IRS OBSTRUCTION: LOIS LERNER'S MISSING EMAILS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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Monday, June 23, 2014

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 7:16 p.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, McHenry, Jordan, Chaffetz, Walberg, Amash, Gosar, DesJarlais, Gowdy, Farenthold, Hastings, Lummis, Woodall, Massie, Collins, Meadows, Bentivolio, DeSantis, Cummings, Norton, Tierney, Lynch, Connolly, Speier, Duckworth, Kelly, and Horsford.

Staff Present: Melissa Beaumont, Assistant Clerk; Molly Boyl, Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Staff Director; David Brewer, Senior Counsel; Caitlin Carroll, Press Secretary; Sharon Casey, Senior Assistant Clerk; Steve Castor, General Counsel; Drew Colliatie, Professional Staff Member; John Cuaderes, Deputy Staff Director; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Frederick Hill, Deputy Staff Director for Communications and Strategy; Christopher Hixon, Chief Counsel for Oversight; Jen Jett, Staff Assistant; Michael R. Kiko, Legislative Assistant; Mark D. Marin, Deputy Staff Director for Oversight; Ashok M. Pinto, Chief Counsel, Investigations; Jeffrey Post, Senior Professional Staff Member; Laura L. Rush, Deputy Chief Clerk; Jessica Seale, Digital Director; Andrew Shult, Deputy Digital Director; Jonathan J. Skladany, Deputy General Counsel; Katy Summerlin, Press Assistant; Peter Warren, Legislative Policy Director; Rebecca Watkins, Communications Director; Aryele Bradford, Minority Press Secretary; Susanne Sachsman Grooms, Minority Deputy Staff Director/Chief Counsel; Jennifer Hoffman, Minority Communications Director; Elisa LaNier, Minority Director of Operations; Valerie Shen, Minority Counsel; Donald Sherman, Minority Chief Oversight Counsel; and Katie Teleky, Minority Staff Assistant.

Chairman ISSA. The committee will come to order.

The Oversight Committee exists to secure two fundamental principles: First, Americans have a right to know that the money Washington, through the IRS, takes from them is well-spent; and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is, in fact, to protect these rights.

Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. Our job is to work tirelessly, in partnership with citizen watchdogs, to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

Would you go ahead—hold on. I'll do it this way.

Thank you. That's what I was looking for.

Without objection, the chair is authorized to declare a recess of the committee at any time.

Without objection, so ordered.

The committee meets today as we continue our effort to get the truth and the full truth on the obstruction by the IRS and the targeting of Americans because of their conservative political beliefs.

When the IRS Commissioner, John Koskinen, appeared before this committee in March, he promised that he would produce what this committee had made its top priority: all of Lois Lerner's emails. The Commissioner made these promises without any qualification or limitation. He even reiterated that statement to the ranking member when asked.

Would you please go ahead and play the video for reflection and memory?

[Video shown.]

Chairman ISSA. The committee requested all of Lois Lerner's emails. The Commissioner told us he would provide all of Lois Lerner's emails. We requested them over a year ago. We, in fact, subpoenaed them in August in order to make it clear that we were not being complied with, and, again, a new one when you became Commissioner in February of 2014.

Transparency clearly did not compel the IRS to tell the truth about Lois Lerner's lost emails. You worked to cover up the fact that there were missing emails and came forward to fess up only on Friday afternoon after you had effectively been caught red-handed.

I'm struck that your acknowledgment of missing Lois Lerner emails came just 2 weeks after we had found some of them at the Justice Department. When you were looking for emails, one of the questions today will be, did you look at the Justice Department, where she had sent over 1.1 million documents, including some that were 6103—in other words, prohibited-to-be-released documents?

Did you ever give the committee the courtesy of a direct communication about missing emails after your false or misleading testimony? Instead, your staff shared a communication you made to a Senate committee controlled by the President's party.

In your previous testimony, you had said it might take years, I believe 2 years, to deliver all of these emails. Welcome back. It hasn't been 2 years.

Did you hope you could run out the clock on this scandal? Another question. Perhaps you thought Congress would never realize that there were missing emails until we found them at the Justice Department perhaps.

Commissioner, I called you to testify tonight because the American people deserve answers about what happened to Lois Lerner's emails and why the IRS hid this for years.

This hiding did not begin—and I repeat, did not begin—on your watch. Clearly, the missing documents were known by many people who have jobs at the IRS today under your predecessor and your predecessor's predecessor. The fact that Lois Lerner's emails were ever transferred out of the exclusive custody of the IRS so that they could be lost or destroyed by Lois Lerner should concern all of us.

The Federal Records Act—and we will meet tomorrow with the Archivist—the Federal Records Act envisions that important documents will be maintained, not just for investigations of Congress, but, in fact, in perpetuity for the benefit of the American people. This event in history, like Watergate, like Teapot Dome, and like many other historic events, will be studied by future generations without the benefit of many of the thoughts and actions of Lois Lerner and others at the IRS as a result of your organization's failure.

I subpoenaed you here tonight because, frankly, I'm sick and tired of your game-playing in response to congressional oversight. You, Commissioner, are the President's handpicked man to restore trust and accountability at the IRS.

You testified under oath in March that you would produce all of Lois Lerner's emails subpoenaed by this committee. Before you testified, you took an oath you will take again tonight to tell the truth, the whole truth, and nothing but the truth. Mr. Commissioner, at a minimum, you did not tell the whole truth that you knew on that day.

You gave your commitment to produce all emails to the committee. You gave your word, sir. And we are just a little questioning what your word is worth if, in fact, you cannot enlighten us about what you know that is germane to our inquiry, whether or not it is explicitly asked. Do we have to grill you for days or weeks or months with every possible question, every possible way something could be asked? Or will the meaning of a question mean that you will, to the best of your ability, give us a true and complete answer?

The American people have no trust in the IRS by comparison to just a few years ago. The American people have never loved the IRS. No one does love the organization that takes your taxes and if they don't feel you treated them right—if they don't feel they got the right amount, they come back and have huge power over your lives. It's hard to love the IRS. But it should not be hard to trust the IRS. The American people deserve this agency, which was previously believed to be nonpartisan—they need to be able to trust that it will once again become nonpartisan, nonpolitical.

Your agency has a set of rules for taxpayers and, apparently, another set of rules for themselves. The American people understand that if they cannot prove that they did the right thing in their tax return 5, 6, and 7 years ago it will be disallowed and they will pay taxes with penalties. Well, in fact, you maintain only 6 months of records and then, apparently, count on people, good and bad, to maintain documents they think are important beyond that. And you do so without safeguards to protect the American people from the loss of those documents.

Commissioner, tonight you will say that you have produced thousands of documents; it will be an impressive number. Quite frankly, that production is pushing a button and printing documents out and then having people scratch out almost everything of value, in many cases. It is not producing the documents that you don't want to produce, the documents that embarrass you.

The fact is, it's the last documents, not the first documents, that normally do us good. It's the documents we receive the night before we're going to depose somebody that often tell us things we've waited months or years for.

I know tonight will be difficult, and it deserves to be difficult for both sides. We have a problem with you, and you have a problem with maintaining your credibility. Again, you promised to produce the documents; you did not. You promised to be forthcoming and candid; you were not.

In our first meeting, my subcommittee chairman, who will also be making an opening statement, Mr. Jordan, irritated you because you felt he questioned your integrity. I defended you at that time, and I, quite frankly, gave you a bit of an apology that he meant no harm, it was just his style. Tonight, quite frankly, I wish I could take that back, and I wish I could say what I'll say to you tonight: You believe you earned trust before you came here, and it was yours to lose. I believe you needed to earn our trust, and you failed at that task.

Either way, the American people do not believe the IRS is dealing fairly with them in this investigation.

With that, I recognize the ranking member for his opening statement.

Mr. CUMMINGS. I'm going to get right down to the heart of the accusation Republicans have been making for the past week.

It is interesting, Commissioner, that you've been accused of false testimony or misleading testimony and been accused, actually, if it's false testimony, of committing a crime.

What are we really saying? And what are the Republicans here saying? They're saying that Lois Lerner intentionally—intentionally—destroyed her emails and that IRS officials helped her cover it up.

Chairman Issa has been leading the charge. Here are some of the accusations he's made. June 13th, Chairman Issa suggested that this was, "a nefarious conduct that went much higher than Lois Lerner." On June 18th, he said, "The emails of a prominent official don't just disappear without a trace unless that was the intention." On June 19th, he said Ms. Lerner, "made the decision not to have this drive recovered." And just this morning, he said, "The Justice Department, the IRS, and the White House are interested in her succeeding in hiding what she's hiding."

Chairman Issa has made these accusations on national television without first obtaining a briefing from IT officials at the IRS who could have explained what really happened, and he made them before hearing from the IRS Commissioner.

Mr. Koskinen testified last Friday before the Ways and Means Committee, and now that we have the facts, they tell a vastly different story. Truth, whole truth, nothing but the truth.

Our committee has obtained no evidence to support Chairman Issa's claim that Lois Lerner intentionally destroyed her emails. To the contrary, we have now obtained contemporaneous evidence from 2011 showing the exact opposite, that this was a technological problem with her computer. Truth, whole truth, nothing but the truth.

In Mr. Koskinen's testimony last Friday, he walked through email after email from 2011 showing that Ms. Lerner sought help from IT staff at the IRS and that they went to great lengths to recover her data but at the end of that process they could not do so.

Mr. Koskinen also testified last week that the IRS took extraordinary steps—the extraordinary step of sending Ms. Lerner's hard drive to experts in the forensic lab at the IRS Criminal Investigation Division, but even they could not recover her data. The truth, the whole truth, and nothing but the truth.

On August 5th, 2011, Ms. Lerner received an email with the bad news, and it said this, and I quote: "Unfortunately, the news is not good. The sectors on the hard drive were bad, which made your data unrecoverable. I am very sorry. Everyone involved tried their best," end of quote.

So if anyone wants the actual evidence of what happened in this case, now we have it.

I ask unanimous consent that all of these emails from July 19th, July 20th, August 1st, and August 5th be entered into the official hearing record.

Chairman ISSA. Without objection, any Lois Lerner emails that any Member wants to put in the record will be placed in the record in the next 7 days.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

These emails are all from 2011, well before any congressional investigation began. And they show that Ms. Lerner's computer crashed before she was informed that IRS employees in Cincinnati were using inappropriate search terms, according to the inspector general. I didn't say that; the inspector general.

Now, we can certainly take issue with why the IRS did not have backup tapes for this data. As Mr. Koskinen testified last week, IRS policy in 2011 was to recycle backup tapes after 6 months to save money. He also explained that this policy was changed in 2013 to save all backup tapes.

The fact is that there are longstanding problems with electronic recordkeeping at Federal agencies. The Bush administration lost millions—millions—of emails relating to the U.S. attorney firings, the outing of covert CIA agent Valerie Plame, and other investigations—millions. In 2007, the White House spokeswoman, Dana Perino, admitted that they lost 5 million emails—5 million. And she said at the time, "We screwed up, and we're trying to fix it."

There's been some progress since then, but I've always believed we need to do more. I've always believed that we could do better. That is why, nearly a year and a half ago, I introduced the Electronic Message Preservation Act. My bill would have required Federal agencies to preserve emails, records electronically. Although this committee voted on a bipartisan basis to approve my legislation, it has languished since then, and the House Republicans have declined to bring it to the floor for a vote.

I believe our committee's work should be a responsible effort to obtain the facts and a responsible effort to find the truth, the whole truth, and nothing but the truth. It should not be an unseemly race against other Republicans to hold the first hearing in front of the cameras. And it should not be a ludicrous competition for some hyperbolic sound bites based on the least amount of evidence.

In this case, Republicans have been trying desperately and unsuccessfully for more than a year to link this scandal to the White House. Rather than continuing on this path, I sincerely hope that we will turn to constructive legislation with concrete solutions to help Federal agencies run more effectively and efficiently.

And, with that, Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

I might note for the record that, in today's briefing, a briefing we asked for a week ago and were denied repeatedly, in today's briefing, after we sent interrogatory questions to the Commission, they said they would answer orally, which they did not.

However, in today's briefing, when asked, can you assure us that Lois Lerner did not intentionally crash her hard drive, they could not verify that she did or didn't; can you assure us that there was nothing nefarious in the loss by Lois Lerner of her emails, and your CIO could not answer definitively. So we still have a lot of——

Mr. CUMMINGS. Mr. Chairman——

Chairman ISSA. —facts to do.

Mr. CUMMINGS. —may I be heard?

Chairman ISSA. Of course.

Mr. CUMMINGS. Just before today's hearing, both the Democratic and the Republican staffs, as you said, had a briefing from the IRS Deputy Chief Information Officer, a career IT professional. While he was not involved in the original 2011 examination of Ms. Lerner's hard drive, he has reviewed documents surrounding the hard-drive crash and the IT office's response to it.

He was asked, do you have any reason to believe that Ms. Lerner intentionally crashed her hard drive? And he responded, "I have no reason to believe it and haven't seen anything that would say that she did that, no."

He also told the committee, "Ms. Lerner was insistent in trying to recover whatever documents she could." He further stated that "I have no indication that there was anything nefarious about the loss of Ms. Lerner's emails."

And when asked whether he was, quote, "aware of anyone at the IRS intentionally destroying documents that are relevant to a congressional investigation," he said, quote, "Absolutely not," end of quote.

Thank you very much, Mr. Chairman.

Chairman ISSA. Thank you.

I might note for the record, as I go to the chairman of the subcommittee, that we sent you those interrogatories 48-hours-plus ago so we would not need to have an extensive, long hearing. It is likely that we will recess this hearing tonight and have you back after those interrogatories are fully answered, since the briefing today in no way addressed any of the interrogatories.

With that, I go to the chairman of the subcommittee, Mr. Jordan.

Mr. JORDAN. First, they denied it, Mr. Chairman. Two years ago, Lois Lerner met with committee staff and said there's no targeting going on. Doug Shulman came in front of a congressional committee and said there's no targeting, I can assure you there's no targeting.

Then they tried to spin it. May 10th, in an unprecedented fashion, before the IG's report went public, Lois Lerner at a Bar Association speech, with a planted question, tried to put her spin on this story.

Then they tried to blame someone else. It wasn't us, two rogue agents in Cincinnati. Then they attacked the messenger, the factfinder, that said the IG's report is flawed.

And now, Mr. Chairman, and now, they hide the evidence.

This is as old as the hills. Any third-rate, B-actor crime drama follows this same script. The bad guy always says—he denies it, he spins, he blames someone else, he tells the police they got the wrong guy. And, of course, he always says, "Officer, I didn't throw the gun in the river. I don't know what happened to the murder weapon."

I mean, Mr. Chairman, this would be laughable if it wasn't so serious.

But here is one big difference between the common criminal on the street and this scandal—one huge, important difference: The bad guy on the street doesn't get to have his friends run the investigation. And I will talk about this until we get to the truth. The fact that Barbara Bosserman, a maxed-out contributor to the President's campaign, is running this investigation is a joke. It is wrong.

The fact that the FBI leaks to the Wall Street Journal on January 13th of this year that no one's going to be prosecuted is wrong. And the fact that the President of the United States, the highest official in the executive branch, goes on national television and says there's no corruption, not even a smidgen, is wrong.

The bad guy doesn't get to have his friends run the investigation, like we see here.

Here's the important point, Mr. Chairman. I hope—I've been hoping that someone in this administration would have the courage to step up and say it's time for a special prosecutor; in light of this fact pattern, it is time for a special prosecutor. Dallas Morning News said it today. They said it's time for one. Five weeks ago, 26 Democrats had the courage to step up and vote with every single Republican and say it's time for a special prosecutor.

I would hope, if nothing more happens in tonight's hearing, I would hope that the guy who heads the agency where the targeting of people for exercising their First Amendment rights took place, I would hope that, at a minimum, that guy, to show his independence, to show us he really wants to establish some credibility back in this agency, would have the courage to do what 26 Democrats did 5 weeks ago and say it's time for a special prosecutor so we can get to the truth and get past this sham of an investigation that the Justice Department is doing.

With that, Mr. Chairman, I would yield back.

Chairman ISSA. Would the gentleman yield to Mr. Turner?

Mr. JORDAN. Oh, I would be happy to yield.

Chairman ISSA. You're good? Okay.

We now go to the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Koskinen, you and those watching this hearing now understand that the stage is set. This is about theater. Fair play, presumption of innocence, civility, respect for an honored public servant who is serving his country yet again are out the window, because there's an agenda that presupposes some guilt that is based, in part, on supposition, on paranoia, on conspiracy theory, all of which fires up the base of the other party and plays well on right-wing media outlets—at the expense, of course, of the truth, at the expense of any semblance of bipartisan cooperation, at the expense of trying to fix problems where we find them.

You don't think for a minute, Mr. Koskinen, that part of the solution here is to provide the IRS with more resources to address its IT problem. You don't think for a minute that the solution contemplated might involve more resources for more IRS agents to try to deal with the backlog of tax-exempt applications, or to say nothing of money left on the table owed the government that could actually help reduce the debt. Because, for ideological reasons, those are beyond the pale.

And then we come to your honor, Mr. Koskinen.

I first met you when we were worried about something called Y2K back in 1999, 1998, and 2000. And it was an IT problem. We were worried that at the stroke of midnight 2000 our banking systems would collapse, red lights would go off, you know, all of our computer systems would go awry, and so we had to make investments to make sure that didn't happen. And you were the Y2K czar.

I saw then and I see now an honorable public servant who cared about his country. He served Republican as well as Democratic administrations and was cited explicitly, including in the Bush administration, for his exemplary service and for his integrity and personal honor.

The fact that you would be subjected tonight to the barrage of innuendo and accusation, backed up by nothing, for the purpose of political theater is, to me, reckless and disgraceful and brings enormous dishonor on this committee.

And I want you to know personally, Mr. Koskinen, that there are a number of us who still honor your public service, who still respect your integrity, and who understand this dynamic and are willing to call it out for what it is. So I hope none of that shakes your faith in your value and in your years of service.

And I hope you will continue your tenure at IRS to clean up what problems there are and to try to make the IRS a more accessible, more accountable, and more efficient agency on behalf of the U.S. taxpayers and this country. That's why you undertook a thankless assignment.

Thank you for your service, Mr. Koskinen, and thank you for being here tonight.

I yield back.

Chairman ISSA. I thank the gentleman.

I now ask unanimous consent that H.R. 1234 be placed in the record at this time.

Chairman ISSA. We now go to our one and only witness for this evening. John Koskinen is the Commissioner of the Internal Revenue Service.

Pursuant to the committee, all members are to be sworn. Would you please rise to take the oath and raise your right hand? A little higher. Thank you.

Do you solemnly swear or affirm that the testimony you will give will be the truth, the whole truth, and nothing but the truth?

Mr. KOSKINEN. I do.

Chairman ISSA. Thank you. Please be seated.

Let the record reflect the witness answered in the affirmative.

You're the only witness. You certainly have some 'splaining to do. Take such time as you need.

STATEMENT OF THE HON. JOHN KOSKINEN, COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. KOSKINEN. Thank you.

Chairman Issa, Ranking Member Cummings, and members of the committee, thank you for the opportunity to appear before you this evening to provide you with an update on recent IRS document productions to Congress.

The IRS, over the past year, made a massive document production in response to inquiries from Congress relating to the investigation of the processing and review of applications for tax-exempt status, as described in the May 2013 report from the Treasury Inspector General for Tax Administration.

This committee has received, as noted, over 600,000 pages of materials, redacted to protect taxpayer information. The tax-writing committees have received over 835,000 pages of unredacted material. As of last Friday, the tax-writing committees already had more than 27,000 emails from Ms. Lerner's computer account and more than 18,000 emails from other custodians' accounts for which Ms. Lerner was an author or a recipient.

I understand that this committee and the other investigators were provided, beginning last fall, with copies of emails indicating that Ms. Lerner had experienced difficulties with her computer 3 years ago. So it should be clear that no one has been keeping this information from Congress.

The IRS expects to complete its production of the remaining Lerner emails in unredacted form by the end of the month. As soon as possible thereafter, we will complete redaction of those emails and produce them to this committee.

At that time, this committee will have all the emails, 43,000 of them, that we have from Ms. Lerner's computer and email account for the period January 2009 through May 2013. In addition, this committee will have 24,000 Lerner emails from other custodians' accounts, for a total of 67,000 Lerner emails.

