predict how long any single examination will take, for cases closed in FY 2011, the average time it took to close a case was 210 days.

c. How many persons are involved in the enforcement of the 501(c)(4) rules?

The Exempt Organizations (EO) function is responsible for the enforcement of section 501(c)(4) statutory rules and regulations as well as those applicable to all other types of tax-exempt organizations.

For FY 2011, the total number of EO staff was 889. Other than the 14 employees in the Director's office, the three EO offices are staffed as follows:

Rulings and Agreements (R&A), which includes EO Determinations and EO Technical, ensures organizations meet legal requirements during the application or private letter ruling process, and through guidance. In FY 2011, R&A had 332 employees.

EO Examinations (Exam) is comprised of various units, including the Classification unit, the EO Compliance Unit, and the Review of Operations unit. Exam develops processes to identify areas of noncompliance, develops corrective strategies, and coordinates with other EO functions to ensure compliance, so that organizations maintain their exempt status. In FY 2011, Exam had 531 employees.

EO Customer Education and Outreach (CE&O) coordinates, assists and supports the development of educational materials and outreach efforts for organizations to understand their responsibilities under the tax law. In FY 2011, CE&O had a staff of 12 employees.

The employees in these functions are responsible for the regulation of all types of tax-exempt organizations, including section 501(c)(4) organizations.

Question 4. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states that 501(c)(4) organizations ''can declare themselves tax-exempt without seeking a determination from the IRS. EO will review organizations to ensure that they have classified themselves correctly and that they are complying with applicable rules.''

a. Why does the IRS allow 501(c)(4) organizations to self-declare?

The Internal Revenue Code expressly provides that certain tax-exempt organizations must give notice to the IRS, by filing an application for exemption, in order to claim tax-exempt status. The Internal Revenue Code does not require an organization to provide notice to the IRS to be treated as described in section 501(c)(4). By contrast, for example, Section 508 generally requires an organization to provide notice to the IRS before it will be treated as described in section 501(c)(3).

b. When an organization ''self declares'' as a 501(c)(4) organization, how does the IRS get notice and how long does it take the IRS to conduct the review to ensure that the organization has classified itself correctly?

As with other tax exempt organizations, organizations claiming to be tax-exempt under section 501(c)(4) generally are required to file a Form 990 on an annual basis.

The Exempt Organizations office of the IRS is responsible for the compliance of over one million organizations with diverse goals and purposes. In order to ensure the highest degree of compliance with tax law while working with limited resources, EO maintains a robust and multi-faceted post-filing compliance program that conducts reviews of exempt organizations in various ways, such as:

Review of Operations (ROO) reviews: Because a ROO review is not an audit, the ROO carries out its post-filing compliance work without contacting taxpayers. Instead, the ROO looks at an organization's Form 990, website, and other publicly available information to see what it is doing and whether it continues to be organized and operated for tax-exempt purposes. If it appears from a ROO review that an organization may not be compliant, the organization is referred for examination.

Compliance checks: In a compliance check, IRS contacts taxpayers by letter when we discover an apparent error on a taxpayer's return or wish to obtain further information or clarification. A compliance check is an efficient and effective way to maintain a compliance presence without an examination. We also use compliance check questionnaires to study specific parts of the tax-exempt community or specific cross-sector practices.

Examinations: Examinations, also known as audits, are authorized under Section 7602 of the Code. For exempt organizations, an examination determines an organization's continued qualification for tax-exempt status. We conduct two different types of examinations: correspondence and field.

Because the IRS cannot review every existing organization in every tax year, we use the review techniques described above to maximize our coverage of the tax exempt sector in both our general program work and our project work. The project work, which results from our strategic planning process, is designed to focus on specific areas affecting the EO sector and to direct more effective use of our resources in the effort to strengthen compliance and improve tax administration. Described in the EO 2012 Work Plan, the sections 501(c)(4), (5) and (6) Self-Declarers is one such project. This project focuses on organizations that hold themselves out as being tax-exempt rather than seeking IRS recognition of their exempt status.

