



*Staff Investigative Report*

## **Presidential Access to Taxpayer Information**

### **Key Findings**

October 2016

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### Key Findings

- *During President Obama's first term, the IRS unlawfully disclosed confidential taxpayer information of his political opponents. One of those unauthorized disclosures was litigated and the IRS paid \$50,000 to settle the lawsuit. In another incident, the IRS unlawfully disclosed more than a million pages of return information of tax exempt organizations to the Department of Justice, likely the largest breach of tax confidentiality laws in U.S. History. Other unlawful disclosures by the IRS under the Obama Administration have never been properly investigated.*
- *Congress has authorized limited disclosure of confidential taxpayer returns and return information to the President pursuant to specific safeguards and reporting requirements under 26 U.S.C. § 6103(g). No President, however, has sought access to confidential taxpayer information through these congressionally-designed mechanisms for disclosure.*
- *Presidents have conducted tax checks of potential appointees exclusively under Section 6103(c) of the Internal Revenue Code. By conducting tax checks in this manner, Presidents avoid the reporting requirements and limitations placed on presidential access to confidential taxpayer information in the Tax Reform Act of 1976. In particular, because the kind of taxpayer information disclosed under a Section 6103(c) consent is not limited and such disclosures need not be reported, Presidents can, and do, circumvent congressional oversight and statutory limitations on the sharing of confidential taxpayer information within and among agencies.*
- *During President Obama's tenure, at least ten DOJ lawyers, selected specifically from the DOJ Tax Division, have been detailed to the Office of the White House Counsel.*
- *At least two Tax Division attorneys were detailed to the Office of the White House Counsel after accessing confidential taxpayer information in lawsuits that arose from allegations that the IRS had unlawfully targeted groups opposed to President Obama's policies. Congress investigated the work of one of those lawyers and concluded that his sequential work for the IRS, the DOJ, and the White House created, at the least, the appearance of impropriety.*

- *Both the DOJ Tax Division and the Office of the White House Counsel have failed to implement safeguards, guidelines, or ethical screens to prevent the inadvertent or deliberate disclosure of confidential taxpayer information by attorney-detailees.*
- *Notwithstanding the experience of the Obama Administration in supervising and managing DOJ attorney-details to the Office of the White House Counsel, there appears to be no program, training, guidelines, ethical screens, or other safeguards to address the serious potential conflicts of interest inherent to the detailing program.*
- *The political allure of using individual consents to secure confidential taxpayer information and employing attorney-detailees with knowledge of such information means that the problems identified in this Report will not be self-correcting. Congress and agencies must act to safeguard taxpayer confidentiality.*

## **About Cause of Action Institute**

### **Mission:**

Cause of Action Institute (“CoA Institute”) is a government oversight group committed to ensuring that the federal regulatory process is open, honest, and fair. As part of its charitable mission, CoA Institute seeks judicial and legislative oversight of the federal regulatory state to protect against law enforcement abuses and arbitrary discretion, as well as to defend robust public access to government information.

### **Investigative Function:**

CoA Institute uses investigative tools to research federal government waste, fraud, and mismanagement, as well as overreach in the form of arbitrary and burdensome regulations. We employ “sunshine advocacy” tools, including document and information requests, lawsuits, ethics complaints, and requests for investigation to promote transparency, integrity, and accountability in government. Our investigations help to expose and prevent government mismanagement of federal funds and to educate the public on how government can be made more accountable.