In the course of responding to congressional requests, the IRS in February reviewed the email available from Ms. Lerner's custodial computer account, which was limited to search terms developed in cooperation with the investigating committees, and identified the possibility of an issue because the date distribution of the email was uneven. It was not clear whether Lerner emails were overlooked, missing, or had other technical issues involved. IRS infor-

mation technology professionals identified documents that indicated Ms. Lerner had experienced a computer failure in 2011.

In mid-March 2014, the IRS focused on redacting materials for the non-tax-writers and processing the rest of Ms. Lerner's emails for production. As we reviewed additional emails, the IRS review team learned additional facts regarding Ms. Lerner's computer crash in mid-2011, which occurred long before these congressional investigations opened or when the TIGTA review began.

During this review, we learned that, as noted, in 2011 the IRS information technology division had tried using multiple processes, at Ms. Lerner's request, to recover the information stored on her computer's hard drive. A series of emails available after all of Ms. Lerner's email was loaded this spring recounts the sequence of events in 2011.

A frontline manager in IT reported to Ms. Lerner in an email on July 20th, 2011, "I checked with the technician, and he still has your drive. He wanted to exhaust all avenues to recover the data before sending it to the hard-drive cemetery. Unfortunately, after receiving assistance from several highly skilled technicians, including HP experts, he still cannot recover the data."

Ms. Lerner was told by email on August 1st, 2011, "As a last resort, we sent your hard drive to CI's," the IRS Criminal Investigation Division, "forensic lab to attempt data recovery."

In an email already read on August 5th, 2011, Ms. Lerner was advised, "Unfortunately, the news is not good. The sectors on the hard drive were bad, which made your data unrecoverable. I am very sorry. Everybody involved tried their best."

In light of the hard-drive issue, the IRS took multiple steps over the past months to assess the situation, ensure that no emails had been overlooked or lost during this investigation, is producing as much email as they have for which Ms. Lerner was an author or recipient.

As the search for and production of Lerner emails was concluding, I asked those working on this matter to determine whether computer systems of the other 82 custodians had experienced any similar difficulties. After the IRS public report was delivered on June 13 to Congress and the Treasury Inspector General for Tax Administration, it was determined last week that several additional custodians may have experienced hard-drive failures during the search period.

It's not unusual for computers anywhere to fail, especially at the IRS, in light of the aged equipment IRS employees often have to use, in light of the continual cuts in the budget these past 4 years. Since January 1 of this year, for example, over 2,000 IRS employees have suffered hard-drive crashes.

It's important to remember that a hard-drive failure does not automatically mean that all or even any emails have been lost or cannot be reconstituted. We are still assessing what effect, if any, computer failures had on the emails of any other custodians, although some custodians apparently lost no emails at all.

The question is, what emails outside the agency prior to April 11, 2011, are not in the 24,000 Lois Lerner emails sent to other IRS employees during that period? Last week, I understand, the White House and the Department of Treasury stated they were providing

all of their Lois Lerner emails, which should help fill those gaps and answer that question.

The Treasury Inspector General for Tax Administration has already begun an investigation of this matter, and his report will provide an independent review of the situation concerning Ms. Lerner's computer crash 3 years ago. We are committed to working cooperatively and transparently with this committee and the six other investigations going on, and we will continue to provide you with updates.

This concludes my testimony, and I would be happy to take your questions.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Koskinen follows:]

WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
JUNE 23, 2014

Chairman Issa, Ranking Member Cummings and Members of the Committee, thank you for the opportunity to appear before you this evening to provide you with an update on recent IRS document productions to Congress.

Before discussing this subject, I believe it is important, in regard to the subpoena that I received from the Chairman of this Committee last week to appear at this hearing, to make sure that there is no suggestion in the record that I was unwilling to appear before this Committee to testify on this subject, or to appear at any other time when a request was made for my testimony.

I have testified before Congressional panels, including this Committee, a total of eight times since being sworn in as IRS Commissioner in December. I also testified before Congress numerous times over the years when I held various positions in the public sector, including: Deputy Director for Management at the Office of Management and Budget; Chairman of the President's Council on Year 2000 Conversion; and Deputy Mayor and City Administrator for the District of Columbia. In each instance, I was able to arrange a convenient time for me to appear with the relevant Committee or Subcommittee. There was never a need for a subpoena. In the future, if this Committee would like me to appear, the Committee need only contact my office and I will, as I have always done, be happy to work with you to set up a convenient date and time.

The IRS has over the past year made a massive document production in response to inquiries from Congress and other parties. In March, the IRS advised the House Ways and Means Committee and the Senate Finance Committee that we had completed the production of documents identified as relating to their investigation of the processing and review of applications for tax-exempt status as described in the May 2013 report from the Treasury Inspector General for Tax Administration (TIGTA). Those production efforts included 11,000 emails from Lois Lerner, former director of the IRS Exempt Organizations division. Since then, pursuant to requests from this and other Congressional Committees, the IRS has been producing on a regular basis all additional Lerner-related emails in its custody, regardless of subject matter.

By any measure, this effort has been substantial. More than 250 IRS employees have spent over 120,000 hours working on compliance with several

investigations stemming from last May's TIGTA report. We have responded to hundreds of Congressional requests for information. In so doing, the IRS has incurred a direct cost of nearly $10 million. We have spent an additional $6-8 million to optimize existing information technology systems and ensure a stable infrastructure for the production and required redactions to protect taxpayer information.

This Committee now has received over 600,000 pages of materials redacted to protect taxpayer information. The tax-writing committees have received over 770,000 pages of unredacted materials. As of last Friday, the tax-writing committees already had more than 25,000 emails from Ms. Lerner's computer account and more than 5,000 emails from other custodians' accounts for which Ms. Lerner was an author or recipient. The IRS expects to complete its production of the remaining Lerner emails in unredacted form by the end of the month. As soon as possible thereafter, we will complete redaction of those emails and produce them to this Committee. At that time, this Committee will have all of the emails – 43,000 of them – that we have from Ms. Lerner's computer and email account for the period January 2009 through May 2013. In addition, this Committee will have 24,000 Lerner emails from other custodians' accounts, for a total of 67,000 Lerner emails.

When the IRS production of documents to Congress began last year, we developed with the investigating committees a list of 77 IRS employees, which has since expanded to 83 IRS employees, and specific search terms designed to retrieve all emails of these employees related to the investigation.

We have faced many hurdles along the way in our efforts to produce materials as quickly as possible. For example, in the materials we shared with Congress on June 13, the IRS explained how the structure and age of the IRS's technology systems complicates efforts to recover information.

In the course of responding to Congressional requests, the IRS in February reviewed the email available from Ms. Lerner's custodial computer account (which was date-limited and limited by search terms) and identified the possibility of an issue because the date distribution of the email was uneven. It was not clear whether Lerner emails were overlooked, missing, or had other technical issues involved; IRS information technology professionals identified documents that indicated Ms. Lerner had experienced a computer failure in 2011.

In mid-March 2014, the IRS focused on redacting materials for the non-tax writers and processing the rest of Ms. Lerner's email for production. Fulfilling the request for Lerner emails – regardless of search terms, relevance, or subject matter – required the IRS to load additional email beyond those previously reviewed.

As we reviewed additional emails, the IRS review team learned additional facts regarding Ms. Lerner's computer crash in mid-2011, which occurred before these investigations opened or when the TIGTA review began.

During this review, we learned that, in 2011, the IRS Information Technology (IT) division had tried using multiple processes – at Ms. Lerner's request – to recover the information stored on her computer's hard drive. However, the data stored on her computer's hard drive was determined at the time to be "unrecoverable" by the IT professionals. Any of Ms. Lerner's email that was only stored on her computer's hard drive was lost when the hard drive crashed, so it could not be recovered. A series of emails available after all of Ms. Lerner's email was loaded recounts the sequence of events in 2011.

A front line manager in IT reported to Ms. Lerner in an email on July 20, 2011:

> "I checked with the technician and he still has your drive. He wanted to exhaust all avenues to recover the data before sending it to the 'hard drive cemetery'. Unfortunately, after receiving assistance from several highly skilled technicians including HP experts, he still cannot recover the data."

Ms. Lerner was told by email on August 1, 2011:

> "As a last resort, we sent your hard drive to CI's [the IRS Criminal Investigation Division] forensic lab to attempt data recovery."

In email on August 5, 2011, after three weeks of attempts to retrieve her emails, Ms. Lerner was advised:

> "Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecoverable. I am very sorry. Everyone involved tried their best."

It's important to note that an extra step was taken in this process by sending the hard drive to the IRS Criminal Investigation forensics lab. This step is not normally taken when an employee's computer crashes. The experts at the IRS forensics lab are experienced at recovering hard drives, which is part of their work assisting on criminal cases. The Criminal Investigation employees are highly skilled in this area and respected for their work in the greater law-enforcement community.

In light of the hard-drive issue, the IRS took multiple steps over the past months to assess the situation and produce as much email as possible for which Ms. Lerner was an author or recipient.

The IRS:

- Retraced the collection process for Ms. Lerner's computer to determine that all materials available in May 2013 were collected;
- Located, processed, and included in its production email from an unrelated 2011 data collection of Ms. Lerner's email;
- Confirmed that back-up tapes from 2011 no longer exist because they have been recycled (which is not uncommon for large organizations in both the private and public sectors); and
- Searched email from other custodians for material on which Ms. Lerner appears as an author or recipient, then produced such email.

From mid-March to late April, the IRS review team concentrated on loading for review all remaining email from Ms. Lerner's account and then repeating the entire process for quality control and to ensure no new emails had been missed. During this time and into May, we were also identifying and reviewing Lerner emails to and from the other 82 custodians. By mid-May as a result of these efforts, the IRS identified approximately 24,000 Lerner emails between January 1, 2009 and April 2011 from these other custodians' accounts.

As the search for and production of Lerner emails was concluding, I asked those working on this matter to determine whether computer systems of the other 82 custodians had experienced any similar difficulties, especially in light of the aged equipment the IRS has been increasingly using as a result of its budget pressures. After the IRS report was delivered on June 13 to Congress and the Treasury Inspector General for Tax Administration, it was determined last week that seven additional custodians had experienced hard drive failures during the search period. In February 2014, outside the search period, an eighth custodian experienced a hard drive failure. A hard drive failure does not automatically mean that all, or even any, emails have been lost or cannot be reconstituted. We are still assessing what effect, if any, computer failures had on the emails of any of the custodians.

In regard to the retention of official records, questions have been raised as to why the IRS does not have available electronic backups for all emails for IRS employees. It is important to keep in mind that the IRS has approximately 90,000 employees. Due to financial and practical considerations, the IRS has limited the total volume of email stored on its server by restricting the amount of email that most individual users can keep in an inbox at any given time.

According to estimates made two years ago, it would cost more than $10 million to upgrade the IRS's information technology infrastructure in order to begin saving and storing all email sent or received by the approximately 90,000 current IRS employees. In light of declining budget resources available to the IRS, the

decision was made at that time not to proceed with this expenditure. These continuing financial constraints have meant that this fiscal year, the IRS is spending minimal amounts supporting its $1 billion IT infrastructure. For example, the IRS has yet to complete moving all employee computers from Windows XP, which is no longer generally supported by Microsoft, to Windows 7.

Currently, the average individual employee's email box limit is 500 megabytes, which translates to approximately 6,000 emails. Prior to July 2011, the limit was lower: 150 megabytes or roughly 1,800 emails. The IRS does not automatically delete email in its employees' email accounts to meet these limits; rather, each employee is responsible for managing and prioritizing the information stored within his or her email box.

Historically, the email of IRS employees is stored in two locations: email in an individual's active email box is saved on the IRS's centralized network, and archived email is saved on the individual employee's computer hard drive. If an email user's mailbox gets close to capacity, the system sends a message to the user noting that soon the mailbox will become unable to send additional messages.

When a user needs to create space in his or her email box, the user has the option of either deleting emails (if they do not qualify as official records) or moving emails out of the active email box (inbox, sent items, deleted items) to an archive. In addition, if an email qualifies as an official record, per IRS policy, the email must be printed and placed in the appropriate file by the employee. Archived email is moved off the IRS email server and onto the employee's hard drive on the employee's individual computer. As a result, these IRS employees' emails no longer exist in the active email box of the employee and are not backed up as part of the daily backup of the email servers. Email moved to a personal archive of an employee exists only on the individual employee's hard drive. An electronic version of the archived email would not be retained if an employee's hard drive is recycled or if the hard drive crashes and cannot be recovered.

In discussing document retention at the IRS, it is important to point out that our email system is not being used as an electronic record keeping system. Furthermore, it should be remembered that not all emails on IRS servers or backup tapes qualify as an "official record," which is defined (in 44 U.S.C. 3301) as any documentary material made or received by an agency under federal law or in connection with the transaction of public business and appropriate for preservation. Accordingly, our agency's email system is not designed to preserve email. Rather, email that qualifies as "records" are printed and retained in compliance with relevant records control schedules. Individual employees are responsible for ensuring that any email in their possession that qualifies as a "record" is retained in accordance with the requirements in the Internal Revenue Manual and Document 12990 (Record Control Schedules).

I would note, however, that since the investigations into the applications process for 501(c)(4) organizations began in May of last year, the IRS has saved backup tapes for all emails on the IRS's servers, which includes tapes for the six months preceding May 2013.

In addition, in late May and early June of 2013 the IRS sent document retention notices to employees who were identified as having documents (including email) potentially relevant to the investigations. These notices instructed employees not to alter or destroy "all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Lookout, from January 1, 2008 to the present." In that timeframe, the IRS sent similar document retention notices to all employees in its Tax-Exempt and Government Entities function and its Chief Counsel counterpart; the IRS Communications and Liaison function; and all employees assigned to respond to the Congressional inquiries.

In conclusion, the IRS has been expending an enormous amount of resources to produce documents related to the investigation related to the May 2013 TIGTA report, including the production of all available Lerner emails. Given the extremely broad scope of this effort, it is not surprising that we would discover that some employees had encountered some technical issues, especially in light of the agency's aging information technology infrastructure. In particular the IRS has described in great detail, in a public report on June 13, its efforts to produce Lerner emails. We are still assessing what effect, if any, hard drive crashes had on the emails of any other custodian. We are committed to working cooperatively and transparently with you, and we will continue to provide you with updates.

Chairman Issa, Ranking Member Cummings and members of the Committee, this concludes my testimony. I would be happy to take your questions.

Chairman ISSA. Commissioner, do you remember the name Braulio Castillo?

Mr. KOSKINEN. I do not.

Chairman ISSA. Did you ever hear the name Gregory Roseman?

Mr. KOSKINEN. No.

Chairman ISSA. Well, Castillo is now on trial for murdering his wife, but, before that, this committee discovered that he had wrongfully received $500 million in contracts, IT contracts, from the IRS.

And Gregory Roseman took the Fifth. He was one of your employees who helped get him that contract.

When you go home tomorrow or the next day, you might want to see Congresswoman Duckworth asking him how his ankle that he hurt at the prep school feels, because, in fact, he claimed to be a disabled veteran some 27 years later. And his old college buddy, a lifelong friend, helped him get that contract.

At that time and now, we rely on the ability to recover emails as part of the chain of discovery. TIGTA Russell George, your IG, relies on that. Tomorrow we'll hear from the head of the National Archives, the Archivist. He relies on your organization to comply with Federal law.

The question I have for you is, how can we expect—you have servers that run Microsoft Exchange. It captures every email in and out. How can we sit here and expect to trust an organization in which the C drive, the local hard drive, of Lois Lerner is supposed to be the only place that email existed?

Mr. KOSKINEN. That is not the only place that email existed. There is email on her email system in the server that has been found and produced. Any email that existed anywhere, even any hard copy of official records that existed anywhere, has been or will be provided to this committee.

Chairman ISSA. Right. So, in 2011, when her hard drive failed, if you were properly backing up all the information required under the Federal Records Act, which would include the information she selected to have and apparently deleted from the exchange server, you would have had all of those emails in your backup, wouldn't you?

Mr. KOSKINEN. All emails are not official records under any official records act. Only emails are saved that reflect agency actions or——

Chairman ISSA. Would you put your mic pointed toward you so we could hear?

Mr. KOSKINEN. Sure. Sorry about that.

Chairman ISSA. No problem.

So the bottom line is that you apparently were not capturing all emails. You were allowing her to delete emails but retain emails on her C drive so that, 6 months after—I just want to make sure we get the record straight—6 months after she moved them to her C drive, you were no longer in possession of those. Is that correct?

Mr. KOSKINEN. No.

Chairman ISSA. Well, what is correct?

Mr. KOSKINEN. What is correct is that each employee is limited to basically now 6,000 emails that they can hold on their email account which is stored on the agency's server.

The reason there is a limitation is the agency does not have servers large enough to sustain the retention of all emails. A decision was made 2 years ago when people looked at that and it was determined it would cost anywhere from $10 million to $30 million to upgrade the system so that, in fact, all emails on the server would be preserved. Because of the budget constraints the agency was operating with 2 years ago, the decision was made not to proceed.

Chairman ISSA. One-point-eight billion dollars in IT is your budget—$1.8 billion. On $1.8 billion, isn't the retention of key documents that the American people need to count on, like whether or not they're being honestly treated by your employees, especially somebody at such a high level, isn't that, in fact, a priority that should have allowed for full retention?

Mr. KOSKINEN. If we had the right resources, there would be a lot of priorities we'd have. The budget for this year——

Chairman ISSA. So the American people should believe that if they don't have the resources to pay their taxes, they shouldn't pay their taxes, because if the IRS doesn't have the resources, it won't keep records. That's pretty much what you're telling us here tonight, is that resources are a question of whether or not you maintain key documents.

Let me just go into one thing in my limited time. You came here and you said—put it up on the board—that, as you did today, you were going to tell the truth, the whole truth, and nothing but the truth.

You saw that montage in the opening. You knew there was a problem with some of Lois Lerner's emails when you came to testify in March; isn't that true?

Mr. KOSKINEN. I knew that I'd been told there was an issue that no one knew the ramifications of.

Chairman ISSA. Did you reasonably believe that at least one email may have been lost?

Mr. KOSKINEN. No. I did not have any basis for knowing what the answer to that was——

Chairman ISSA. So you knew there was a problem, but you're going to——

Mr. KOSKINEN. I knew there'd been a problem—somebody said there's an odd development in the way the emails are showing up, we're going to pull all of her emails and investigate it. The first time I knew that emails had been lost from her account was in April.

Chairman ISSA. So when you knew in April that you said you were going to give us all of it, you said to Mr. Cummings and myself you were going to give us all, you went and told political appointees at Treasury, didn't you——

Mr. KOSKINEN. I did not.

Chairman ISSA. You did not?

Mr. KOSKINEN. I did not.

Chairman ISSA. So who did you tell in April when you knew?

Mr. KOSKINEN. Who did I tell? I didn't tell anybody. I was advised— I had no one I was going to tell.

Chairman ISSA. You didn't tell your IG that some of the documents weren't going to be provided?

Mr. KOSKINEN. I did not——

Chairman ISSA. Or did you cause someone to find out at the White House, at Treasury, or your IG?

Mr. KOSKINEN. I did not. And if you have any evidence of that, I'd be happy to see it.

Chairman ISSA. I asked a question.

Mr. KOSKINEN. And I answered it.

Chairman ISSA. You did not cause anyone to find out.

Mr. KOSKINEN. I absolutely did not.

Chairman ISSA. So you told us that all the emails would be provided. When you discovered that all emails would not be provided——

Mr. KOSKINEN. All the——

Chairman ISSA. —you did not come back and inform us; is that correct?

Mr. KOSKINEN. All the emails we have will be provided. I did not say I would provide you emails that disappeared. If you have a magical way for me to do that, I'd be happy to know about it. I said I would provide all of the emails. We are providing all the emails.

The fact that 3 years ago some of them, not all of them, but some of them were not available, I never said I would provide you emails we didn't have. And, in fact, we are going to provide you 24,000 emails from the time——

Chairman ISSA. My time has expired, and I've lost my patience with you.

We now go to the ranking member.

Mr. CUMMINGS. I want you to talk about resources. You were starting to say something about resources.

Mr. KOSKINEN. Resources. We have——

Mr. CUMMINGS. Yes.

Mr. KOSKINEN. —a wide range——

Mr. CUMMINGS. How does that affect what you do?