Question 5. The IRS Compliance Guide for Tax-Exempt Organizations states:

''When a 501(c)(4), (5) or (6) organization's communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to its net investment income for the year or the aggregate amount expended on political campaign activities during the year, whichever is less.''

a. How does the IRS keep track of these explicit communications and ensure that the organization pays this tax?

Tax-exempt organizations filing Forms 990 or 990–EZ are required to report political activities. Organizations that engage in direct or indirect political campaign activities are also required to complete Schedule C of Form 990 or 990–EZ. Organizations subject to tax under section 527(f) are required to comply with the statutory reporting and payment rules. The IRS also receives referrals regarding such activities from a variety of sources that are handled through an impartial, independent review. See the response to question 3 for the description on the IRS referral process.

b. What is the reason for the requirement that the tax will be based on ''whichever is less'' between its net investment income for the year or the aggregate amount expended on political campaign activities?

The statute under section 527(f) explicitly states that a 501(c) organization is subject to its tax based on ''an amount equal to the lesser of—(A) the net investment income of such organization for the taxable year, or (B) the aggregate amount expended during the taxable year for such an exempt function.''

c. What tax would an organization have to pay if it spends all its income on political advertising (therefore it has NO net investment income)?

Under the statute cited above, an organization that otherwise meets the requirements of section 501(c)(4) social welfare tax-exempt status, which spends all its income on political advertising and has no net investment income would not owe any tax under section 527(f). It may however, through such spending (and depending on the otherwise applicable facts of the case), no longer qualify as an organization that is tax-exempt under section 501(c)(4).

Question 6. Ms. Lerner's letter quotes the IRS webpage on Social Welfare Organizations:

''The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in *some* political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f). [Emphasis added.]

a. What is the statutory basis of the language that allows 501(c)(4) organizations to engage in some political activities?

Please see responses to questions 1 and 2, above.

b. How does the IRS keep track of these political activities and ensure that the organization pays the tax under section 527(f)?

Section 501(c)(4) organizations filing Forms 990 or 990–EZ are required to report political activities. Organizations that engage in direct or indirect political campaign activities are also required to complete Schedule C of Form 990 or 990–EZ. Organizations subject to tax under section 527(f) are required to comply with the statutory reporting and payment rules. The IRS also receives referrals regarding such activities from a variety of sources that are handled through an impartial, independent review. See the response to question 3 for the description on the IRS referral process.

Question 7. In her July 13 letter, Ms. Lerner states that the IRS also addresses the issue of political activities in the Forms 990 and 990–EZ.

Are Forms 990 and 990–EZ made public? If so, where can they be accessed?

Yes, Forms 990 and 990–EZ are made public. Tax-exempt organizations are required to make their returns widely available for public inspection. Organizations are required to allow the public to inspect the Forms 990, 990–EZ, 990–N, and 990–PF they have filed with the IRS for their three most recent tax years. Exempt organizations also are required to provide copies of these information returns when requested, or make them available on the Internet. The annual information returns also are available from the IRS, as well as from third-party sources that post them on their websites.

Question 8. Internal Revenue Services Publication 557 states that, if a 501(c)(4) entity can ''submit proof that [the] organization is organized exclusively to promote social welfare, it can obtain an exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office.''

Have the following 501(c)(4) organizations a) applied for; and if so, b) received the described exemption for political activity from the IRS?

a. Crossroads Grassroots Policy Strategies
b. Priorities U.S.A.
c. Americans Elect
d. American Action Network
e. Americans for Prosperity
f. American Future Fund
g. Americans for Tax Reform
h. 60 Plus Association
i. Patriot Majority USA

j. Club for Growth
k. Citizens for a Working America Inc.
l. Susan B. Anthony List

Initially, to clarify, section 501(c)(4) organizations do not receive ''exemption for political activity.'' Rather, organizations are recognized under section 501 (c)(4) as tax-exempt when they demonstrate that they plan to be primarily engaged in activities that promote social welfare. If they meet that standard, the fact that they engage in other activities that do not promote social welfare, such as political campaign intervention, will not preclude recognition of their tax-exempt status. Whether an organization meets the statutory and regulatory requirements of section 501 (c)(4) depends upon all of the facts and circumstances, and no one factor is determinative.