Mr. KOSKINEN. What it affects is that—we have a wide range of responsibilities. The IT budget has been cut by over $100 million over the last 4 years. This year's budget for 2014 required $300 million just for the implementation of the Affordable Care Act, but Congress provided us zero. That meant that that $300 million to implement a statutory mandate had to be taken from other IT programs. That's been our challenge for the last 3 or 4 years.

Mr. CUMMINGS. Now, Commissioner Koskinen, last week, many Members of Congress, including our own chairman, suggested that Lois Lerner intentionally crashed her computer to destroy emails. But, last Friday, you testified about the facts. You provided Congress with evidence from 2011, contemporaneous, by the way, emails showing exactly the opposite and that this was a technological problem. Since some Members of Congress are still pushing this accusation, I want to walk through these emails.

And let me ask staff to put up the slides.

On July 19th, 2011, Lois Lerner emailed Associate Chief Information Officer at the IRS for help in recovering her hard drive. And it says, "I'm taking advantage of your offer to try and recapture my lost personal files. My computer skills are pretty basic, so nothing fancy. But there were some documents in the files that are irreplaceable. Whatever you can do to help is greatly appreciated."

Commissioner Koskinen, is that right? Is that accurate?

Mr. KOSKINEN. That's an email that has been found and been produced, yes.

Mr. CUMMINGS. Next slide.

Later that day, that IT employee sought help from the field director of the Customer Support Division. And he wrote, "If she can't fix it, nobody can."

Is that a document that you—part of a document that you produced?

Mr. KOSKINEN. Yes.

Mr. CUMMINGS. Next slide.

The next day, the field director emailed Ms. Lerner and said, "I checked with the technician, and he still has your drive. He wanted to exhaust all avenues to recover the data before sending it to the hard-drive cemetery. Unfortunately, after receiving assistance from several highly skilled technicians, including HP experts, he still cannot recover the data."

Is that a part of a document that you supplied to——

Mr. KOSKINEN. Yes.

Mr. CUMMINGS. —our committee?

Next slide.

On August 1st, 2011, the IT field director wrote again to Ms. Lerner and informed her that, "As a last resort, we sent your hard drive to CI's forensics lab to attempt data recovery."

Now, Mr. Koskinen, "CI" stands for Criminal Investigation Division at the IRS. And what do they do in the forensic lab in that division?

Mr. KOSKINEN. They're an expert at, in that lab, taking hard drives in computers that have been seized by criminals, tax evaders, and others and reconstituting emails wherever necessary.

Mr. CUMMINGS. Now, is this a step typical when an employee computer crashes? Do you normally do that?

Mr. KOSKINEN. No. It's extraordinary that we would—the IRS would send a hard drive to CI for their help.

Mr. CUMMINGS. And why did you do that?

Mr. KOSKINEN. Because Ms. Lerner, I am advised, insisted that all possible efforts be made.

Mr. CUMMINGS. Now, despite all of these efforts, the field director finally emailed Ms. Lerner with the results.

Next slide, please.

"Unfortunately, the news is not good. The sectors on the hard drive were bad, which made your data unrecoverable. I'm very sorry. Everyone involved tried their best."

So the technical experts concluded 3 years ago that the sectors on her hard drive were bad. Is that accurate?

Mr. KOSKINEN. That's what the email says.

Mr. CUMMINGS. Now, these emails are concrete evidence of what really happened back in 2011, but my Republican colleagues just want to ignore them. They want to pretend they don't exist, those stubborn facts. But they do exist. And they show this was not intentional, this was not nefarious, this was not a conspiracy.

Mr. Koskinen, are you aware of any evidence, documents, emails—and I remind you you are under oath; I also remind you you have been accused of false statements—are you aware of any evidence, documents, emails, or other information from IT profes-

sionals that calls into question the accuracy and the legitimacy of these emails?

Mr. KOSKINEN. No.

Mr. CUMMINGS. And, finally, and just so everyone is clear, Mr. Koskinen, when you testified before this committee on March 26, did you know about this email claim? Did you know Ms. Lerner's emails were lost forever?

Mr. KOSKINEN. No.

Mr. CUMMINGS. Thank you very much.

Chairman ISSA. Thank you.

We now go to the gentleman from Florida, Mr. Mica.

Mr. MICA. Well, thank you, Mr. Chairman.

I have known the Commissioner for many years, and I know him to be a good public servant. I'm a little bit baffled.

I know, John, I think that you're probably in a position of the guy at the end of the parade with the broom and shovel here and in a very difficult situation.

Let me, if I can, just take people back to the history of this, and to you, Commissioner. This targeting began sometime in March or April of 2010. In June of 2010, Chairman Issa alerted IRS and it made an inquiry. In February of 2011, Lois Lerner sent an email to IRS employees stating that the Tea Party is a very dangerous matter.

Then the chairman of the committee with jurisdiction, in June of 2011, June 3rd, Dave Camp, who you spent time with recently, sent a letter to IRS the heat—it looks like the heat really started to come on at that point.

Now, an entire administration and one of the biggest scandals in government was back during Watergate when, what, 18 minutes of tape was lost. And somehow, between June 3rd and June 13th, Lois Lerner's hard drive crashes and is gone in 10 days.

And it's not just a couple of days or 18 minutes like Rose Mary Woods had the misfortune of losing, but 27 months, is that correct, of hard drive that's lost?

Mr. KOSKINEN. That's correct. All the emails before June——

Mr. MICA. From June of 2009 to April of 2011. So it raises many questions.

Now, you came on in December, right, John?

Mr. KOSKINEN. Yes, the end of December.

Mr. MICA. And they briefed you. You were briefed about this whole situation the beginning, I guess, of January.

In February, you testified today that you learned that there was a problem recovering some of the emails. Is that correct?

Mr. KOSKINEN. No, I—yes, I—what I learned was that there was an issue with her emails, that there was a problem with the dates.

Mr. MICA. But then, in March, what troubles me is you came to us and you said—last week informed this committee and others, "We believe we've completed our production to the Ways and Means Committee and all the documents that are asked for in light of these document productions." This is to us here. "I hope the investigations can now be concluded in the very near future."

You went through and told us what you just started out with, of how much money you spent and how many documents you pro-

duced. But nowhere did we hear, until just a few days ago, that the hard drive crashed and all of this was unrecoverable.

But they—again, the information we have is they briefed you in February. You gave us this testimony in March and never spoke to this.

Mr. KOSKINEN. Right. In February, as I said, they briefed me that, with the emails that they had pulled subject to the search terms, they were concerned that there was an issue with the date issues. I did not, was not advised, did not know——

Mr. MICA. But——

Mr. KOSKINEN. —that there was a hard-drive crash.

Mr. MICA. John, I gave you the benefit of the doubt. I went back and looked through all of what you gave us in March. This is your testimony. And even what you gave us today conflicts. So that does—it raises questions, because it appears that you knew and others knew and——

Mr. KOSKINEN. Others knew——

Mr. MICA. —the Congress wasn't informed until just recently.

Now, I don't have much time. I understand, I just learned a little about this Sonasoft backup, Sonasoft backup contractor. And they were retained—are you familiar with them—to back up emails and——

Mr. KOSKINEN. I was not familiar then, but I do have the information was provided me today.

Mr. MICA. Well, I have the same information, and I understand that they were dismissed in 2011, and they had started 2005. And, actually, in their advertisements, they bragged about how they could retain emails.

Do you know if they have a backup that exists?

Mr. KOSKINEN. They were under a contract with the Chief Counsel of the IRS for about 3,000 employees and an internal disaster recovery program that would allow you to move emails from one system to another as a backup. That contract was terminated when the IRS Chief Counsel upgraded to Outlook 2010 and that alternate system was no longer needed.

Mr. MICA. But you don't know if that backup exists.

Mr. KOSKINEN. If the backup before——

Mr. MICA. But they were in place, they had that responsibility for the backup between, I think, 2005 and 2011.

Mr. KOSKINEN. But that's for the Chief Counsel. That's for 3,000 employees in the Chief Counsel, not for anybody else in the entire——

Mr. MICA. So that might exist? That data may exist?

Mr. KOSKINEN. If any of the data exists, it's been searched for, all of the emails. I'm told we've searched every word of every——

Mr. MICA. Did you ask that company for that information?

Mr. KOSKINEN. The company didn't have any data on their servers. The data was all inside the IRS.

Mr. MICA. And that's gone, too?

Mr. KOSKINEN. No, everything that we have and all the—that was a disaster recovery system for the Chief Counsel. All of those emails across the system have been—any data that the Chief Counsel has or that the IRS has has been searched.

Mr. MICA. Again, Mr. Chairman, many questions.

Chairman ISSA. I thank the gentleman.

We now go to the gentlelady from the District of Columbia, Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Like Mr. Mica, John Koskinen, I have known you well before you came to Congress. Since coming to Congress, I have been impressed, not a little bit, by the confidence you have inspired in Republican and Democratic Presidents alike. It's as if they saved you for jobs that others couldn't do, didn't have the guts to do, or didn't have the integrity to do. You are well-known on both sides of the aisle as the government's most versatile turnaround artist. When an agency is in trouble, turn to John Koskinen.

Therefore, I begin my series of questions simply by offering you an apology. I believe you deserve one. You deserve one because of accusations designed to sacrifice the reputation of a public servant with a spotless reputation, for political advantage, without a scintilla—and I use my words advisedly—of evidence.

It's vile enough to look a man in the face and accuse him of perjury without submitting any evidence. It is much worse when all of the evidence supports the version of the facts of the man you are facing. Whether it is that the Lerner crash occurred well before this investigation began—she must be clairvoyant; whether it's been confirmed by the decriminalization lab, all the evidence is on your side, Mr. Koskinen.

And I want to point out for the record that the line of conspiracy hunting has shifted with the Lerner crash. For the longest time, the line of questioning was about one subject alone. So we've moved from one scapegoat to another. What we've just moved off of, the notion that this was all a conspiracy directed on behalf of the White House, that also without a crumb of evidence. Lacking evidence, the crash provides new fodder.

Just for the record, Mr. Koskinen, have you identified any evidence since you have been Commissioner that IRS employees before you came or now were part of a conspiracy to intentionally target the President's political enemies?

Mr. KOSKINEN. No. I have done no investigations. I have read the IG's report that said inappropriate criteria were used to identify organizations for review. And the IG had nine recommendations, and we have accepted all of those recommendations.

I think it's important for the public to be confident that, whoever they are, they're going to be treated fairly by the IRS, whether they're Republicans, Democrats, belong to organizations of one kind or another. Wherever they show up, wherever they speak, they should understand they'll be treated fairly. If there's an issue, it's because something in their tax return; if somebody else had that issue, they would get the same response from the IRS.

I think it's critical that the public have that confidence, and we're doing everything we can to restore that confidence.

Ms. NORTON. Well, 41 individuals have testified, just as you have, that there's no evidence of the first conspiracy, now that we're on to the second conspiracy. And so did the IG.

Do you recall that the IG also testified, "The Inspector General, when asked by the Ways and Means Committee, was there any evidence of political motivation from the White House," he said, "we

have no," we did not have—we had no—"Did you have any evidence?" "We did not, sir."

So I just want to say that your strong reputation, your character should hold you in good stead as you face baseless accusations. And when a man faces accusations and no evidence is put before him, I think he's got nothing to worry about.

Thank you very much for your extraordinary service to the people of the United States.

Chairman ISSA. Would the gentlelady yield?

Ms. NORTON. Be happy to yield.

Chairman ISSA. I appreciate it.

I just would wonder if that quote from March, "We can find Lois Lerner's emails"—would the Commissioner stand behind that statement or would he have to qualify it with, "We will find some of Lois Lerner's emails"?

Ms. NORTON. I'm sure he was trying to find all of Lois Lerner's emails. And they were lost—the crash occurred before we even began.

Chairman ISSA. But not after Mr. Camp had sent letters, not after we had begun our investigation. Her crash came after we began investigating.

Ms. NORTON. And therefore? And, therefore, what, Mr. Chairman?

Chairman ISSA. And, therefore——

Ms. NORTON. And, therefore, she did what?

Chairman ISSA. And therefore documents disappeared after——

Ms. NORTON. And, therefore, she did what or Mr. Koskinen did what?

Chairman ISSA. I didn't say Mr. Koskinen——

Ms. NORTON. Well, that's what we're here to learn. And I repeat there is no evidence that this man had anything to do with any malfeasance or that he should be accused of perjury before this committee.

Chairman ISSA. Only that he said that he was aware that Lerner's emails were overlooked, missing, or had other technical issues.

Mr. KOSKINEN. There was no evidence at that time to know whether they had been overlooked, missing, or had other issues. I did not say that we knew that.

I said, at that time, we had no idea whether any of those applied. That's why they were investigating. That's what I was told then in April, when they came back with the findings as they had reviewed it all.

I never said, at the time, that, in fact, we had any idea whether any of that was true.

Chairman ISSA. And, Eleanor, that's the inconsistency that we're talking about here tonight.

Ms. NORTON. What's the inconsistency, Mr. Chairman?

Chairman ISSA. If you know that you have a difference in the numbers and——

Ms. NORTON. What numbers? We don't know the number yet, Mr. Chairman.

Chairman ISSA. The Commissioner knew that there was a problem, but he didn't know the details. We were never told there was a problem——

Ms. NORTON. So he should talk before he knows the details?

Chairman ISSA. When every person up on the dais, including the ranking member, wants to know if you're going to get all and you know there's at least some sort of a problem or concern——

Ms. NORTON. Mr. Koskinen, what is your response to that? You said, "We're going to get—we're getting find them all." Were you lying when you said, "We're going to find them all"?

Mr. KOSKINEN. Absolutely not.

Chairman ISSA. Thank you.

We now go to Mr. Turner.

Mr. TURNER. Mr. Koskinen, you are touted as a man of integrity, and I've even heard you say it about yourself on television. So I'm going to ask you to use that integrity to help me understand a few things that have become confusing to me.

Now, you said that you want to restore confidence to the Agency, and I have no question to question that. I have no basis upon which to think that that isn't your goal.

But you have to understand that this discussion of the missing emails goes right to the heart of the issue of confidence and of the issue of your ability to do that and of your integrity.

So let's start first with just some general concept of ethics, back to your integrity.

Now, you agree, as Commissioner, that you can't both be the manager of the Agency, the investigator of the Agency, judge, jury, and prosecutor of matters that are being undertaken under and by the Agency. Right?

There's inherent conflict and bias in those positions. You, by basic concepts of an ethics with integrity, can't fill all of those. Correct?

Mr. KOSKINEN. I'm not sure I understand that question.

I'm in charge of the Agency, I'm responsible for its activities, and I'm accountable for its activities.

Mr. TURNER. So you believe that you can testify under oath today that no crime has been committed by Lois Lerner at the IRS?

Chairman ISSA. I can testify I have seen no evidence of a crime.

Mr. TURNER. I understand that.

And that is the question that has been bantered back and forth here. I can tell you I have no evidence that Lois Lerner has committed a crime.

But I don't have it within—I don't have the Agency and I certainly don't have the ability to go to the FBI and others and have them take things from you that can give that.

Mr. KOSKINEN. All right.

Mr. TURNER. Just because you haven't seen all the evidence doesn't mean that you have the ability to just blanketly say no crime was committed.

Mr. KOSKINEN. I didn't say no crime. I said I've seen no evidence. I would note again——

Mr. TURNER. And that's the distinction.

Mr. KOSKINEN.—that the Inspector General——

Mr. TURNER. Because you can't testify here under oath that no crime was committed.

Mr. KOSKINEN. The Inspector General has started an investigation——

Mr. TURNER. I'm asking you. Do you have any ability to say no crime has been committed?

Mr. KOSKINEN. I have the ability to say I have seen no evidence of any crime.

Mr. TURNER. Of course. But you cannot say what I've asked you, that no crime has been committed.

So let's go to Lois Lerner. She came before this committee and, under—while she was placed under oath, she evoked the Fifth because she indicated that she wanted to assert those rights, albeit that she did that incorrectly, because she had fear of prosecution. Let's say that again. Prosecution. Fear of criminal prosecution.

Now, you can't testify today that Lois Lerner has no need for a fear of criminal prosecution because you can't testify that Lois Lerner didn't commit a crime.

Now, here's what I'm concerned about, since you are a man who is placed before us with integrity.

If in the process of these emails being destroyed there were those in your Agency that knew that it was a possibility that a crime was committed, then they committed a crime because destruction of evidence of a crime is, in fact, a crime.

And you can't testify today that no one—that there was no crime committed in the destruction of her emails. Right? You can only say you have no evidence of a crime having been committed in the destruction of these emails. Right.

Mr. KOSKINEN. I have no evidence whether she beat her dog, whether she beat children. I have no evidence of a whole series of things.

Mr. TURNER. Right.

That's why it's so important, getting to what Jim Jordan has said about a special prosecutor, and that's what my question is to you today.

If you are truly a man of integrity and you know the difference between you—you—there's no—that you have—you don't have any evidence that a crime has been committed versus you know no crime has been committed, you have to understand that the whole integrity of your Agency is at risk.

You possibly have people at the IRS who are committing crimes and they're not being held accountable. The only way you can know that is to—by pick up the phone, call the FBI and ask them to come in and do an investigation on the disappearance of these emails.

So my question to you is: Will you call the FBI and ask them to come in and investigate these missing emails that their destruction could possibly have been a crime?

Mr. KOSKINEN. At this time, the Inspector General, an independent agency not controlled by us, started an investigation——

Mr. TURNER. They're not a criminal investigating agency.

Mr. KOSKINEN. They are actually capable of doing criminal investigations as well as civil. They make recommendations——

Mr. TURNER. Will you call the FBI?

Because the integrity of your Agency is absolutely at stake. It is—we have Lois Lerner having invoked the Fifth in front of this committee, indicating that she's fearful of criminal prosecution, which should be enough for you, a man of integrity, to pause and think, "Maybe crimes were committed within my Agency and, now that these emails are missing, maybe someone not of integrity committed a crime in destroying them."

You should call the FBI. You should call for a special prosecutor.

Mr. KOSKINEN. I cannot enter into Lois Lerner's mind—I've never met her—as to what she——

Mr. TURNER. I asked you to pick up the phone and call the FBI, not enter Lois Lerner's mind.

Mr. KOSKINEN. I am not going to call the FBI. The Inspector General has started—when the Inspector General has completed its——

Mr. TURNER. Then, that is an issue of your personal integrity, because the integrity of this Agency and the concern that Americans have of it is at stake.

Mr. KOSKINEN. I reject the suggestion that my integrity depends upon my calling the FBI. The Inspector General will issue a report. We will all get the benefit of that report, and then we can determine what the appropriate action is.

Mr. TURNER. I have always believed that what happened in your Agency with Lois Lerner is a crime. I believe that there were others involved.

I believe the emails that are missing are the ones that would probably give us an ability to establish that. And I believe that somebody undertook a criminal act in its destruction.

And I believe that, since you can't tell me I'm wrong and it's enough of a doubt in your mind, as the Commissioner of that Agency, you should call the FBI.

Mr. KOSKINEN. That's an interesting set of——

Chairman ISSA. Gentleman's time has expired.

Mr. KOSKINEN. —with no facts behind them.

Chairman ISSA. Thank the gentleman.

We now go to the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you.

Mr. Koskinen, good evening. And thank you for being here night.

I don't think I've seen a display of this kind of disrespect in all the time I've been here in Congress, and it's unfortunate that anybody would have to be subjected to it.

This is an incredible thing, a public servant being——

Chairman ISSA. Would the gentleman yield?

Mr. TIERNEY. No. I will not yield.

Chairman ISSA. Okay. The gentleman will suspend.

Is the gentleman——

Mr. TIERNEY. No. I won't suspend either. I'm in the middle of my time——

Chairman ISSA. Is the gentleman asking——

Mr. TIERNEY. —and I will continue to ask questions——

Chairman ISSA. The gentleman will suspend——

Mr. TIERNEY. I won't suspend.

Chairman ISSA. Please stop the clock.

The time is suspended.

I would caution all Members not to characterize the intent or the character of your fellow Members here on the dais.

Mr. KOSKINEN. But it's fair game to question the integrity of the witness?

Chairman ISSA. With all due respect, the rules of the House do—excuse me—the rules of the House speak to questioning the integrity of Members.

I would caution all of us that, while the chair has questioned the testimony earlier as to whether it was the truth or the whole truth, that, in fact, to question the motives of the witness should be done only on evidence.

But to question the motives of your fellow Member is, in fact, within the rules of the House, an action for which the floor can take down words.