As discussed in our response to you dated June 4, 2012, section 6103 of the Internal Revenue Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by some provision in the Internal Revenue Code. The IRS cannot legally disclose whether the organizations on your list have applied for tax exemption (unless and until such application is approved). Section 61 04(a) of the Code permits public disclosure of an application for recognition of tax exempt status only after the organization has been recognized as exempt.

Searching the names exactly as provided, our records show that the following organizations have been recognized by the IRS as tax exempt under section 501(c)(4).

Americans For Prosperity
American Future Fund
60 Plus Association
Patriot Majority USA
Citizens for a Working America Inc.

With respect to the other organizations for which you inquired, we will be able to determine if they have been recognized by the IRS as tax-exempt with additional information, such as an address or EIN, that specifically identifies the organization. Organizations often have similar names or maintain multiple chapters with variations of the same name. With respect to many of the other organizations you identified, numerous organizations in our records have very similar names. IRS staff can work with your staff in identifying the specific organizations for which you are interested. IRS staff is also available to assist your staff to navigate searchable databases on the IRS public website. As previously discussed, information on organizations with applications currently pending legally cannot be provided unless and until the application is approved. Please note that organizations that hold themselves out as tax-exempt without IRS recognition and organizations that have pending applications for recognition are required to file annual returns/notices.

Question 9. Have you reminded 501(c)(4)s which publicly seem to be operating in the partisan political arena as to the factors you will consider in determining whether they are engaging in partisan political activity? If not, why not?

As described in the July 13, 2012 response, the IRS takes several steps to continually educate organizations of the requirements under the tax law and inform them of their responsibilities to avoid jeopardizing their tax-exempt status. We believe these steps ensure the IRS administers the nation's tax laws in a fair and impartial manner.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre at (202) 622–3720.

Sincerely,

STEVEN T. MILLER,
Deputy Commissioner for Services and Enforcement.

U.S. SENATE, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC, August 31, 2012.

Hon. DOUGLAS H. SHULMAN,
Commissioner, Internal Revenue Service, Washington, DC.

DEAR COMMISSIONER SHULMAN: Thank you for the August 24, 2012 response by Steven T. Miller, Deputy Commissioner for Services and Enforcement, to my July 27, 2012 letter.

I find it unacceptable that the IRS appears to be passively standing by while organizations that hold themselves out to be ''social welfare'' organizations clearly ignore the tax code with no apparent consequences.

Frankly, the response that ''long standing Treasury Regulations have interpreted 'exclusively'" as used in section 501(c)(4) to mean ''primarily'' and the argument that ''section 501(c)(4) does not contain a specific rule or limitation on political campaign intervention by social welfare organizations'' are not persuasive. The word ''exclusively'' as written in the statute is clear and speaks for itself. Its clarity is not diminished because the section does not mimic words in another section, which words are also clear.

As a follow-up to your letter, I would like to know the following:

1. If the IRS determines that an organization that has been given 501(c)(4) status has not engaged primarily in social welfare activities, but instead was primarily engaged in activity within the scope of section 527, what are the consequences for the organization? What are the consequences for such an organization having not filed timely Forms 8871 and 8872? Must they file such forms after the fact? What taxes would be due? Will contributions that already have been made to that organization be taxable to that organization?

2. How many 501(c)(4) organizations which appear to be primarily engaged in political activity have been notified by the IRS within the last 6 months that they may be in violation of the law?

It is urgent that I receive your answers promptly, and no later than September 10, please.

Sincerely,

CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., September 14, 2012.

Hon. CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations, U.S. Senate, Washington, D.C.

DEAR SENATOR LEVIN: I am responding to your letter to Commissioner Shulman dated August 31,2012, requesting additional information about section 501(c)(4) organizations. This response supplements the previous responses dated June 4, 2012, July 13, 2012 and August 24, 2012, and addresses the additional questions raised in your recent letter.