Mr. HORSFORD. Mr. Chairman?

Chairman ISSA. Yes, of course.

Mr. HORSFORD. Thank you.

You talk about the rules of the committee and the rules.

Chairman ISSA. The gentleman will state his parliamentary inquiry, please.

Mr. HORSFORD. Has the chairman violated the rules of the committee and the rules of the House?

Chairman ISSA. Please state your point of parliamentary inquiry.

Mr. HORSFORD. When the chairman cut off——

Chairman ISSA. If the gentleman will state a point of parliamentary inquiry.

Mr. HORSFORD. Has the chairman violated his own rules in the——

Chairman ISSA. That's a question.

Do you——

Mr. HORSFORD. —in the process of conducting——

Chairman ISSA. Do you have a question of parliamentary inquiry to ask?

Mr. CUMMINGS. May he ask the question, Mr. Chairman?

Chairman ISSA. You'll state it as a point of order.

Mr. CUMMINGS. Just let him ask the question, please.

Chairman ISSA. I will not.

State a point of inquiry. If not, we will go on.

The gentleman may continue. Mr. Tierney.

Mr. TIERNEY. I think the understanding is the rules of the House say that Members should conduct themselves in a way that reflects credibility upon the House. I think people watching this hearing today can decide whether or not that's been followed on that.

Look, I think what you're trying to tell people at one point is that it's the Inspector General's responsibility to review this matter and file a report and, in that report, make recommendations as to what action might be done or, upon reviewing that report, you or others might make recommendations of what might be done, such as refer to a—another body like the FBI or somebody else. Is that correct?

Mr. KOSKINEN. That's correct.

Mr. TIERNEY. So we're not even to that point yet.

Mr. KOSKINEN. That's correct.

Mr. TIERNEY. I guess, you know, as opposed to shoot and then aim, we might be trying to first gather some information and then decide where we go from there. Is that correct?

Mr. KOSKINEN. Correct.

Mr. TIERNEY. Have you testified tonight to anything that was not discussed at last Friday's hearing?

Mr. KOSKINEN. I'm sorry. What?

Mr. TIERNEY. Have you discussed tonight with this committee anything—any matter pertinent to this subject that was not discussed last Friday?

Mr. KOSKINEN. Thus far, no.

Mr. TIERNEY. So just to get it right, you—you were scheduled to testify originally in front of Chairman Camp's committee tomorrow, on the 24th. Is that correct?

Mr. KOSKINEN. That's correct.

Mr. TIERNEY. Had they been in touch with you or your staff before scheduling that date?

Mr. KOSKINEN. Yes. They actually had asked whether I would be available in the morning on Tuesday, and I was not. Then we agreed that I would testify in the afternoon.

Mr. TIERNEY. So you agreed to testify voluntarily?

Mr. KOSKINEN. I've always agreed to testify voluntarily over the course of the last 20 years.

Mr. TIERNEY. So after you discussed and agreed to testify before Chairman Camp, you received a unilateral subpoena from Chairman Issa. Is that correct?

Mr. KOSKINEN. That's correct.

Mr. TIERNEY. And that subpoena asked you to come here—in fact, it compelled to you come here tonight?

Mr. KOSKINEN. Correct.

Mr. TIERNEY. Did Mr. Issa ever call you and ask you to come voluntarily?

Mr. KOSKINEN. No.

Mr. TIERNEY. Did any of his staff ever call you and ask you to come voluntarily?

Mr. KOSKINEN. No.

Mr. TIERNEY. Did he ever explain to you why it was so urgent that you come here at 7:00 on Monday night when you were already scheduled to appear voluntarily before a different committee of jurisdiction on Tuesday, the 24th, the following day?

Mr. KOSKINEN. No.

Mr. TIERNEY. Now, I won't ask you to speculate, but I think some might speculate either people don't think that Mr. Camp could do the job, which I would sort of think is suspect—he's been known to be a pretty good Member—or that there's some sort of competition going on here. I don't know. Some might speculate that.

But when Chairman Camp heard that Chairman Issa had subpoenaed you for tonight, you were all of a sudden notified that there was going to be a hearing in Chairman Camp's committee on Friday of last week. Is that correct?

Mr. KOSKINEN. That's correct.

Mr. TIERNEY. How were you notified of that?

Mr. KOSKINEN. Staff asked if I was avail—would be available on Friday. They had to get the approval—or agreement of the minor-

ity, since I understand there's a 7-day rule. I told them that I could make myself available on Friday.

Mr. TIERNEY. Now, how long did you testify on Friday?

Mr. KOSKINEN. Total length of the hearing was 4 1/2 hours with a recess for about 45 minutes in the middle.

Mr. TIERNEY. I would think that, having testified all that time on the subject matter, that tonight's hearing might be somewhat redundant on that. And, so far, it has been. Is that correct?

Mr. KOSKINEN. It has similarities to Friday.

Mr. TIERNEY. And I am looking on this. I think the only thing that might be different in the sequence of what's going on is now I understand that Chairman Issa has invited Ms. Jennifer O'Connor to testify tomorrow.

Do you know Ms. O'Connor?

Mr. KOSKINEN. I do not.

Mr. TIERNEY. Do you know whether or not she worked at the IRS from May to November of 2013?

Mr. KOSKINEN. I do understand she did.

Mr. TIERNEY. Now, she left in November of last year. Is that right?

Mr. KOSKINEN. That's my understanding.

Mr. TIERNEY. And that would have been well before there was any discovery of Ms. Lerner's emails gone missing. Is that correct?

Mr. KOSKINEN. That's correct.

Mr. TIERNEY. Do you know where Ms. O'Connor works now?

Mr. KOSKINEN. My understanding is she works at the White House.

Mr. TIERNEY. So I think some would speculate that maybe people on this committee think that now trumped Mr. Camp on his committee and maybe that gets some cameras in the action here, but nobody would want to speculate like that.

Again, I will just end my questioning here by saying that I think it's unfortunate that you have to be subjected to this after having gone through it last Friday, and I hope that Members will reflect the credibility of the House from here on in, at least, if hasn't been done so far.

Thank you.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Well, thank you very much.

And, first, Mr. Chairman, let me thank you for pursuing this investigation the way you have because, in a free country, no individual—no group of individuals should be targeted for their political beliefs. And, certainly, I think almost everyone who has looked closely at this feels that that happened in this situation.

Although, on March 26th, when Mr. Koskinen was here before us, he said there had been no targeting, just inappropriate criteria, the Washington Post said Mr. Koskinen fell "back on bureaucratese." And the Washington Post, of course, is probably the main defender of the Federal bureaucracy.

And their Fact Checker said that Mr. Koskinen should be given three Pinocchios for that testimony. And they—in their classification, three Pinocchios is one Pinocchio under what they call whoppers.

So I don't know if what the—what his opinion is on that. But I will say this: All over the country people are saying that there's one—there's a double standard being applied here. They're saying there's one standard for everybody else and one standard for the IRS.

And I can tell you that—you know, I've been following politics and government ever since I was in high school, and I can tell you that I believe there's more anger and resentment and disgust toward the Federal Government today than anytime in my lifetime because everybody seems to feel today that we've ended up with a government of, by, and for the bureaucrats instead of one that's of, by, and for the people.

Mr. Koskinen was given a chance on Friday to apologize on behalf of the IRS, and he didn't do so. But I can tell you that I think the people of this country deserve at least an apology that a different standard has been applied by the IRS than would be applied to individuals who were having problems on their taxes.

And this—it seems that every time the Federal Government screws up, which is often, they always fall back on one or both of two excuses. They always say they're either underfunded or their technology is out of date. And, of course, that's what we've heard today.

But I can tell you the people of this country are sick and tired of the arrogance within the Federal Government. And this hearing and others that will follow about this I think will help assure that this does not happen again.

And so I commend you for it, Mr. Chairman.

And I yield back the balance of my time.

Chairman ISSA. Would the gentleman yield?

Mr. DUNCAN. Yes, sir.

Chairman ISSA. I thank the gentleman.

I'd like to go through the question one more time, Commissioner.

When—you testified that, in fact, you knew there was this problem when you were here last time, but you didn't know that, in fact, emails were lost. Is that correct?

Mr. KOSKINEN. That's correct.

Chairman ISSA. But you knew there was a problem. You knew that there was this sequence problem or numbering problem. Is that correct?

Mr. KOSKINEN. Correct.

Chairman ISSA. Did you take any steps to find out what that sequence or numbering problem is? I mean, people tell you there's a problem. Almost always, at least in my experience as a CEO, you say, "Well, tell me about the problem. What does the problem mean?" Did you do that?

Mr. KOSKINEN. No. I asked to be kept updated. There were 200 people working on this issue, and they said they would let me know. And they did let me know.

Chairman ISSA. So there's 200 people working on the problem of delivering emails?

Mr. KOSKINEN. Correct.

Chairman ISSA. And it took this long to find out that there were missing ones from Lois Lerner?

Mr. KOSKINEN. It took until——

Chairman ISSA. It's almost a year.

Mr. KOSKINEN. Well, that's right. From the time there was—anybody thought there was a problem, it took about 2 months.

Chairman ISSA. Okay. So——

Mr. KOSKINEN. Nobody knew there was a problem last year.

Chairman ISSA. But you knew there was this inconsistency when you came before us.

Mr. KOSKINEN. Yes. I knew it'd been identified—that a problem had been identified and was under investigation.

Chairman ISSA. Why is it you did not answer when asked a dozen times, really, on both sides of the aisle, "Will you deliver?" "We can find Lois Lerner's emails"?

Mr. KOSKINEN. Right. That was my assumption at the time.

Chairman ISSA. But you knew there was some problem with some part of her emails; you'd been briefed on that?

Mr. KOSKINEN. But we had no idea—at that time, nobody understood what the ramifications were, were there emails that—was it part of the production process.

They ran the whole production process again. They searched all the files again to make sure that the production process itself hadn't caused emails to be lost.

So at the time I testified, no one had any idea whether there were any emails missing or not.

Chairman ISSA. Right.

But were you aware when you testified the last time that there'd been a crash in Lois Lerner's disc drive some years before?

Mr. KOSKINEN. When I testified here?

Chairman ISSA. Yes.

Mr. KOSKINEN. No.

Chairman ISSA. Were the people reporting to you aware of that?

Mr. KOSKINEN. The IT people apparently were. I'm advised that they knew that—discovered there was an issue with her computer in late February.

Chairman ISSA. Thank you.

We now go to the gentleman from Massachusetts, Mr. Lynch—Mr. Stephen Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

I do want to raise the issue that, while the IRS is not held in very high repute these days, neither—neither is the United States Congress. And I want to thank you for your willingness to testify.

I would like to refocus on the evidence here. You know, I'm a little bit surprised at the chronology that Mr. Tierney has laid out here where you originally were invited by Mr. Camp and the Ways and Means Committee to testify and then it seems like, when Mr. Issa found out about that, you were subpoenaed—unilaterally subpoenaed here to testify before you were going to testify tomorrow at that other hearing, and then Mr. Camp jumps in front of him.

And now I have billboards and I had a video clipped up there earlier. Great showmanship. And I'm just worried I'll come in here tomorrow, there'll be a 16-piece orchestra to sort of cap out the show.

That's not the way this is supposed to happen. That's not the way this is supposed to go down. I think there are some serious

issues here that we have to get to. But all of this fanfare, all of this showmanship, is clouding it over.

I think we're doing a disservice to the people that we represent, and I think we are failing greatly in meeting the high expectations of the American people. I think that's probably an understatement.

I would like to focus on the evidence. And going back to the heart of this issue, we did have a situation where there was evidence and an admission on the part of the IRS that they were using search terms such as "Tea Party," "patriots," "9/12 Project," in terms of be on the lookout for—for groups that were applying with those characteristics.

They also were looking for any issues in an application that included government spending or government debt or taxes. They were also looking for statements in the case file criticizing how the country was run.

That's evidence. When the IRS goes after citizens of the United States because of this criteria, that is evidence of their state of mind. That is relevant evidence.

Now, that's not all they looked for. They also looked for any search terms regarding progressives or these emerge groups, which were also very progressive groups, 501(c) applications. They also went after any successor organizations to ACORN because they were highly progressive.

So there was—there was a widespread—it's not just going after conservative groups, but it's—it's going after American citizens who have various political views. And that is evidence. That's hard evidence.

Would you agree?

Mr. KOSKINEN. They're evidence. Exactly.

Mr. LYNCH. Right. Okay.

So when these emails go missing for 27 months on Lois Lerner's account, you realize how that—that just feeds into the suspicion that there's something going on here?

Mr. KOSKINEN. I understand that. That's why I think it's important to understand we were able to find 24,000 emails in that period.

Mr. LYNCH. I know what you found. I appreciate that. And I think you went at it legitimately and honestly.

Let me ask you: When the—when Mr. Russell, the IG for the IRS—when he looked at it, he was looking at the search term issue for us.

Did he look at the other issue of the missing emails? Did he do any of that or was that known to him?

Mr. KOSKINEN. It was not known to anyone at that time.

Mr. LYNCH. So we didn't look at that.

Mr. KOSKINEN. Pardon?

Mr. LYNCH. We didn't look at that.

Mr. KOSKINEN. The IG, to my understanding, did not look at that. He has started an investigation of that now.

Mr. LYNCH. Okay. Well, I think that's—that's something we might want to revisit, then.

Do you think that it would be worthwhile to have the Inspector General go back and look at the way these emails went missing?

And I also know that there are some allegations—unfounded allegations about six other employees about their emails going missing.

Mr. KOSKINEN. He should look at it and he is looking at it. I expect that, when they complete that investigation, they'll provide a report to the public, us, and this committee and other investigators.

Mr. LYNCH. Okay. My time has expired.

I yield back.

Chairman ISSA. Thank you.

The gentleman just said it was unfounded. Are there other drives that led to other emails not being available, to your knowledge?

Mr. KOSKINEN. At this point there aren't. We noted last week—I had asked—because I said in my testimony in May, as we were finally getting our arms around Lois Lerner—I said could we look at the other 82 custodians and determine whether there are other hard drives that would affect this.

As I noted, we now have found several custodians. It is not clear what emails, if any, were lost. Again, that was part of what we had hoped to complete in our full review of all of this, at which point we would have provided you with that information.

Chairman ISSA. Okay.

Mr. KOSKINEN. As we find it——

Chairman ISSA. So we don't know today about others. There may be others because there were other crashes.

Mr. KOSKINEN. There may be others. Yes. We have provided information on what we know. We just learned about that last Monday.

Mr. LYNCH. Just a follow-up on that?

Chairman ISSA. Of course.

Mr. LYNCH. I'm trying to remember her name. Nikole Flax. There was a story last week that her emails were missing.

Have we made any progress on trying to figure out her email——

Chairman ISSA. I think that was cleared up, that it was just one of her two computers.

Mr. LYNCH. Are her emails missing?

Mr. KOSKINEN. There's no evidence now any email is missing.

Mr. LYNCH. Okay. Thank you.

Chairman ISSA. Thank you.

I now ask unanimous consent that the 141-page staff report from April 7, 2014, be placed in the record. Without objection, so ordered.

The title of it is "Debunking the Myth that the IRS Targeted Progressives."

Chairman ISSA. We now recognize the gentleman from North Carolina, Mr. McHenry.

Mr. MCHENRY. Mr. Koskinen, there's a lot of discussion, and you've been through multiple hearings related to this Lois Lerner targeting of conservative groups.

Do you understand what the fuss and fury is about this week? Do you understand the reason why many folks are really upset about this?

Mr. KOSKINEN. I understand, having been around Washington in a long time.

Mr. MCHENRY. Yeah. I mean, you've had a long career.

Mr. KOSKINEN. And one of the reasons we've taken it seriously is that, if there has been a hard drive crash and emails disappear, that's a matter that should be reviewed.

As I say, we've provided all the information we have about the emails and, in fact, it appears that Ms. Lerner was working very hard to retrieve the emails, not to lose them.

Mr. MCHENRY. But you had the ability to share with Congress in realtime and share with the American people in realtime what you were finding.

Why didn't you do that?

Mr. KOSKINEN. Because my judgment was that what we should do is produce all of the information when we had it and not dribble it out. We actually provided——

Mr. MCHENRY. Even if that meant along the way people are questioning how you answered Congressional inquiries?

Mr. KOSKINEN. We answered a Congressional inquiry completely and totally——

Mr. MCHENRY. No. I understand that.

But, for me, this is really not about you. It's not about anybody up here on the dais. It's not about a hearing. It's about the American people.

Your Agency sends fear up the spines of every American when you contact them. And if there's one receipt missing, a small business person goes—searches far and wide for that one last receipt.

And, yet, we have evidence that—and you've testified that, you know, Lois Lerner's hard drive crashed and that, you know, erased emails from January 2009 to April 2011, just the time period that Congress was most concerned about with the targeting of conservative and Tea Party groups.

So, look, I mean, I understand. And you can answer very reasonably. But when you see that type of thing happen, it almost defies anyone's sense of capacity that that could happen.

Mr. KOSKINEN. Congress is very interested in what happened from April of 2011 until May of 2013. And we have produced all of those—or are in the process of producing all of those emails.

So we have significant amounts of emails——

Mr. MCHENRY. I understand.

Mr. KOSKINEN. —not lost that we determined from Lois Lerner email—43,000 unlost Lois Lerner emails. Plus, we've been able to find another 24,000.

But the point, I think, is important, as I have said. The question is: In the period in which we found the 24,000, what are the emails that she sent outside the Agency that would not be reflected in anybody's accounts and——

Mr. MCHENRY. Right. And how are they going to magically come forward.

The other thing——

Mr. KOSKINEN. They are going to come forward because the White House and Treasury have provided this committee and other committees a response to those emails——

Mr. MCHENRY. So that means she didn't email outside the White House or Treasury.

Mr. KOSKINEN. Pardon?

Mr. MCHENRY. That means she didn't email outside of the White House or Treasury.

Okay. But the point about this——

Mr. KOSKINEN. I'm sorry. But that's what I thought was a big issue, was whether, in fact, this was all part of her——

Mr. MCHENRY. It is. But it's not the question I'm asking you, sir.

Mr. KOSKINEN. I'm sorry. Go ahead.

Mr. MCHENRY. And I've been very respectful of your time and giving you an opportunity to answer.

Mr. KOSKINEN. I appreciate that.

Mr. MCHENRY. So the reason why I'm asking this question is I just want you to be able to convey to the American people that running the IRS, a very frightening Agency—right?—a very frightening Agency for my constituents at home, that you get it, that you understand why the American people look at this and say, "This is so far beyond my ability to reason. An Agency that has a more than billion-dollar—nearly $2-billion IT budget lets a hard drive crash."

It just seems absolutely ridiculous and beyond comprehension that this would happen in such a convenient context and, yet, we have Lois Lerner, who's been a major focus of this inquiry—and she's the one who's searching desperately to make sure that we recover her hard drive that may incriminate her. We won't know, though, because this has been recycled.

So I'll yield the balance of my time to Mr. Jordan.

Mr. JORDAN. I thank the gentleman.

I just have one question in the few seconds we have.

What date did you learn that you could not get all of her email?

Mr. KOSKINEN. I learned that in April. I don't recall when.

Mr. JORDAN. You don't know the day?

Mr. KOSKINEN. I do not know the day.

Mr. JORDAN. Early April?

Mr. KOSKINEN. I have no recollection.

Mr. JORDAN. Mid-April?

Mr. KOSKINEN. April.

Mr. JORDAN. Your—well, Mr. Chairman, I'll yield back the time. Wait for my 5 minutes. Thank you.

Chairman ISSA. Would the gentleman yield?

Mr. JORDAN. Be happy to.

Chairman ISSA. You only know within a month? Could you provide the committee with some evidence from the calendar that would indicate what day you were briefed?

Mr. KOSKINEN. I'd be delighted to. There's going to be nothing on my calendar that shows that, but you can look at the entire month of my calendar——

Chairman ISSA. Well, but who briefed you?

Mr. KOSKINEN. Pardon?

Chairman ISSA. Who told you that email had been lost?

Mr. KOSKINEN. I don't recall who. I've addressed all of the people doing the work. I've talked to people as it goes along. There's not a——

Chairman ISSA. Okay. So your testimony today is you don't remember the name of the person that told you sometime in April——

Mr. KOSKINEN. All I know is that by—sometime in April I was aware, A, that there had been emails lost, B, that we were reconstituting emails to the extent we could from other custodians. And by mid-May, we were able to determine——

Chairman ISSA. But you don't remember the name of the people who told you that?

Mr. KOSKINEN. I do not remember when I was told or by whom. I just know it was that time frame.

Chairman ISSA. Okay. "I don't remember" is an answer.

We now go to the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

I'd ask unanimous consent that an article dated July 4, 2013, by Jonathan Weisman of the New York Times, taking direct issue with your staff report that you entered it into the record with unanimous consent, be entered into the record at this time.

Chairman ISSA. Would the gentleman state the date of that article, please.

Mr. CONNOLLY. Yes. July 4, 2013.

Chairman ISSA. So somebody disputes my April 7, 2014, with a July 2013 article?

Mr. CONNOLLY. Mr. Chairman, he kind of lays out a pretty good case. But I think it should be in the record just like your staff report.

Chairman ISSA. I certainly think that it's fine for somebody to determine almost a year ahead of a report that the report is invalid.

Without objection, so ordered.

Mr. CONNOLLY. I thank the chair for his courtesy.

Mr. Koskinen, from your testimony, the IRS does not permit all of its 90,000 employees to store all of their email in their active inboxes. Is that correct?

Mr. KOSKINEN. That's correct.

Mr. CONNOLLY. Why is that?

Mr. KOSKINEN. Because we do not have the server capacity to absorb all of those emails.

Mr. CONNOLLY. Why don't you have the server capacity to absorb all those emails?

Mr. KOSKINEN. Because of the expense.

Mr. CONNOLLY. What would be the cost of expanding that capacity?

Mr. KOSKINEN. The estimate made when the IRS considered expanding or—its system was it would cost somewhere between 10- and $30 million. That was an estimate 2 years ago.

Mr. CONNOLLY. Okay. IRS employees instead move their emails when they want to store into archive files on their hard drives. Is that correct?

Mr. KOSKINEN. That's correct.

Mr. CONNOLLY. Would one alternative be the cloud?

Mr. KOSKINEN. There's no way of the emails on the IRS go into the cloud at this time.

Mr. CONNOLLY. Why?

Mr. KOSKINEN. Because we're very sensitive to security of taxpayer information. And so, thus far, the IRS has not moved any information to the cloud, although my understanding is that the IDT department continues to look at that issue.

Mr. CONNOLLY. Hard drives crash especially in older computers. Industry experts say that businesses should replace their employees' computers every 3 to 4 years. Is that correct?

Mr. KOSKINEN. That's the general industry standard.

Mr. CONNOLLY. And how often does the IRS meet that standard?

Mr. KOSKINEN. We refresh them over time. Sometimes it takes as long as 5 to 7 years.

Mr. CONNOLLY. So could part of the problem be we're dealing with an aging set of PCs in IRS because we haven't invested in new equipment?

Mr. KOSKINEN. There's no doubt about that. As I noted on Friday, we have thousands of employees still running Windows XP. We're trying to move on to Windows 7. Windows XP is no longer supported by Microsoft.

Mr. CONNOLLY. Well, surely this concern we have up here with hard drives crashing and emails not being properly archived or stored and all kinds of other problems and given precisely the sensitivity of the data that the IRS possesses—surely the Congress has provided an investment portfolio, a set of resources for you to quickly update your computer technology—your information technology in the IRS. Is that correct?

Mr. KOSKINEN. We are provided significant amounts of money, but significantly less than we need.

Mr. CONNOLLY. Has your budget gone up or down in the last 4——

Mr. KOSKINEN. Budget has gone down regularly every 4 years.

Mr. CONNOLLY. How much has your budget declined?

Mr. KOSKINEN. Budget has declined over the last 4 years $850 million. The number of taxpayers has gone up by 7 million. And we've been asked to implement the Foreign Account Tax Compliance Act and the Affordable Care Act.

Mr. CONNOLLY. Your budget's gone down $800 million in real dollars?

Mr. KOSKINEN. Yes.

Mr. CONNOLLY. Nominal dollars, not including index for inflation?

Mr. KOSKINEN. That's right. That's the actual dollar number.

Mr. CONNOLLY. Huh. That's amazing, given our concern, that we wouldn't be providing you with resources to try to turn this around and make sure this kind of thing doesn't happen again.

Mr. KOSKINEN. The House mark for this year's upcoming fiscal year 2015 cuts us by another $350 million.

Mr. CONNOLLY. $350 million in one fiscal year?

Mr. KOSKINEN. Yes.

Mr. CONNOLLY. Well, surely that will change in light of our deep and profound concern for what happened to Lois Lerner's hard drive.

Mr. KOSKINEN. We have high hopes.

Mr. CONNOLLY. Well, surely you've been called to these midnight sessions to try to see what help you need, right, you've been asked?

Have you been subpoenaed or voluntarily requested before any committee of the House of Representatives to testify as to what your needs are and why the $350-million cut on top of an $800-million cut in the last 4 years might do to your Agency?

Mr. KOSKINEN. I've testified before the House Appropriations Subcommittee, and we have provided updated information to the House and Senate appropriators about the negative impact of a $350-million cut.

Mr. CONNOLLY. And there are——

Chairman ISSA. Gentleman's time has expired.

Mr. CONNOLLY. And their heart bled for you, undoubtedly. Thank you, Mr. Koskinen.

Chairman ISSA. I thank the gentleman.

Mr. MICA. Mr. Chairman?

Chairman ISSA. For what purpose does the gentleman seek recognition?

Mr. MICA. A quick unanimous consent request.

I'd like entered in the record without objection, if I may, the Reason magazine article from the weekend of June 21st that IRS had a contract with email backup service from vendor Sonasoft starting in 2005.

And then I'd like to also put in the record the motto of Sonasoft from an email they have, which said: If the IRS uses Sonasoft products to back up their services, why wouldn't you choose them to protect their services?

And then they had this service—way to have a second—a third article. The Daily Caller on June 21st, this weekend, said Sona—it's an article that cites Sonasoft 6 years' relationship with IRS came to an abrupt close at the end of fiscal year 2011 as Congressional investigators began looking into IRS conservative targeting scandal.

Chairman ISSA. Without objection, it will all be placed in the record.

With that, we go to the gentleman from Ohio, Mr. Jordan.

Mr. JORDAN. I thank the chairman.

Mr. Koskinen, I want to go to your testimony. IRS in February of 2014 identified documents indicating Ms. Lerner had experienced a computer failure in 2011.

In mid-March 2014—again, your testimony—the IRS focused on Lerner email for production. During this review, i.e., during the mid-March review, the data stored on her computer hard drive was determined at the time to be unrecoverable.

So mid-March you knew the data was unrecoverable. Late March you came in front of this committee and did not tell us that—you didn't tell us her computer failed. You didn't tell us, "We can't recover emails." You said, "We're going to give them all to you." Fine.

Your testimony is, you know, "I was still checking. I wasn't quite sure we'd lost them all. Even though the IT professionals said we lost them all, I wasn't quite sure." Last round, I just asked you when did you learn and you said sometime in April.

Mr. KOSKINEN. Correct.

Mr. JORDAN. I want to focus on when you did officially learn, according to definition.

The chairman asked you who told you this information. You can't remember?

Mr. KOSKINEN. No. I do not remember.

Mr. JORDAN. Did someone tell you in person? Did they send you an email? How did you get the information?

Mr. KOSKINEN. I don't recall. I do not get emails on these subjects. So I'm sure—I'm sure it was someone in person.

Mr. JORDAN. Someone in—this has been a major news story for the last 13 months and you don't remember who came up to you and said, "Hey, boss, we lost Lois Lerner's emails?" You don't even remember anything about that situation?

Mr. KOSKINEN. I remember being told in April.

Mr. JORDAN. You don't remember who told you?

Mr. KOSKINEN. I do not recall who told me. No.

Mr. JORDAN. Something that's been a front-page story, you would think that would be significant enough to remember how it happened, when they told you, what the actual date was.

Mr. KOSKINEN. Got to remember——

Mr. JORDAN. You might even remember where you were standing.

Mr. KOSKINEN. Remember, I'm running an Agency with 90,000 people. We are dealing with all——

Mr. JORDAN. This has been the biggest issue in front of your Agency for the last year.

Mr. KOSKINEN. We're in the middle of filing season as all this is going on.

Mr. JORDAN. Okay. So here we go. Here we go.

So you find out sometime in April. You don't know who told you.

What did you do then?

Mr. KOSKINEN. I was advised—I didn't do anything. I was advised that they were reconstituting as many emails as they could from other——

Mr. JORDAN. No. No. No.

Who did you tell? Did you tell the White House?

Mr. KOSKINEN. I never told the White House.

Mr. JORDAN. Politico reports you told the White House in April.

You didn't tell anyone at the White House?

Mr. KOSKINEN. I don't think that's what Politico reported

Mr. JORDAN. Did you tell anyone at Treasury? Did you tell any of your bosses? Did you tell the Treasury Secretary?

Mr. KOSKINEN. I did not tell anybody at Treasury either.

Mr. JORDAN. Did you talk to anyone about this?

Mr. KOSKINEN. No.

Mr. JORDAN. Talk to anyone outside the Agency about when you——

Mr. KOSKINEN. Not outside the Agency. I talked in the Agency about it. I get the——

Mr. JORDAN. When did you tell Congress?

Mr. KOSKINEN. Pardon?

Mr. JORDAN. When did you tell Congress?

Mr. KOSKINEN. We produced the public report 10 days ago.

Mr. JORDAN. So you knew in April and you waited 2 months to tell this body——

Mr. KOSKINEN. Correct.

Mr. JORDAN. —the body that's been looking into this?

Why did you wait so long?

Mr. KOSKINEN. Because we actually were going to wait until we produced all of Lois Lerner's emails——

Mr. JORDAN. No. No. No. No.

Mr. KOSKINEN. —had reviewed all the——

Mr. JORDAN. No. No. No.

Mr. KOSKINEN. I'm telling you.

Mr. JORDAN. Hey. Hey. Hey. You can't give us all her emails. You done lost some. So don't give me that statement.

Mr. KOSKINEN. Can I give you an answer?

Mr. JORDAN. I want to know why you didn't tell us you had lost some of her emails. Because that's what we care about.

Mr. KOSKINEN. Can I give you the answer?

Mr. JORDAN. Sure.

Mr. KOSKINEN. All right. Our program was to complete the production of all Lois Lerner emails, complete the review of all custodians, and provide——

Mr. JORDAN. But it's kind of important, Mr. Commissioner, to tell us when you lost emails for the person that we're focused on, don't you think?

Let me ask you this. Let me ask you a more important question.

Did you tell the Justice Department?

Mr. KOSKINEN. No.

Mr. JORDAN. Why not? There's a criminal investigation going on. Don't you think that's a pertinent fact that they'd like to know?

Mr. KOSKINEN. We have no evidence that there's any criminal violation involved.

Mr. JORDAN. I didn't ask you that.

There's a—the President of the United States said on May 15th, "We've got to get to the bottom of this."

The Attorney General said, "We're going to do everything we can to find out what happened here."

And you have information you still—have you talked to the FBI at all?

Mr. KOSKINEN. I have never talked to the FBI about it.

Mr. JORDAN. Don't you think it's incumbent upon the Commissioner of the Internal Revenue Service when he gets a—think about this. Think about the average citizen out there.

FBI is investigating some citizen and they lose documents over a 2-year time period that are crucial, critical, to the investigation and they say, "You know what? We're not going to tell the FBI" and then the FBI learns later. Do you think that person's in trouble? Heck, yeah, they are.

But you as a—you said, "I don't need to tell anybody." You didn't tell—did you tell the Inspector General?

Mr. KOSKINEN. We issued a public report——

Mr. JORDAN. No. No. No. No.

Back in April. You told us just a few minutes ago you learned in April.

Mr. KOSKINEN. In April.

Mr. JORDAN. Did you tell the Inspector General in April that you lost Lois Lerner email?

Mr. KOSKINEN. No. Because we didn't know how many—whether we'd lost any. We were——

Mr. JORDAN. How long were you—here's what I'd like to know.

If you wait—you waited 2 months to tell anyone. At what point does it become obstruction of justice? 3 months? 4 months? 2 weeks?

When you got that kind of critical information, you say, you know, "I'm going to hang on to this. We got to wait and make sure we can spin this better, do"—whatever it was.

The fact that you—you didn't tell us and we've been after this for 13 months. We subpoenaed 6 months ago for this.

You had a hearing on the 26th where everyone on this dais went after you and said, "We want all the emails." And you assured us you'd get them all to us, and then you learned you can't.

And you don't tell anybody? And you give us a report that you sent to Senator Hatch and Senator Wyden. And on page 9 of some report you say, "Oh, by the way"——

Mr. KOSKINEN. Actually, I have the report.

Mr. JORDAN. —"we lost the emails."

Mr. KOSKINEN. It starts on page 5. It's half of the 7-page report.

Mr. JORDAN. Page 5. Imagine. I'd like for you to tell us, not send us in some 37-page document on page 5 on a Friday afternoon, for goodness sakes.

Mr. KOSKINEN. It's a 7-page document.

Mr. JORDAN. 7-page document on page 5.

This is ridiculous, Mr. Chairman, that we did not know this when he first knew and that he almost knew everything on the 26th and wouldn't tell us—wouldn't tell us the computer crashed, wouldn't tell us, "We think we might have lost them all. We're not quite sure. We're 99 percent sure." And he wouldn't tell us and then waits 2 months before he does. Ridiculous.

I yield back.

Chairman ISSA. Thank the gentleman.

For the record, Ways and Means Committee referred four criminal charges to Justice against Lois Lerner months ago.

Ms. SPEIER.

Ms. SPEIER. Mr. Chairman, I implore you to enforce the rules of this committee. Rule XI(k)(4) asks that you control this committee, that we operate with decorum and professionalism and order.

Badgering witnesses is inappropriate and shameful for this committee to conduct itself in that manner. And I would implore you in the future to rely more heavily on this rule.

I would now like to ask unanimous consent——

Chairman ISSA. Is the gentlelady making a motion?

Ms. SPEIER. No. At this point I just want us to get back to basics and to run this committee as it should be run, with respect and decorum.

And badgering this Commissioner, as virtually every Member on the Republican side has done, is shameful. And it's got to stop——

Mr. JORDAN. Mr. Chairman?

Ms. SPEIER. —or else I'm telling you one Member here is going to walk out and not return.

Mr. JORDAN. Mr. Chairman?

Chairman ISSA. It's the gentlelady's time.

Ms. SPEIER. And I'm not yielding.

Mr. JORDAN. Would the gentlelady yield?

Ms. SPEIER. No. The gentlelady is not yielding.

Mr. JORDAN. Gentlelady please yield?

Ms. SPEIER. I'm sorry. I didn't hear you.

Mr. JORDAN. I said would the gentlelady please yield?

Ms. SPEIER. That was better. But, no.

Mr. Chairman, I would like unanimous consent to put into the record the Democratic staff report of May 6, 2014, "No Evidence of White House Involvement or Political Motivation in IRS Screening of Tax Exempt Applicants."

Chairman ISSA. Absolutely. Without objection, so ordered.

Ms. SPEIER. All right. Thank you.

Commissioner Koskinen, why you are serving our country at this point in time is beyond me. But thank you on behalf of all of us.

Because you are a sterling example of what we do need in this country in government, and that is someone who knows exactly what they're doing, is not going to be bullied, and is going to state the facts as they see them.

Now let us start from the very beginning in this time line.

Based on the emails we have obtained, Ms. Lerner's hard drive crashed on June 13, 2011. Is that not so?

Mr. KOSKINEN. Yes.

Ms. SPEIER. All right. June 13, 2011.

Her first indication—the first time she was informed by IRS employees in Cincinnati that they were using inappropriate search terms did not happen until after her computer crashed. Is that not true?

Mr. KOSKINEN. That's correct.

Ms. SPEIER. And what date was that?

Mr. KOSKINEN. That is a week or two thereafter. I don't know——

Ms. SPEIER. It was June 29, 2011.

So June 13 it crashes. June 29th she is informed that they may be using inappropriate search terms.

And the Congressional investigation and the Inspector General's audit also did not start until after the computer crashed. Is that correct?

Mr. KOSKINEN. That's correct.

Ms. SPEIER. So I just want to make sure I have this clear.

Ms. Lerner's computer crashed before she was informed that the IRS employees in Cincinnati were using inappropriate search terms and before there was no Congressional or Inspector General investigation?

Mr. KOSKINEN. That's correct.

And we also have emails from April 11 in 2011 forward. Because, apparently, she archived materials on her hard drive, but kept emails in her email account which did not go down with her hard drive.

Ms. SPEIER. Along with my colleague to my left, who was talking about the system that exists now, when you archive in the IRS right now because you don't have the data ability because you don't have the $30 million invested, you actually have to print emails.

It has to be determined that an email is appropriate and necessary to be archived and it has to be printed. Is that correct?

Mr. KOSKINEN. That's correct.

Ms. SPEIER. That's how archaic it is.

All right. So let's move on to the hearing last Friday.

Some of the Republican Members there sprung a document on you that you had not reviewed beforehand. They argued that

Chairman Camp had sent a letter to the IRS on these exact issues 10 days before Ms. Lerner's computer crashed and, therefore, as Representative Roskam said, Chairman Camp sent a letter on this whole issue and then 10 days later—so think about the duration of 10 days. 10 days is the ability to panic within the IRS, reflect, plan, talk, and execute. And there was a crash 10 days after the chairman's letter.

Now, I have a copy of the chairman's letter here. You've probably had an opportunity to review it. June 3, 2011. And, as I understand it, the question that was asked by the chairman of the Ways and Means Committee to the then-Commissioner was whether donations to a 501(c)(4) were taxable gifts and if a gift tax return should be filed.

So there already is law that says and asserts the applicability of gift taxes to 501(c)(4) donations. And in his own letter he says it's unsettled area of tax law, but he further notes that it has been applied in some cases.

Is that not what the gist of that letter was all about?

Mr. KOSKINEN. That is correct. It was about the application of the gift tax laws to (c)(4) organizations.

Ms. SPEIER. All right. So the letter had nothing to do with the issue of 501(c)(4)s and inappropriate terms being used to identify certain organizations?

Mr. KOSKINEN. It did not mention inappropriate terms at all, as far as I recall.

Ms. SPEIER. All right. I yield back.

Chairman ISSA. I thank the lady for yielding back.

We now go to the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. I thank the chair——

Chairman ISSA. Would the gentleman hold off on the time. I apologize.

I'd like to ask unanimous consent so that it's in with Ms. Speier that the June 16, 2014, majority staff report be placed in the record. Without objection, so ordered.

Chairman ISSA. It is titled "How Politics Led to the IRS to Target Conservative Tax Exempt Applicants for Their Political Beliefs." I think it'll go well with the minority report.

Ms. SPEIER. Mr. Chairman, can I——

VOICE. This is going to be some record.

Chairman ISSA. It is going to be some record.

Actually, Mr. Commissioner, we looked at the Rule XI, and it turns out what was cited was the audio-video in proceedings. So we're going to have to figure out how that applies, too.

Ms. SPEIER. Rule XI(k)(4), Mr. Chairman.

Chairman ISSA. That's what we're looking at.

Ms. SPEIER. Mr. Chairman, could I ask that this letter from the Chairman of Ways and Means to Doug Schulman be——

Chairman ISSA. Of course. That will be placed in the record.

Mr. Chaffetz is recognized.

Mr. CHAFFETZ. Thank the chairman.

My understanding is that the backup of emails was only—only lasted for 6 months. Is that correct?

Mr. KOSKINEN. Yes. It's actually a disaster recovery system, and it backs up for 6 months in case the entire system goes down.

Mr. CHAFFETZ. And that was in place in 2011?

Mr. KOSKINEN. That was the rule in 2011, policy.

Mr. CHAFFETZ. So when Lois Lerner figured out on June 13 that her computer crashed and you've—there have been emails showing that she was going to great lengths to try to get that recovered, why didn't they just go to that 6-month tape?

Mr. KOSKINEN. Because that 6-month tape is a disaster recovery tape that has all of the emails on it and is a very complicated tape to actually extract emails for.

But I have not seen any emails to explain why they didn't do it. So I—it would be difficult, but I don't know why they didn't.

Mr. CHAFFETZ. But you said that the IRS was going to extraordinary lengths to give it to the recovery team.

Mr. KOSKINEN. That's correct.

Mr. CHAFFETZ. Correct?

Mr. KOSKINEN. That's correct.