Question 1. If the IRS determines that an organization that has been given 501(c)(4) status has not engaged primarily in social welfare activities, but instead was primarily engaged in activity within the scope of section 527, what are the consequences for the organization? What are the consequences for such an organization having not filed timely Forms 8871 and 8872? Must they file such forms after the fact? What taxes will be due? Will contributions that already have been made to that organization be taxable to that organization?

If an IRS audit or examination concludes that a section 501(c)(4) organization does not engage primarily in social welfare activities, the IRS may revoke the tax-exempt status of that organization. If the tax-exempt status is revoked, the organization is a taxable entity effective, in general, as of the first day of the tax year under examination. The organization is required to file Federal income tax returns, generally a Form 1120, U.S. Corporation Income Tax. The tax treatment of the organization's contributions and other income is determined under normal rules of Subtitle A.

Whether an organization no longer qualifies to be tax-exempt under section 501(c)(4) does not determine whether it is a political organization under section 527. Section 527(e)(1) defines a political organization as a party, committee, or other organization that is organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for an exempt function (as defined in 527(e)(2)). If an organization meets this definition, then its tax status is determined under section 527.

Subject to certain exceptions, to be tax-exempt under section 527, a political organization is required to give notice electronically to the Service. The required notice form is Form 8871, Political Organization Notice of Section 527 Status. To be tax-exempt, the political organization must file Form 8871 within 24 hours after the date on which it was established. If the organization has a material change in any of the information reported on Form 8871, it must file an amended Form 8871 within 30 days of the material change to maintain its tax-exempt status. When the organization terminates its existence, it must file a final Form 8871 within 30 days of termination.

An organization that is required to file Form 8871, but fails to file on a timely basis, will not be treated as a tax-exempt political organization for any period before the date Form 8871 is filed. The taxable income of the organization for any period in which it failed to file Form 8871 (or, in the case of a material change, the period beginning with the date of the material change and ending on the date it satisfies the notice requirement) is subject to tax and must be reported on the annual income tax return Form 112Q–POL. The tax is computed by multiplying the organization's taxable income by the highest federal corporate tax rate, currently 35 percent. For purposes of computing its taxable income for any period, the organization includes its exempt function income (including contributions received, membership dues, and political fundraising receipts), minus any deductions directly connected with the production of that income, but may not deduct its exempt function expenditures for the period.

Generally, tax-exempt political organizations that have, or expect to have. contributions or expenditures exceeding $25,000 during a calendar year are required to file Form 8872, Political Organization Report of Contributions and Expenditures, beginning with the first month or quarter during the calendar year in which they accept contributions or make expenditures. A tax-exempt political organization subject to the periodic reporting requirement may choose to file Form 8872 on a monthly basis or on a quarterly/semiannual basis, but it must file on the same basis for the entire calendar year. In addition, tax-exempt political organizations that make contributions or expenditures with respect to an election for federal office as defined in 527(j)(6) may be required to file pre-election reports for that election.

A tax-exempt political organization that does not timely file the required Form 8872, or that fails to include the information required on the Form 8872. must pay an amount calculated by multiplying the amount of contributions and expenditures that are not disclosed by the highest federal corporate tax rate, currently 35 percent.

Question 2. How many 501(c)(4) organizations which appear to be primarily engaged in political activity have been notified by the IRS within the last 6 months that they may be in violation of the law?

When the IRS examines a section 501(c)(4) organization, the objective of the audit is to determine whether that organization qualifies for tax-exempt-status as a social welfare organization. As discussed in our June 4, 2012 response to your March 30, 2012 letter, that determination looks to whether the organization is primarily engaged in activities that promote social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual. The examination looks at the activities engaged in during the complete taxable year at issue. Although the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office, a section 501(c)(4) social welfare organization can engage in political activities as long as it is primarily engaged in activities that promote social welfare.

If the IRS believes that an organization does not meet the requirements under section 501(c)(4), the IRS notifies the organization of its intention to revoke the organization's exempt status, explaining the law and reasons for the proposed revocation. The organization has 30 days from the date of that letter to protest or appeal the determination before a final revocation letter is issued to the organization.

During the past six months, no notices of proposed or final revocation were issued to section 501(c)(4) organizations. Note that the IRS currently has more than 70 ongoing examinations of section 501(c)(4) organizations (this includes examinations for a variety of issues, some of which include whether the organization is primarily engaged in activities that promote social welfare). It is also important to note that the Service also maintains a determination process to review the operations of an organization to determine whether it should be recognized as tax exempt. In this area, we also review compliance with the legal requirements, including whether an organization is primary engaged in activities that promote social welfare. There are currently more than 1,600 organizations in the determination process seeking recognition as a section 501(c)(4) organization. The level of political activity is an issue in a number of these determination cases.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre.

Sincerely,

STEVEN T. MILLER,
Deputy Commissioner for Services and Enforcement.

TRIBUTE TO JUDGE BRUCE D. BLACK

Mr. BINGAMAN. Mr. President, I want to recognize the distinguished service of my friend Bruce Black, the Chief Judge for the U.S. District Court for the District of New Mexico.

Bruce has chosen to leave the Federal bench at the end of this month. His decision to retire is a loss for our State and for the Nation. But he has served our Nation with great distinction and ability.

Bruce was appointed to be a district court judge by President Clinton in 1995. During the 17 years of his service in that position he has exemplified the integrity and high standards of fairness and impartiality which we strive for in our Federal judiciary.

Throughout his years as a Federal judge he has never lost sight of the real-life effects of the court's decisions on the lives of those who come before the court.

Bruce and his wife Mary have exciting plans for the next chapter of their lives. They are close friends to my wife Anne, and me. We wish them the very best in future years.

TRIBUTE TO JONA OLSSON

Mr. BINGAMAN. Mr. President, today I wish to recognize Jona Olsson, fire chief of the Latir Volunteer Fire Department located near Questa, NM. Olsson was recently honored as the 2012 Volunteer Fire Chief of the Year by Fire Chief for her tireless work at the Latir Volunteer Fire Department and her efforts to increase diversity in the local fire service. She was honored on August 3, 2012, during the opening session of the International Association of Fire Chiefs' Fire-Rescue International Conference and Exhibition in Denver, CO.

After moving to New Mexico in 1999, Olsson was recruited to join the Latir Volunteer Fire Department. She quickly became integrated in the fire department, rising through the ranks, serving as a training officer, deputy chief, and eventually fire and EMS chief for the department in 2006. Olsson has facilitated training to individual departments and fire conferences across North America, as well as the United Kingdom.

During tough economic times, Olsson and other volunteers have continued to expand the fire department, increasing training hours and the number of qualified volunteers. All 18 of Latir's volunteer firefighters are structure trained, 13 are qualified with wildland Red Cards, and nine have EMS licenses. The Latir Volunteer Fire Department also has an active junior firefighter program. In addition, the fire department recently built a new addition to the fire station and purchased another fire engine.

I ask that my colleagues join me in honoring Jona Olsson and the excellent work of the Latir Volunteer Fire Department. The dedication of Olsson and the community volunteers helps ensure the delivery of vital services to New Mexico residents.

HONORING OUR ARMED FORCES

Mr. LAUTENBERG. Mr. President, over 2 years have passed since I last included the names of our troops who have lost their lives serving in support of operations in Iraq and Afghanistan. I wish to honor their service and sacrifice by including their names in the CONGRESSIONAL RECORD.

Since I last included the names of our fallen troops on July 13, 2010, the Pentagon announced the deaths of 1,020 troops in Iraq and in Operation Enduring Freedom, which includes Afghanistan. They will not be forgotten, and today I ask unanimous consent that their names be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CW2 Jose L. Montenegro Jr., of Houston, TX; CW2 Thalia S. Ramirez, of San Antonio, TX; PFC Shane W. Cantu, of Corunna, MI; LCpl Alec R. Terwiske, of Dubois, IN; SSG Jeremie S. Border, of Mesquite, TX; SSG Jonathan P. Schmidt, of Petersburg, VA; SPC Kyle R. Rookey, of Oswego, NY; SSG Jessica M. Wing, of Alexandria, VA; SGT Christopher J. Birdwell, of Windsor, CO; SPC Mabry J. Anders, of Baker City, OR; PFC Patricia L. Horne, of Greenwood, MS; SGT Louis R. Torres, of Oberlin, OH; SGT David V. Williams, of Frederick, MD; SFC Coater B. Debose, of State Line, MS; SGT Richard A. Essex, of Kelseyville, CA; SGT Luis A. Oliver Galbreath, of San Juan, PR; SO2 David J. Warsen, of Kentwood, MI; SO1 Patrick D. Feeks, of Edgewater, MD; PO1 Sean P. Carson, of Des Moines, WA; CW2 Suresh N. A. Krause, of Cathedral City, CA.