Mr. CHAFFETZ. But it's backed up on tape?

Mr. KOSKINEN. For 6 months. Yes.

Mr. CHAFFETZ. And that was within the 6-month window.

So why didn't you get them off the backup?

Mr. KOSKINEN. All I know about that is that the backup tapes are disaster recovery tapes that put everything in one lump and extracting individual emails out of that is very costly and difficult and it was not the policy at the time.

Mr. CHAFFETZ. Did anybody try?

Mr. KOSKINEN. I have no idea—indication that they did.

Mr. CHAFFETZ. So you have multiple emails showing that she was trying to recover this.

The testimony of the IRS that they were trying desperately—in fact, you got a forensic team to try to extract this. You went to great lengths. You made a big point over the last week about all the efforts you were going through.

But they were backed up on tape and you didn't do it?

Mr. KOSKINEN. As far as I know, they did not. But they did have, as I noted the email, she had 3 months' worth of emails at that time going from April—or 2 months from April to——

Mr. CHAFFETZ. That would have been fortuitous with the 6-month month backup available.

And we need to explore this, Mr. Chairman.

Did I hear you right in the answer to Mr. Lynch, that when the Treasury Inspector General was doing their work, that they were unaware that her email had crashed?

Mr. KOSKINEN. This is last summer?

Mr. CHAFFETZ. No. The question that Mr. Lynch just asked here.

Mr. KOSKINEN. Yeah. He asked whether the Inspector General, when they did their review of the determination process, was aware that her email had cashed.

And I said I do not think they were, I wasn't around at the time.

Mr. CHAFFETZ. So the Inspector General is trying to get to the bottom of this matter, and nobody informs them that her computer had crashed and there were emails lost?

Mr. KOSKINEN. Not to my understanding. No. I'm not——

Mr. CHAFFETZ. Were they withholding information from the Inspector General?

Mr. KOSKINEN. I wasn't there. I don't know what—the Inspector General has access to all emails. He has access to any records he would like. And I have no indication that anybody did not provide him all of the records.

Mr. CHAFFETZ. Did they ask for the Lois Lerner emails?

Mr. KOSKINEN. I have no idea. I was not there then.

Mr. CHAFFETZ. Do you think it's unreasonable for us to ask that question?

Mr. KOSKINEN. I beg your pardon. You can ask the Inspector General. That would be fine.

Mr. CHAFFETZ. We plan to.

June 3, 2011—I am glad you brought this up, because Dave Camp did ask on page 2 the names, titles, and divisions and/or officers of any and all individuals who were involved or contributed to the decision to investigate whether taxpayer contributions to 501(c)(4) organizations should be subject to gift rules.

It goes on and talks about—actually, before that, organizations will trigger an IRS audit based on the political activities of an organization.

May 14—that was in 2011. He's asking for all these emails.

Why wasn't it brought to the attention of the committee that all of her emails were not available back then?

Mr. KOSKINEN. At that time?

Mr. CHAFFETZ. Yeah.

Mr. KOSKINEN. I have no idea. I was not there at that time.

Mr. CHAFFETZ. May 14, 2013, also asked for those emails. Didn't get a response.

You have a—you have a subpoena from the United States Congress. And I recognize you personally weren't there. But I don't understand why the IRS wasn't diving into this to figure out—this is August of 2013. This committee issues a subpoena asking for her emails.

It was known years before that some of her emails were gone. Correct?

Mr. KOSKINEN. Yes. Obviously, people knew in 2011 that there had been a crash.

Mr. CHAFFETZ. When you came and testified on March 26, did you know or should you have reasonably known that you did not have all of her emails?

Mr. KOSKINEN. I did not know.

Mr. CHAFFETZ. Did you think you had all the emails?

Mr. KOSKINEN. At that point, my understanding was that they were reviewing the entire process to find out where the emails might be. I had no idea whether we had more or less.

Mr. CHAFFETZ. So you didn't know if we had them all?

Mr. KOSKINEN. At that time.

Mr. CHAFFETZ. At that time, March 26.

Mr. KOSKINEN. All I knew was that they were investigating and we were going to provide all the emails we have. And that's what we're in the process of doing.

Mr. CHAFFETZ. But did you or did you not know that you had all the emails?

Mr. KOSKINEN. I did not have any idea one way or the other.

Mr. CHAFFETZ. Then, why did you say, "We can find"——

Mr. KOSKINEN. Lois Lerner's emails. And we did find them and we are producing them.

Mr. CHAFFETZ. Did you find all—what percentage of them?

Are we supposed to ask you what percentage? I mean, is that not clear what I asked you——

Mr. KOSKINEN. At that point, I would have told you we're going to give you 100 percent of the emails we have, and that's what we're going to do.

Mr. CHAFFETZ. Now you're qualifying.

You had reason to know—for years you had reason to know——

Mr. KOSKINEN. I haven't been there for years. I've been there for 5, 6 months.

Mr. CHAFFETZ. You had reason to know—this is a hot investigation. You had reason to know that there was a problem, and you did nothing to indicate there was a problem. Correct?

Chairman ISSA. Gentleman's time has expired.

You may answer.

Mr. KOSKINEN. Pardon?

Chairman ISSA. You may answer.

Mr. KOSKINEN. Yes. I did not indicate at that time because I did not know the nature of the problem.

Mr. CHAFFETZ. But you thought that there might be a problem.

Chairman ISSA. Gentleman's time has expired.

Mr. CHAFFETZ. If the chairman—if he will please answer that question.

Did you or did you not think that there was a problem?

Chairman ISSA. The gentleman's time has expired.

Commissioner, you may answer that last question.

Mr. KOSKINEN. No. I have testified before that, at that time, I did not know the nature of the problem. All I knew, there was a question being investigated.

Chairman ISSA. I thank the gentleman. And I apologize, but time is up.

We now go to the gentlelady from Illinois, Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Mr. Commissioner, good to see you here. Thank you for coming on such short notice.

You know, it's really amazing to me to read that IRS requires employees to print and file emails that they decide are relevant to the official record or that the IRS does not necessarily think that all emails are part of the official record that's relevant to the Federal Records Act.

Email is critical, and I really feel like it's absolutely unacceptable that a government Agency with such a critical public mission cannot produce emails requested during an investigation.

But what's troubling to me is that this is not an issue with just the IRS, but is, in fact, government-wide. It's also not just with this administration.

I'm looking at a report—a GAO report from the—that is entitled "National Archives and Selected Agencies Need to Strengthen Email Management," dated June of 2008, that basically addresses the inadequate email preservation procedures across government.

And, Mr. Chairman, I'd like to ask unanimous consent that this report be inputted into the record.

Chairman ISSA. Without objection, so ordered.

Ms. DUCKWORTH. Thank you.

Mr. Commissioner, I'd like to hear what steps you've taken or plan to take to ensure better electronic records-keeping at the IRS going forward.

Mr. KOSKINEN. Long before this arose, I asked earlier this spring when I arrived for us to take a look at what it would take to develop an email system that was much easier to search.

Right now, as I've noted, if you want to see anything from 90,000 employees, you've got to go to 90,000 hard drives.

I was told more recently that we had looked at creating, in effect, a broader-based server that would allow us to preserve emails, and that's the 10- to $30-million cost. We are reviewing that.

We are also going to review whether we can move for the National Records Act from a paper system to an electronic system, but that's part of the upgrade of the email system.

Ms. DUCKWORTH. Thank you.

On June 17, the National Archives and Records Administration sent a letter to the Office of Records and Information Management at the IRS regarding the loss of Ms. Lerner's emails. Is that correct?

Mr. KOSKINEN. That's my understanding. I have not seen the letter.

Ms. DUCKWORTH. Okay. So what they—what they're required to do, the National Archives and Records Administration, is required to request a report of investigation from any agency that has an unauthorized disposal of Federal records. Is that correct?

Mr. KOSKINEN. That's my understanding.

Ms. DUCKWORTH. Okay. It turns out that these requests from the Archives are very commonplace among Federal agencies and, according to the National Archives, they sent 92 similar requests to Federal agencies during the Bush Administration.

Were you aware of that?

Mr. KOSKINEN. I was not.

Ms. DUCKWORTH. You know, I believe that the Federal agencies should take these inquiries from the Archives very seriously.

Will you cooperate with their request for the IRS to further investigate this matter?

Mr. KOSKINEN. We would be delighted to do that. We cooperate with all investigations.

Ms. DUCKWORTH. And what steps has the IRS already taken to understand the circumstances around the loss of Ms. Lerner's documents?

Mr. KOSKINEN. I've testified at some length that we've reviewed all of the emails of Ms. Lerner and all emails subject to the search terms of the custodians that we've been working with to reconstitute as many emails as possible, and we've provided—or will provide 24,000 of those emails.

Ms. DUCKWORTH. So would it be accurate to say that, when—in April, when you found out that some of the emails had been lost, that your understanding was that the team was still going to try to recover as many of those emails that had been lost from her crashed hard drive, but that they would be located in other people's systems' hard drives, for example, if she sent an email from her to

another IRS official, that you could probably recover that email that was lost when her hard drive crashed because it still existed somewhere else. Is that correct?

Mr. KOSKINEN. That's correct, if it was in the other email of one of the 82 custodians and those were selected because they were the most—they were the operatives working in the exempt organization area.

Ms. DUCKWORTH. So in April, when you found out that her hard drive had crashed and it was unlikely that you would be able to recover from the lost emails, the IRS and the appropriate people—technical people in the IRS were still trying to recover as many of those lost emails as possible in one of those 82 other repositories. Correct?

Mr. KOSKINEN. Correct. And we're also continuing to produce her emails post the crash, the 43,000 that we're committed to produce.

Ms. DUCKWORTH. Okay. Thank you.

The IRS previously proposed reallocating $180 million in agency funds to sustain and replace its IT infrastructure.

Is it fair to say that these long-standing financial and budgetary issues have contributed to the current records retention challenges at the IRS?

Mr. KOSKINEN. It is true. It's our challenge of—as I say, we're still moving people off Windows XP onto Windows 7.

Ms. DUCKWORTH. Thank you.

I'm almost out of time. I just want to thank you so much for your continued public service.

I yield back, Mr. Chairman.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. I thank the chairman.

And, Mr. Koskinen, thank you for being here.

You said several times that Lois Lerner was very concerned that her emails be found and was attempting to do above-and-beyond efforts to achieve that. Am I correct?

Mr. KOSKINEN. That's correct.

Mr. WALBERG. You probably then could understand why there are some who might conjecture that Lois Lerner pled the Fifth wrongly, but pled the Fifth because she felt to answer might incriminate her and that incrimination could possibly come from the information that were in those emails.

Could you understand that?

Mr. KOSKINEN. Yes. But I have no way of knowing what her concerns are as to what exposure she might have.

Mr. WALBERG. And we never will, at least at this point, unless some of those emails can be found, because it's interesting that that took place.

Let me ask you: Have you fired anybody on your staff that didn't give you enough information so that you would have made that statement more accurate for us about information contained in emails that you couldn't provide to us, but now we find out that people knew that emails had been lost, but didn't tell you?

Mr. KOSKINEN. I have not fired anyone. No one in my staff, that I'm aware of, has committed any——

Mr. WALBERG. Nobody's been fired for not giving adequate information?

Mr. KOSKINEN. Mr. Walberg, there's no reason and there's no basis for considering firing.

Mr. WALBERG. Answer accurately and correctly and fully the Oversight Committee of Congress.

Mr. KOSKINEN. Yes. And, in fact, the purpose of that hearing was to talk generally about the investigation. Great lengths of that hearing were spent about productions in response to the subpoena, and the chairman and I talked at length about that. The Lois Lerner emails were then ultimately agreed upon as the next priority.

Mr. WALBERG. Can you understand why there's anger out there about this situation?

Mr. KOSKINEN. I can understand people's concerns about the fact that we do not have——

Mr. WALBERG. All the information.

Mr. KOSKINEN. —knowing whether we have all of her emails. I think we—as I say, last week the White House and Treasury provided emails.

Mr. WALBERG. And why it's so difficult for us to get to the bottom of it, because there isn't much help coming.

The President himself on May 15th said: It's inexcusable and Americans are right to be angry about it, and I'm angry about it. I will not tolerate this kind of behavior in any agency, but especially in the IRS, given the power that it has and the reach that it has into all of our lives. And he said: I'll do everything in my power to make sure nothing like this happens again by holding the responsible parties accountable.

Someone much more astute than I once said that the power—the ability or the power to tax is the power to destroy.

We've seen that, Mr. Koskinen. Before you came and took your position, we've seen people with First Amendment liberties being targeted by the IRS, the Agency with the power to destroy, and they attempted to do it. And now we can't get answers completely.

Let me go on further——

Mr. KOSKINEN. Sure.

Mr. WALBERG. —with something that you said to me back on March 26th in a hearing where you had indicated that you were trying to get to the bottom of the controversy.

And you said, "Congressman, just to make you comfortable"—and I don't know if we can have that up on the screen—"Just to make you comfortable, if there is a problem that I don't know about, then that is my fault, because that means that I haven't created a culture where problems and issues get raised from frontline workers and go easily and freely to the top."

Do you stand by your earlier statement to me on March 26th?

Mr. KOSKINEN. I do.

Mr. WALBERG. Are these issues still not getting raised to the top or are you withholding them from us?

Mr. KOSKINEN. These issues were raised over time. I've told you about that. And we reproduced a public record discussing all of those.

So I'm satisfied that, in regard to this issue the——

Mr. WALBERG. How many hard drives fail annually at the IRS?

Mr. KOSKINEN. I noted that, since January 1st, 2,000 have failed this year alone.

Mr. WALBERG. In your professional career, how many times has your hard drive failed?

Mr. KOSKINEN. My hard drive failed once.

Mr. WALBERG. Once.

Mr. KOSKINEN. The average for hard drive failures is 3 to 5 percent. That would mean, that with 90,000 employees, we would expect that we would have between 2 and—at 5 percent, we'd have 15,000——

Mr. WALBERG. Can it be really understood by our people, then, involved in this greatest investigation in the IRS's history that all of these people, several people, in fact, and especially the one at the center of this investigation, has a mysterious experience of a hard drive crash on this information, information that probably caused Lois Lerner to plead the Fifth?

Mr. KOSKINEN. I don't know if you can say probably or not. And I will tell you it's not a mysterious crash. As I say, we've had 2,000 thus far this year.

Mr. WALBERG. This is mysterious for the American people. They don't understand it. They're angry. We need to get to the bottom of it.

And, frankly, I think there is all sorts of prevarication going on, stonewalling, and I'm very disappointed in that.

I yield back.

Chairman ISSA. I thank the gentleman.

Mr. CHAFFETZ. Mr. Chairman?

Chairman ISSA. We now go to the——

Mr. CHAFFETZ. Mr. Chairman, can I ask unanimous consent to simply enter into the record the op-ed from the Chicago Tribune yesterday, "More Smoke at the IRS and Not Only From the Hard Drives"?

Chairman ISSA. Without objection, so ordered.

We now go to the gentleman from Nevada for 5 minutes.

Mr. HORSFORD. This hearing has been quite an embarrassment.

For over a year now, Republicans have alleged that the IRS was engaged in a conspiracy directed by or on behalf of the White House to target its political enemies, but neither this committee nor the Inspector General has identified any evidence to back up this allegation.

The whole charade—and, Mr. Chairman, you say that we're not allowed to ask about the motives of other members. Then, how about asking about the motives of the hearing itself—the integrity of the hearing itself, the fact that the chairman has continued to conclude the outcome without allowing the information to be presented in an impartial and complete way so that the members can do our job as we are elected to do?

And this is a serious committee that has serious responsibilities. And I have said before that I want to get to the bottom of things, that there was wrongdoing at the IRS and that we should fix it, but we can't fix it when the House Republicans continue to establish unfair, unsubstantiated, and unfounded allegations against

what we do have, which are the facts. So you may be entitled to your own opinion, but you're not entitled to your own facts.

Commissioner, have you, since you've been in this position, identified any evidence that IRS employees were part of a conspiracy to intentionally target the President's political enemies?

Mr. KOSKINEN. I'm not aware of any evidence.

Mr. HORSFORD. Thank you.

This is the same answer that we've received now from 41 other witnesses interviewed by this committee, including senior officials at the IRS, the Treasury Department, and the Department of Justice.

The senior group manager in Cincinnati told us that it was his employees who first came up with the inappropriate screening criteria in an attempt to treat similar cases consistently.

Is that your understanding of how that process came about?

Mr. KOSKINEN. That's my understanding, although I would say I haven't done any independent investigation.

Mr. HORSFORD. This employee told us that he is a conservative Republican. In fact, none of the 41 individuals told the committee that the White House directed, suggested or even knew about their conduct when it was going on.

The Inspector General, Russell George, told us the same thing, that he identified no evidence of White House involvement. He confirmed that IRS employees in Cincinnati, "developed and implemented inappropriate criteria."

Is that your understanding as well?

Mr. KOSKINEN. That's my understanding from what I've read in the newspapers and heard in hearings. I have not myself independently determined that.

Mr. HORSFORD. When the Inspector General testified before the Ways and Means Committee on May 17, 2013, the Inspector General was asked by Ranking Member Sandy Levin whether he had found any evidence of political motivation in the selection of the tax-exempt applicants.

In response, the Inspector General answered, "We did not, sir."

Commissioner, do you have any reason to doubt the Inspector General's findings?

Mr. KOSKINEN. I do not.

Mr. HORSFORD. In addition to all of these findings, on June 18, 2014, the White House sent a letter to Ways and Means Chairman Dave Camp.

This letter explained that the White House also searched its records and did not identify any emails between Ms. Lerner and any member of the Executive Office of the President from January 2009 to 2011.

I ask unanimous consent to enter this letter from the White House dated June 18, 2014.

Chairman ISSA. Without objection, so ordered.

Mr. HORSFORD. Allegations that the White House directed or subliminally coerced the IRS to target applicants for tax-exempt status are unfounded, and I hope that we put these reckless accusations to rest and finally begin focusing on the facts.

I agree—one statement that I agree with the other side about, the public is upset. Part of the reason they're upset is the behavior

of the chairman and this committee of how they have politicized this issue.

When I listen to my constituents——

Chairman ISSA. The gentleman's time has expired.

Mr. HORSFORD. —what they tell me, Mr. Chairman, is that they're——

Chairman ISSA. The gentleman's time has expired.

Mr. HORSFORD. —sick and tired of this process being used against them. We are one Nation, and it's time for us to act like it.

Chairman ISSA. I thank the gentleman.

I now ask unanimous consent that the article dated February 4th of this year by Josh Hicks be placed in the record, in which it shows that the bonuses paid to IRS employees in fiscal year 2012 were $89 million as opposed to $10 million it would take to maintain critical documents.

With that, we go to the gentleman from Arizona, Mr. Gosar.

Mr. GOSAR. Thank you, Mr. Chairman.

I appreciate the gentleman's comments prior to me.

I really want to ask you: Do you understand, really, the gravity of what America feels in regards to the IRS?

Mr. KOSKINEN. Yes. I think, if the question goes—and the earlier one—about people being upset about the IRS using inappropriate criteria, any indication that the IRS is anything other than apolitical are issues that are serious that we need to address and that I am committed to addressing.

Mr. GOSAR. I love that.

Are you aware that, in the articles of impeachment of Richard Nixon, in Article II, item number 1, "He has actingly, personally and through his subordinates and agents endeavored to obtain through the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner."

Are you aware of that?

Mr. KOSKINEN. I do recall that from years ago.

Mr. GOSAR. That's why it's serious, I mean, because this is—I mean, if there's one thing I can tell you, that's a dark light on our history.

And we talked about missing data, once again, missing data in the Richard Nixon data tapes. Some similarities. Once again, getting information.

So another investigation that we have here, it takes Judicial Watch to get information that was supposed to be given to this committee, yet not given to it.

So you're aware of all this. Right?

Mr. KOSKINEN. I'm not aware of the Judicial Watch problem.

Mr. GOSAR. Do you read the paper?

Mr. KOSKINEN. I do read the newspaper. Yes.

Mr. GOSAR. Then, you should be aware of it because that's how we came about in regards to Benghazi and the select committee.

That was the kicker because we didn't have that information until we had Judicial Watch get it for us.

So let's go back to the mindset here. Because I'm a dentist impersonating a politician.

And you're an attorney. Right?

Mr. KOSKINEN. I'm an attorney. Right. Gave up practice years ago.

Mr. GOSAR. Well, but, you know, the fundamentals never leave you. Right?

Mr. KOSKINEN. One would hope so.

Mr. GOSAR. And you're also a businessman?

Mr. KOSKINEN. Yes. Spent 20 years in the private sector.

Mr. GOSAR. So when we have a problem—and you came into this forest fire, I'm going to call it—you had your eyes wide open. Right?

Mr. KOSKINEN. Yes, I did.

Mr. GOSAR. So you knew you were going to have lots of scrutiny?

Mr. KOSKINEN. Yes. I understood that this was a high-profile challenge.

Mr. GOSAR. So you'd really want to dot your I's and cross your T's. Right?

Mr. KOSKINEN. Yes.

Mr. GOSAR. Dot your I's and cross your T's.

Mr. KOSKINEN. That's always actually been my approach to everything I've done in 45 years.

Mr. GOSAR. So—and a big problem.

You've also said that you have 90,000 employees. Right?

Mr. KOSKINEN. Correct.

Mr. GOSAR. So, obviously, you divide and conquer the problem. Right?

Mr. KOSKINEN. I'm not sure I'd approach it quite that way.

Mr. GOSAR. So what you do is you have people that you trust formulate battle plans in a consensus aperture and then you hold them accountable. Right?

Mr. KOSKINEN. Actually, I spent a lot of time going to the 25 largest offices, talking to 10,000 IRS employees, primarily frontline workers, to hear from them as well.

Mr. GOSAR. So let me ask you a question coming into this.

Were you bothered by Lois Lerner's conduct? I mean, you had to know about it. Here's a lady that seeds a question in an audience.

That's kind of odd, wouldn't you say?

Mr. KOSKINEN. It's not the normal way people would behave. I would think that's right.

Mr. GOSAR. Once again, you know, we're talking about the IRS and we're seeding a question out there. That's really kind of odd.

And what was your, what did you take for her comment sitting here where you sat and taking the Fifth, but not really taking the Fifth? What did you think about that? Was that kind of odd?

Mr. KOSKINEN. I didn't have any thought. She's got her own lawyers. I don't know her——

Mr. GOSAR. Well, let me ask you this as an attorney: Is that typically how the Fifth Amendment is taken?

Mr. KOSKINEN. I'm not aware of the Fifth Amendment practices, whether that's the way it's done or not.

Mr. GOSAR. Have you seen anybody else take the Fifth that way?

Mr. KOSKINEN. Actually, I don't think I've ever seen anybody else take the Fifth.

Mr. GOSAR. Wow. That's kind of a nice scapegoat.

Because that's really odd. I mean, I'm just a dentist and I've seen a number of people take the Fifth and I've never seen anybody take the Fifth like that. And that's pretty contentious.

In fact, my good friend over here, Trey Gowdy, had a problem with the way she took the Fifth, and I trust his interpretation of the Fifth pretty well.

But it seems to me that, if you had this management style, you would know exactly the precipitant person who told you about the problem with the hard drive.

Mr. KOSKINEN. There are at least five different people who report to me about this situation. We have a major effort going on.

Mr. GOSAR. Oh. But, once again, it seems, if they're reporting to you, you're asking them a question and holding them responsible. Right? So you should know.

Do they all have the same task?

Mr. KOSKINEN. There are four or five people who are actually involved regularly in this production effort. I get information from several different people.

Mr. GOSAR. My time has expired, and I've run out of time.

I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Tennessee, Mr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman.

Thank you, Mr. Koskinen, for appearing before us today.

I know it's getting late and there's been a lot of repetition, but let's talk a little bit about revenues again.

You had a discussion earlier about the problem with backing up emails in the IRS. And it was because why?

Mr. KOSKINEN. The problem is because, basically, the server—IRS servers can only hold so much data.

Mr. DESJARLAIS. Okay. And the reason they haven't been upgraded?

Mr. KOSKINEN. Because, I understand, the cost.

Mr. DESJARLAIS. Okay. And you had a number earlier that it would take to upgrade those systems.

Mr. KOSKINEN. To actually turn it into an electronic system with a broader server, it would be somewhere between 10- to $30 million, depending on, you know, the software and what you wanted to do with it.

Mr. DESJARLAIS. Now, the chairman mentioned earlier how many bonuses were given by the IRS to its employees in 2012.

Did you know what that number was?

Mr. KOSKINEN. I did not until I heard the chairman say it.

Mr. DESJARLAIS. So $89 million were given in bonuses to employees at the IRS just in 2012 alone.

You've talked about how the IRS has been underfunded now for at least 4 years. If you want to extrapolate that math, I would say that we probably could have upgraded the equipment so the IRS could do a better job.

Would you agree?

Mr. KOSKINEN. There are 90,00 employees. So at $89 million, it's less than $1,000—or about $1,000 an employee.

Mr. DESJARLAIS. Did you know that the IRS——

Mr. KOSKINEN. We could fund a lot if we didn't pay any bonuses, we gave no pay raises, actually continued to shrink the organization. We'll have more money, but that's not exactly what you would design as the best way to organize the Agency.

Mr. DESJARLAIS. Did you know that a million dollars in bonuses were given to IRS employees who owed back taxes?

Mr. KOSKINEN. That issue has come up more recently. And we actually have a program. And we're negotiating an agreement with the union because we have a commitment that every IRS employee will be current in their taxes. And even if you're 3 or 5 days late, you get a letter of admonishment.

Mr. DESJARLAIS. You probably wouldn't do that for the rest of America, though, would you?

Mr. KOSKINEN. What? Hold everybody to——

Mr. DESJARLAIS. The same standards as yours.

Mr. KOSKINEN. —paying their taxes on time?

Pardon.

Mr. DESJARLAIS. The same standards as yours? You would give bonuses to people for not paying taxes?

Mr. KOSKINEN. As we go forward, anyone who willfully doesn't comply with——

Mr. DESJARLAIS. Oh. Going forward. All right.

Mr. KOSKINEN. Okay.

— won't get a bonus. And we've negotiated that with the union.

Mr. DESJARLAIS. Okay. I don't think that necessarily sets well, but that's fine.

Do you think that the IRS improperly targeted conservative groups?

Mr. KOSKINEN. My understanding is what I know. And I support the IG's report. It said in his report improper criteria were used. The issue has been whether that then turns into targeting or not, the earlier reference to the Washington Post.

But the report itself says improper criteria were used. And we have taken all of the IG's recommendations, accepted them, and are implementing them. So our goal is for this not to happen again.

Mr. DESJARLAIS. During the hearing in March, you testified that you had never referred to the IRS as targeting. The Washington Post found that this statement was also not true.

Do you want to revise that statement?

Mr. KOSKINEN. No. They found an occasion once in the past where I had used the word "targeting" once. They also noted that the IG Had himself used the word "targeting."

And my point was the IG Report says improper criteria. But once I did use the word "targeting"—I've now mentioned it in this criteria again, but, again, the IG's report was improper criteria.

Either way, my point very strongly has been from the start, the American public deserves to feel that there will not be improper criteria used, that people will not be selected for——

Mr. DESJARLAIS. Were you ever coached on how to say that? Did anyone ever coach you to say it that way as opposed to targeting? Does it sound more palatable?

Mr. KOSKINEN. No. That's what the——

Mr. DESJARLAIS. No one ever coached you?

Mr. KOSKINEN. No. That's what the IG Report says.

Mr. DESJARLAIS. So no one at all ever told you not to call the IRS conduct "targeting"?

Mr. KOSKINEN. Nobody tells me what to say. I actually am responsible for what I say. People talk about a lot of different things. The IG Report said inappropriate criteria were used. That's why I referred to it in that hearing.

Mr. DESJARLAIS. So you're the kind of guy that believes leadership starts at the top?

Mr. KOSKINEN. I believe it starts at the top, and I believe the leader is held accountable for what happens in his Agency.

Mr. DESJARLAIS. So the IRS acted inappropriately. We can't get to the bottom of this. We have lost emails.

Do you think it's time that we ask for a select committee or a special prosecutor?

Mr. KOSKINEN. No.

Mr. DESJARLAIS. You wouldn't? Why not?

Mr. KOSKINEN. There are six—now seven investigations going on. My position has been that, once we get somebody to write a report—and particularly in this case where the IG Completes his review and issues a report on this very issue—we can all then decide what the appropriate next step is.

To have yet another investigation start, especially while the IG Is going forward, seems to me a waste of money, as I've said in the past.

Mr. DESJARLAIS. Well, you're the face of the IRS right now, and right now that face doesn't look too good.

Don't you think it would be better to clean the image of the IRS for the people who are sitting—watching this hearing tonight?

Mr. KOSKINEN. We'll clean the image of the IRS when we hear from the Inspector General and see whether he finds that there was any malfeasance at all.

Mr. DESJARLAIS. Yeah. Okay. Well, my time has expired. And I think that we owe the people a little better than what we're seeing here.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Commissioner, you're an attorney. Can you explain for our fellow citizens what the phrase "spoliation of evidence means."

Mr. KOSKINEN. I have no idea what that means.

Mr. GOWDY. Well, I'm going to help you with it. Okay?

"Spoliation of evidence" is, when a party fails to preserve evidence, there's a negative inference that the jury can draw from their failure to preserve the evidence.

You with me?

Mr. KOSKINEN. Gotcha.

Mr. GOWDY. If you destroy documents, the jury can infer that those documents weren't going to be good for you. If you fail to keep documents, the jury can infer that those documents were not going to be good for you.

You've heard the phrase "spoliation of evidence," haven't you?

Mr. KOSKINEN. I can't recall ever hearing it.

Mr. GOWDY. It's true in administrative hearings, civil hearings, criminal hearings.

Mr. KOSKINEN. I practiced law once 45 years ago, gave it up for Lent one year and never went back.

Mr. GOWDY. All right. Well, let me tell you what you would have found if you had stuck with it.

When a party has a duty to preserve evidence or records and they fail to do so, there is a negative inference that is drawn from their failure to preserve the evidence. It's common sense. Right?

If you destroyed something, the jury has a right to infer that whatever you destroyed would not have been good for you or else every litigant would destroy whatever evidence was detrimental to them. Agreed?

Mr. KOSKINEN. I'm not sure. I think, if you destroy the evidence and people could prove it, it wouldn't be a good thing for your defense.

Mr. GOWDY. Well, no. It's worse than that.

The jury can draw and they're instructed they can draw a negative inference.

Mr. KOSKINEN. All right.

Mr. GOWDY. And that's true if a taxpayer is being sued by the IRS administratively, civilly or prosecuted criminally and they fail to keep documents. The jury can draw a negative inference from the fact that they didn't keep receipts or emails or documents.

So if it's true and it applies to a taxpayer, it ought to apply to the IRS as well. Agreed?

Mr. KOSKINEN. Is this a trial? Is this a jury? Is that what you're referring to?

Mr. GOWDY. I said administrative, civil or criminal. If you want to go down that road, I'm happy to go down it with you, Commissioner.

Mr. KOSKINEN. I just——

Mr. GOWDY. In fact, I'm glad you mentioned it.

You have already said multiple times today that there was no evidence that you found of any criminal wrongdoing. I want you to tell me what criminal statutes you have evaluated.

Mr. KOSKINEN. I have not looked at any.

Mr. GOWDY. Well, then, how can you possibly tell our fellow citizens that there's no criminal wrongdoing if you don't even know what statutes to look at?

Mr. KOSKINEN. Because I've seen no evidence that anyone consciously——

Mr. GOWDY. Well, how would you know what elements of the crime existed? You don't even know what statutes are at play. I'm going to ask you again.

Mr. KOSKINEN. I think——

Mr. GOWDY. What statutes have you evaluated?

Mr. KOSKINEN. I think you can rely on common sense that nothing I have seen looks like——

Mr. GOWDY. Common sense? Instead of the Criminal Code, you want to rely on common sense? No, Mr. Koskinen. You can shake your head all you want to, Commissioner.

You have said today that there's no evidence of criminal wrongdoing, and I'm asking you what criminal statutes you have reviewed to reach that conclusion.

Mr. KOSKINEN. I have reviewed no criminal statute.

Mr. GOWDY. All right. So you don't have any idea whether there's any criminal conduct or not because you don't know the elements of the offense?

Mr. KOSKINEN. I've seen no evidence of wrongdoing.

Mr. GOWDY. Well, that's very different than no evidence of criminal misconduct, Commissioner.

Mr. KOSKINEN. Well, it seems to me, if you haven't done wrongdoing, it'd be pretty hard to argue that you've had some criminal violation if you did nothing wrong.

Mr. GOWDY. Well, what did Lois Lerner mean when she said, "Perhaps the FEC will save the day"?

Mr. KOSKINEN. I have no idea what she meant.

Mr. GOWDY. What did she mean when she said, "We need a project, but we need to be careful that it doesn't appear to be, per se, political"? You don't think that's a potential violation of 18–242?

Mr. KOSKINEN. I have no idea if it——

Mr. GOWDY. Because you haven't looked at 18–242. And you don't have any idea, Commissioner—you don't have any idea whether there's any criminal wrongdoing or not.

Mr. KOSKINEN. With regard to the production of the evidence, the production of Lois Lerner emails, I have seen no evidence of wrongdoing.

What else went on——

Mr. GOWDY. Well, if there were, that would be a separate criminal offense.

Mr. KOSKINEN. What else went on with Lois Lerner I said in the past——

Mr. GOWDY. So what you're saying is you don't have any idea whether she engaged in criminal wrongdoing? You're just saying that you did not engage in any with respect to the emails.

Mr. KOSKINEN. I haven't seen any wrongdoing with regard to the production of Lois Lerner emails.

Mr. GOWDY. But you are not saying there was no criminal wrongdoing with respect to the targeting of conservative groups? I want to be very clear. You are not saying that?

Mr. KOSKINEN. I've made no judgments about that.

Mr. GOWDY. So you disagree with the President when he says there's not a smidgen of corruption?

Mr. KOSKINEN. There are people who have been making judgments both sides about whether there were——

Mr. GOWDY. And you know what? I'm not one of those.

I'm just simply saying we will never know because you didn't keep the evidence. The evidence was spoliated. And whether it's negligent, whether it's intentional, whether it's reckless, we still don't have the evidence, Commissioner.

Mr. KOSKINEN. Well, you have the evidence that there's no emails from the White House. You have all of the Treasury emails. So the basic premise that this was an argument and a conspiracy driven by the White House does not——

Mr. GOWDY. No, sir. You're wrong about that. You're wrong about that. You're repeating a talking point from our colleagues on the other side that we're obsessed with the White House.

It was Jay Carney who perpetuated the myth that, "It was two rogue agents in Ohio. It wasn't any of us."

Was that accurate? Was that first initial line of defense that this is just two rogue agents in Ohio—was that accurate, Commissioner?

Mr. KOSKINEN. Not that I know of.

Mr. GOWDY. All right. So that wasn't accurate, and that came from the White House.

Who says there's not a smidgen of corruption? Who said that, Commissioner?

Mr. KOSKINEN. My understanding is that was the President.

Mr. GOWDY. It was the President.

So that's Jay Carney and the President both inserting themselves into the IRS scandal.

And you want to blame us for bringing the White House into it?

Mr. KOSKINEN. I haven't blamed you at all.

Mr. GOWDY. You just did, Commissioner. You just did.

Mr. KOSKINEN. Well, it's a good argument.

All I said was the White House has revealed there were no Lois Lerner emails. Treasury has given you all of their emails.

So to the extent that the argument was that Lois Lerner was conspiring and emailing back and forth, thus far, I haven't seen any——

Mr. GOWDY. Well, you can be engaged in a conspiracy that doesn't include the White House.

Mr. JORDAN. [presiding.] Gentleman, time is up.

Mr. KOSKINEN. Thank you, sir.

Mr. JORDAN. Well, I was wanting to let him go, but the guy beside me kept grabbing me.

The gentleman from Texas is recognized.

Mr. FARENTHOLD. Thank you very much, Mr. Commissioner.

And there's a lot of passion on this, especially on my side of the aisle. I was at home this weekend and it's all anybody was talking about.

The American people don't believe for a second that this stuff was lost accidentally. Mike Richline, a friend of mine who used to work at my computer consulting company, still in the business, emailed me, "Blake, there's no way this could happen. You've got to do something about it."

And that's the frustration that I'm getting from the American people. And if we came back to you and said, "Oh, I don't have the resources to save all the records to comply with the IRS tax law," we wouldn't—I wouldn't—y'all wouldn't let me skate.

So I don't think you guys ought to be able to skate on the resource issues. And I'll get back to that in a second.

In the Clinton Administration, you worked in the OMB, didn't you, and part of your job was to oversee the executive branch recordkeeping and these Federal Records Act-type requirements? Did you not do that?

Mr. KOSKINEN. That was actually done by the Office of Information and Regulatory Affairs.

Mr. FARENTHOLD. But were you involved in that when you were with the Clinton Administration?

Mr. KOSKINEN. I was not involved personally, but I was the deputy director for management.

Mr. FARENTHOLD. Okay. So are you familiar with the Federal Records Act?

Mr. KOSKINEN. I am familiar with the Federal Records Act.

Mr. FARENTHOLD. It says the head of each Federal agency shall make and preserve records containing adequate, proper documentation of the organization functions, policies, decisions, procedures, and essential transaction of the agencies and goes on along those lines.

Your IRS manual says the way y'all do that is to print out the emails. Right?

Mr. KOSKINEN. The official records—any official record.

Mr. FARENTHOLD. Anything that's an official record.

Who decides what's an official record?

Mr. KOSKINEN. The employees are provided background information, and then they make a judgment as to whether it's an official record or not.

Mr. FARENTHOLD. All right. And so, if you're doing something that you might believe is questionable, you might lean toward not deciding that——

Mr. KOSKINEN. It's possible. But we've trained over 2,000 information resource coordinators across the Agency to continue to oversee and encourage and make sure that we comply.

Mr. FARENTHOLD. All right. So in response to some earlier questions, you indicated in going through Lois Lerner's emails that you used search terms. Is that correct?

Mr. KOSKINEN. There were—search terms were used for all of the searches in response——

Mr. FARENTHOLD. All right. So how do you use search terms on the hard-copy emails that she would have been required to print out from that lost hard drive?

Has somebody gone through all of her files or the files of people she routinely corresponded with to search those hard-copy records?

Mr. KOSKINEN. Yes.

Mr. FARENTHOLD. All right. Don't you think it would have been easier and saved some money if you'd have had that in electronic form?

Mr. KOSKINEN. No doubt.

Mr. FARENTHOLD. All right. Let me—we heard from the other side that there's an issue with respect to the resources there.

Now—all right. I did this on my cell phone. And let me find my notes here. Because you've got to—you guys got a lot of people good at math at the IRS. So I'm going to assume you guys could figure this out. All right?

So let's say your procedure is to print the records out. All right. So I went on to—did a Google search, said, "What's the average size of a Word document?"

And they said: Well, you can get 64,782 Word documents of about 9 pages per gigabyte. A terabyte is 1,000 gigabytes.So that's 64.8 million documents. All right?

Now, I went on Amazon and saw you could buy a terabyte hard drive for $59—about $59. Buy two of them. So, you know, $120.

The statistics in the industry, average cost to print a page of documents, it's about 5 to 8 cents when you include paper and toner and wear and tear on the printer.

So if you do that math and multiply it out, it looks to me like, for every terabyte of storage you added to the email, you'd save $21 million in printing fees, not to mention the greenness of it.

How come some of the mathematicians at the IRS didn't realize, "Hey, we go out and"—all right. Let's say you've got to buy a computer and hook it up. All right. So let's spend 5 grand on a backup system for our email and save $21 million?

Mr. KOSKINEN. You've got 90,000 employees. Get one of those for each employee.

Mr. FARENTHOLD. Well, each employee is not going to have millions of pages of emails and documents. You could do it on a system-wide basis.

Mr. KOSKINEN. Not in our system you can't.

Mr. FARENTHOLD. It's not stored on an exchange server? Can't you get a Barracuda email backup that you see advertised on TV that captures all the email?

Mr. KOSKINEN. Well, that's one of the things when we looked at it I'm told the estimate was $10- to $30 million to create a server that would hold all of that.

Mr. FARENTHOLD. All right. $10 million. $21 million to print. You've already saved $10 million.

Mr. KOSKINEN. If we're printing 21 million dollars' worth of stuff, probably.

Mr. FARENTHOLD. Well, if you're—and you'd be—no question you're complying with the Federal Records Act because you're saving everything. You wouldn't be relying on the judgment. So this lack of resources thing doesn't fly.