CW3 Brian D. Hornsby, of Melbourne, FL; PO1 Darrel L. Enos, of Colorado Springs, CO; SSgt Gregory T. Copes, of Lynch Station, VA; SPC James A. Justice, of Grover, NC; PFC Michael R. Demarsico II, of North Adams, MA; SSG Eric S. Holman, of Evans City, PA; PFC Andrew J. Keller, of Tigard, OR; SSgt Scott E. Dickinson, of San Diego, CA; Cpl Richard A. Rivera Jr., of Ventura, CA; LCpl Gregory T. Buckley, of Oceanside, NY; SSgt Sky R. Mote, of El Dorado, CA; GySgt Ryan Jeschke, of Herndon, VA; Capt Matthew P. Manoukian, of Los Altos Hills, CA; MSgt Gregory R. Trent, of Norton, MA; MAJ Thomas E. Kennedy, of West Point, NY; CSM Kevin J. Griffin, of Laramie, WY; SPC Ethan J. Martin, of Lewiston, ID; Maj Walter D. Gray, of Conyers, GA; PO3 Clayton R. Beauchamp, of Weatherford, TX; Cpl Daniel L. Linnabary II, of Hubert, NC.

1SG Russell R. Bell, of Tyler, TX; SSG Matthew S. Sitton, of Largo, FL; 1LT Todd W. Lambka, of Fraser, MI; PFC Jesus J. Lopez, of San Bernardino, CA; SPC Kyle B. McClain, of Rochester Hills, MI; LCpl Curtis J. Duarte, of Covina, CA; GySgt Jonathan W. Gifford, of Palm Bay, FL; GySgt Daniel J. Price, of Holland, MI; 1LT Sean R. Jacobs, of Redding, CA; SGT John E. Hansen, of Austin, TX; SPC Benjamin C. Pleitez, of Turlock, CA; SFC Bobby L. Estle, of Lebanon, OH; PFC Jose Oscar Belmontes, of La Verne, CA; PFC Theodore M. Glende, of Rochester, NY; Sgt Justin M. Hansen, of Traverse City, MI; SPC Justin L. Horsley, of Palm Bay, FL; PFC Brenden N. Salazar, of Chuluota, FL; PFC Adam C. Ross, of Lyman, SC; SGT Eric E. Williams, of Murrieta, CA; PFC Julian L. Colvin, of Birmingham, AL.

SSG Richard L. Berry, of Scottsdale, AZ; PO2 Michael J. Brodsky, of Tamarac, FL; SSG Brandon R. Pepper, of York, PA; SPC Darrion T. Hicks, of Raleigh, NC; PFC Jeffrey L. Rice, of Troy, OH; PO2 Joseph P. Fitzmorris, of Ruston, LA; CPO Sean P. Sullivan, of St. Louis, MO; SPC Krystal M. Fitts, of Houston, TX; Cpl Joshua R. Ashley, of Rancho Cucamonga, CA; SGT Daniel A. Rodriguez, of Baltimore, MD; SGT Jose J. Reyes, of San Lorenzo, PR; SPC Sergio E. Perez Jr., of Crown Point, IN; SPC Nicholas A. Taylor, of Berne, IN; SGT Erik N. May, of Independence, KS; SSG Carl E. Hammar, of Lake Havasu City, AZ; SGT Michael E. Ristau, of Rockford, IL; SPC Sterling W. Wyatt, of Columbia, MO; PFC Cameron J. Stambaugh, of Spring Grove, PA; PFC