I'm sorry. I ran out of time. I had some other questions.

But I will yield back.

Mr. JORDAN. Thank the gentleman.

The gentleman from Kentucky is recognized.

Mr. MASSIE. Thank you, Mr. Chairman.

Mr. Chaffetz asked why the 6-month backup wasn't applied to Lois Lerner's emails, and you suspected that it was too much effort.

Do you have any emails to indicate there was a discussion about going to the backups to try and get hers?

Mr. KOSKINEN. There's none that I know of.

Mr. MASSIE. Have you looked for any——

Mr. KOSKINEN. I'm not——

Mr. MASSIE. —to see what the IT staff—what sort of effort—you mentioned they made an effort to retrieve the hard drive, but what about the software effort on the servers?

Mr. KOSKINEN. They actually—as far as I understand, her email was in her—from April on, she had——

Mr. MASSIE. Right. But there was some on the servers.

Mr. KOSKINEN. —in her email account, she had that email. They then were focused primarily on the hard drive, which is where she had archived her emails.

Mr. MASSIE. Right.

Well, that hard drive, you're saying, is gone. And I'll accept that it's gone.

But what about the software backups? You don't see any evidence of an email trail where the IT department was trying to go to the servers to get those emails?

Mr. KOSKINEN. No. No. They went—they had on the server emails from April forward. In terms of whether they went and actually went to the backup——

Mr. MASSIE. I understand that.

Mr. KOSKINEN. —backup tapes, I haven't seen anything about the backup tapes.

Mr. MASSIE. Her hard drive crashed in April 2011.

Mr. KOSKINEN. I'm sorry.

In June 2011. We have emails from April 2011.

Mr. MASSIE. Okay. All right. I'm on to another question.

Was that hard drive replaced?

Mr. KOSKINEN. Yes.

Mr. MASSIE. Are you in possession of that hard drive?

Mr. KOSKINEN. The Inspector General has it.

Mr. MASSIE. So could we look at that hard drive to see if she was in the habit of deleting emails?

Mr. KOSKINEN. You're welcome to ask the Inspector General for it. He's got it.

Mr. MASSIE. But, I mean, wouldn't it be possible? Because you're collecting emails from her associates. So you know which emails she sent and retrieved.

Did it occur to you to look on her hard drive to see if she purposely deleted any?

Mr. KOSKINEN. No. We haven't looked at that. But we do have—as I say, we've produced all of these emails. It'd be possible to take a look at that.

Mr. MASSIE. So next question.

You said there's about a 3 to 5 percent chance that a hard drive will fail. That's in a year. You testified to that last week and, also, tonight. Right?

Mr. KOSKINEN. That's right. That's what I'm advised is the industry standard.

Mr. MASSIE. So that's about a 1 in 30 chance if it were 3 percent.

But let's see. Chairman Camp sent a letter to the IRS demanding the IRS explain allegations of targeting Tea Party and other groups, and her hard drive failed within 10 days, just doing a little math here.

The probability of that failing in 10 days instead of a year is actually 1 in 1,000.

Mr. KOSKINEN. Well, that's not the way—that's not the way probability works.

Mr. MASSIE. I understand.

Mr. KOSKINEN. Every day——

Mr. MASSIE. A lot of bad things could have happened. So maybe it was 1 in 100 or 1 in 10 that something bad happens.

Mr. KOSKINEN. The way probability works is it's the same probability every day. It's like, when you flip a coin, if it lands heads 10 times in a row——

Mr. MASSIE. Yes. You can tell me how probability works. I took the class at MIT. It's about 1 in 1,000 that it would fail within the 10 days that she received that letter.

Mr. KOSKINEN. We must have taken a different probability class.

Mr. MASSIE. I think so.

So can you tell me the timing of the other hard drives that failed that were her associates? Were there any that failed in that same time period or near that?

Mr. KOSKINEN. I don't know. But we've got—they're pursuing that, and I haven't—I don't know what the list looks like.

Mr. MASSIE. Because if another one failed, one of her associates within that same 10 days, that means it's a 1 in 1 million probability that two hard drives failed with somebody dealing with this case in that 10-day window if there's a 3 percent annual probability.

Mr. KOSKINEN. As I said, we're investigating that. We'll provide you a full report, including the names and hard drives, when they failed and whether emails were lost as a result of the failure.

Mr. MASSIE. Correct.

And notice I am not questioning your integrity.

Mr. KOSKINEN. I appreciate that.

Mr. MASSIE. We're talking about numbers here.

Mr. KOSKINEN. Right.

Mr. MASSIE. I do, though, sort of question your judgment a little bit about not sharing this bad information with us.

You had some suspicion in February and then in March that maybe all the emails might not be retrievable. There's a saying that bad news never gets better with age, never improves with age.

And what I want to ask you now is: Are there any other anomalies in the data or in the retrieval of emails that you can think of now so we can avoid having a second hearing on this in 6 months?

Mr. KOSKINEN. That's a fair question, a good question.

I'm not aware of any.

Mr. MASSIE. Okay. So there's nothing like somebody came to you——

Mr. KOSKINEN. Other than we're pursuing the other custodians.

Mr. MASSIE. Right. The other eight hard drives that have failed.

Mr. KOSKINEN. Right. That's what we knew last week. We're still looking. I don't know what the final number will be.

Mr. MASSIE. Okay. So you understood my question?

Mr. KOSKINEN. I understand your question.

Mr. MASSIE. A hint of bad news that was similar to the bad news you had in February, I'm asking you to just share it now.

Mr. KOSKINEN. And I've said I do not know of any other bad news, as you put it.

Mr. MASSIE. Okay. One final question.

If we had a flat tax or a fair tax, would we be here today?

Mr. KOSKINEN. No. I'm a big supporter of tax simplification. I support Chairman Camp's attempt to move that dialogue forward. I'm prepared to be as helpful as I can.

Mr. MASSIE. I do, too. Thank you very much.

Mr. JORDAN. The gentleman from Kentucky with several patents and a degree from MIT in engineering made some great points.

We'll now go to the gentleman from Georgia.

Mr. COLLINS. Thank you, Mr. Chairman.

I appreciate that. I am not a student of MIT. I have three degrees ranging from a bachelor's degree, to a theology degree, to a law degree.

And this has been an amazing story. I sat here in front just a few weeks ago, relative time frame, and I asked you, you know, and just said without any definition can we provide all the things you agreed to.

But when you just take a step back, this has just got to be—I have a 15-year-old that I love dearly. He's different than my other two children because my 15-year-old has an active imagination. His active imagination can lead you on some pretty amazing trips.

And let's just think about this for just a moment. You have an agency, supposedly, in Cincinnati that decides on its own, just sua sponte—just say, "We're going to start looking into certain files. By the way, then, we don't tell Washington. We don't let anybody else know," all those pretty well set the fact that that was probably not accordance to good policy.

When the chairman of our—one of our committees makes an inquiry concerning this kind of information, a hard drive fails. 2 weeks later all of a sudden then Cincinnati decides to tell that we have an issue.

We move forward in this progression, and we have seen the Fifth taken, we've had evidence come here when you said we're going to have— you know, all the evidence, all of the facts, presented. And, again, it's still sort of hard to believe that even it should have at least come up, "I'll produce all that I have. But, oh, by the way, we've got a problem."

It also seems hard to believe, as you go through this whole story, that when the Inspector General was going through this whole thing, nobody seems to have told him, "Oh, by the way, we're missing some emails."

According to him——

Mr. KOSKINEN. That's right. But nobody that I know knew that was dealing with the Inspector General they were missing emails.

Mr. COLLINS. But we're investigating—but, at that time, it was investigating this whole thing, which Ms. Lerner was a big part of.

Mr. KOSKINEN. Correct.

Mr. COLLINS. Okay. So, again, I guess, as I go back to my 15-year-old here, at a certain point in time, I have to just look at him and I have to say, "Cameron, at a certain point in time, the load you're carrying in the bull in the back of the truck don't add up anymore and nobody believes it."

It's a bad position for you. I would hate to be in your position. You've had an extended life of great service to this country.

But what is really troubling and—for the people in the 9th district of Georgia, whether you figure probabilities or not, they have a pretty good meter, and the meter right now on both—really, on both Democrats I know and Republicans I know has just gotten full.

This story is just becoming more implausible as it goes. It crashes at a certain time. We can't find it at a certain time. No one was told about it at a certain time.

I'm going to take you seriously that you really take responsibility for your job at the IRS. Is that correct?

Mr. KOSKINEN. Yes.

Mr. COLLINS. And you take responsibility for the custodians of the records because you're the man at the top, as you said before?

Mr. KOSKINEN. Correct.

Mr. COLLINS. Then, did you notify the archivist when you learned of the destruction of Ms. Lerner's emails earlier this year?

Mr. KOSKINEN. It was not a destruction of her emails. It was——

Mr. COLLINS. Or loss of.

Mr. KOSKINEN. It was a loss of emails. I did not.

Mr. COLLINS. Okay. And that is supposed to be.

Now, let me ask you this. In Ms. Lerner's emails that you found out that we may not be able to obtain—you've talked about this before. Some things are supposed to be kept. Some things are not supposed to be kept.

If you knew that there were some emails you might not could have found, there probably or possibly could have been emails in there that should have been kept under the Records Act. Correct?

Mr. KOSKINEN. If there were emails to be kept under the Records Act, they would have been printed out. The responsibility is, if you have an email that's a record, you print it out in hard copy. It's an archaic system, but that's the system.

Mr. COLLINS. But you can't say—especially if there was a possibility of something not right, you can't have—you cannot sit here and say that Ms. Lerner would have kept or printed off emails she would not have wanted to be kept. Correct? If you can, then there's a whole line of questions a whole lot of people are going to start coming back for.

Mr. KOSKINEN. My understanding is every employee is supposed to print records of—that are official records on hard copy and keep them. She had hard-copy records. I don't know whether anything that was lost was an official record or not.

Mr. COLLINS. So it would be a matter of then just caution—or prudence that you should have probably told the archivist this?

Mr. KOSKINEN. No. I'm supposed to tell the archivist if there's been a destruction of records.

Mr. COLLINS. Well, a hard drive destroyed, would that not qualify as destruction or are we back to parsing terms again?

Mr. KOSKINEN. No. This is about her—her archives for record purposes are hard copies printed out of emails.

Mr. COLLINS. That you know of.

Mr. KOSKINEN. I don't know—you know, that's what she was supposed to do.

Mr. COLLINS. But, again—but, again——

Mr. KOSKINEN. Whether she did it or not I don't know.

Mr. COLLINS. —I'm trying to take it off of you.

What you know of, but in a sense, where you've lost it and it's since been destroyed, no way to go back and find—the hard drive was destroyed. Only what was printed was left.

There's no way for you to tell if you should or should not have told the archivist. Correct?

Mr. KOSKINEN. Correct.

Mr. COLLINS. So, in prudence, you should have told the archivist. Would that not be true?

Mr. KOSKINEN. I could do that. Yes.

Mr. COLLINS. Mr. Koskinen, again, this is a long story. The people are just looking for the truth. And there are a lot of, probably, parents and nonparents and grandparents out there who've trailed the story this long together and they just don't understand.

They don't get it because they don't get the same—they can come with a story at the IRS and the IRS would just basically say, "We don't want the story. We don't care how much you're broke. We don't care how much you couldn't afford to keep it. We just want the records that you're supposed to provide."

Mr. KOSKINEN. Right. And——

Mr. COLLINS. This is a sad trail down a wrong road.

Mr. Koskinen, your service has been good. Unfortunately, you're running into a dead end, and the American people are tired of it.

Mr. Chairman, I yield back.

Chairman ISSA. [Presiding.] The gentleman yields back.

We now go to the gentleman Mr. Massie.

Mr. KOSKINEN. We've had him already.

Chairman ISSA. You've already gone?

Mr. MASSIE. Yep.

Chairman ISSA. Thank you. My order here——

Mr. KOSKINEN. It was an interesting conversation, but we're done.

Chairman ISSA. Well, he may say again. You never know.

We now go to Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman. And thank you for your patience.

So let me follow up on Mr. Collins' line of questioning.

The Federal Records Act requires emails to be part of the record to be printed out. Is that correct?

Mr. KOSKINEN. Yeah. If the email is a record, it should be printed out in hard copy, is the IRS policy.

Mr. MEADOWS. So what is your definition of a record?

Mr. KOSKINEN. The record is, as the Act provides, any record of Agency actions or policies. If you're just sending emails conversing back and forth, those aren't records.

Mr. MEADOWS. Conversing back and forth with regards to what? Because that's not what your manual says.

Mr. KOSKINEN. Pardon?

Mr. MEADOWS. That's not what your manual says.

Mr. KOSKINEN. The manual says any record of Agency actions, policies or anything that would reveal important Agency policies.

Mr. MEADOWS. It says specifically emails are records when they are created or received in the transaction of agency business.

Mr. KOSKINEN. That's correct. So if we're doing an exam or we have a litigation, all of the information about that exam and that information is——

Mr. MEADOWS. So what you're saying is that none of Lois Lerner's emails are part of Agency business?

Mr. KOSKINEN. Lois Lerner printed hard-copy emails which have been provided to you.

Mr. MEADOWS. Hard copy of how many emails?

Mr. KOSKINEN. I have no idea.

Mr. MEADOWS. Of all of them?

Mr. KOSKINEN. All of her emails were not official records.

Mr. MEADOWS. And under what definition? Because I pulled the definition because, you know, really, all I have to go by is the law. And that's what you would have to go by. And I pulled the definition out of your policy book.

Mr. KOSKINEN. I would assure you I have not read very many Lois Lerner emails. But of the 67,000 you'll ultimately have, I will guarantee you a reasonable number of them are not going to be official records.

Mr. MEADOWS. Under what definition?

Mr. KOSKINEN. Under the definition in that brochure.

Mr. MEADOWS. Well, this definition says that they need to be machine-readable materials. That qualifies to almost every single email. "Machine-readable" is what this said.

Mr. KOSKINEN. In terms of——

Mr. MEADOWS. I would like to ask that we put this in the record, if we could.

Chairman ISSA. Without objection, so ordered.

Mr. MEADOWS. So if I'm following your manual and there has been no wrongdoing, I think is what your testimony says, there's been no wrongdoing—isn't that what you said?

Mr. KOSKINEN. Yes. No wrongdoing in terms of the destruction—potential loss of these emails.

Mr. MEADOWS. All right. So when someone did not notify the National Archives, was that wrongdoing? When you lost these, when you automatically said, "Golly, we can't find the emails. There might be just one email in there that's a record," would that be a wrongdoing or breaking the law?

Mr. KOSKINEN. If we didn't advise the archivist that we lost records we knew——

Mr. MEADOWS. Well, you didn't advise them because I have——

Mr. KOSKINEN. We did not have any evidence at this point whether they were official records or not. As stated by Mr. Collins, we could have called and said, "We've lost some emails and we don't know whether they're records or not. We thought we'd let you know," but we did not do that.

Mr. MEADOWS. Okay. Can I submit for the record a letter from the National Archives expressing their concern over the fact that there may be official records that were not——

Chairman ISSA. Without objection, so ordered.

Mr. MEADOWS. So all of this in not following up is really, according to the Democrats—really a money problem, and you've concurred with that.

Is that what you would indicate?

Mr. KOSKINEN. We would be in much better shape if we had an electronics records system that was an official record.

Mr. MEADOWS. And the reason you don't is because of money?

Mr. KOSKINEN. I'm told that 2 years ago, when they considered trying to do that, that they didn't have the funds to do it.

Mr. MEADOWS. So can we tell the American taxpayers, then, that if they just don't have really the money to comply with IRS stat-

utes, that that's okay, that it's okay to break the law as long as they don't have the money to comply?

Mr. KOSKINEN. I don't think we've established that the IRS broke the law.

Mr. MEADOWS. Well, there is wrongdoing in terms of not keeping all the records according to the Federal Records Act.

All of the records—would you agree some of the records are missing?

Mr. KOSKINEN. I have no idea whether official records are missing or not. I have no idea——

Mr. MEADOWS. So your testimony today—let me make sure.

Your testimony today is that you do not know whether there are missing emails?

Mr. KOSKINEN. You just asked about missing official records. I do know there are missing emails.

Mr. MEADOWS. Would a normal person assume there may be one record in all of those emails that are missing?

Mr. KOSKINEN. We don't know how many are missing. We——

Mr. MEADOWS. A reasonable person. No. You're an attorney. A reasonable person.

Wouldn't a reasonable person think that, in thousands of emails, there would be one official record?

Mr. KOSKINEN. We don't know if thousands are missing or not. We are producing 24,000.

Mr. MEADOWS. I didn't ask you that.

I said: A reasonable person, wouldn't they agree? Are you a reasonable person?

Mr. KOSKINEN. Last time I checked.

Mr. MEADOWS. Okay. Wouldn't you think that there might be one record in there?

All right. Let me finish out.

Because you say it's a money issue, are you aware that $49 million were spent on conferences during this same time period? $49 million?

Mr. KOSKINEN. That was in——

Mr. MEADOWS. Between 2010 and 2012, $49 million, according to the TIGTA report.

Mr. KOSKINEN. A substantial number of those are training conferences, bringing——

Mr. MEADOWS. I didn't ask you that.

Were you aware that $49 million was—yes or no?

Mr. KOSKINEN. I was not aware of the number.

Mr. MEADOWS. Okay. $49 million. Some of that, $3,500 a night. We've already talked about a Star Trek video.

Mr. KOSKINEN. That was all in 2010.

Mr. MEADOWS. Do you think you could have moved some of that $49 million to pay to make sure that the Federal records were really preserved?

Chairman ISSA. The gentleman's time has expired.

You may answer.

Mr. KOSKINEN. I don't know the details of those events and which were training and what were wasted funds. It's all 3 and 4 years ago, long before I arrived.

Chairman ISSA. That wasn't the gentleman's question. The gentleman's question was: Do you think any of the "money" on those conferences, including the one for making a Star Trek video—whether or not that could have been used properly for this purpose?

Mr. KOSKINEN. Well, you needed 10- to $30 million. Whether there was $30 million there, $10 million in that or not, I don't know. If there was money wasted, they certainly could have used it for this purpose. That's clear.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Michigan, Mr. Bentivolio.

Mr. BENTIVOLIO. Thank you very much, Mr. Chairman.

Nice to see you again, Commissioner.

Before I forget, I have two questions—or two lines of questioning.

You said four to five people report to you regularly. Who are they? Can we have their names and titles.

Mr. KOSKINEN. Of the people who report to me? I actually have about 30 people who report to me regularly. There have been four or five who report to me in this area.

Mr. BENTIVOLIO. Okay. Can we have their names and titles.

Mr. KOSKINEN. I'll be happy to provide those.

Mr. BENTIVOLIO. Great. Great.

Do you believe there's a difference between objectivity and neutrality?

Mr. KOSKINEN. That's an interesting question.

I suppose you could be objective—I don't know. I think most of the—both terms would imply that you're not involved personally in an issue. You're objective about it or you're neutral about it.

Mr. BENTIVOLIO. So they're synonyms?

Mr. KOSKINEN. I would think they could be viewed as synonyms. Yes.

Mr. BENTIVOLIO. Objectivity is the ability to judge fairly despite bias, and neutrality is to have no stance regarding a particular issue.

Do you think that employees at the IRS have any self-interest in who's elected as President of the United States?

Mr. KOSKINEN. I think, as individuals, every American has an interest in who's elected President of the United States.

Mr. BENTIVOLIO. Would you say they're trying to be nonpartisan, IRS, nonpartisan?

Mr. KOSKINEN. IRS is nonpartisan. It doesn't mean they can't have an interest in understanding the importance of the presidential election.

Mr. BENTIVOLIO. Okay. But they're not supposed to have—to back one party or another, are they?

Mr. KOSKINEN. The Hatch Act does not prohibit IRS employees on their own time——

Mr. BENTIVOLIO. In their official duty.

Mr. KOSKINEN. Pardon?

Mr. BENTIVOLIO. In their official duty.

Mr. KOSKINEN. In their official duties, it's absolutely prohibited.

Mr. BENTIVOLIO. Okay. So my question is about self-interest.

Do you believe that employees of the IRS can remain objective when analyzing the tax implications of groups and people that want them to lose their jobs?

Mr. KOSKINEN. Want them to lose their jobs?

I think so. I think that they are professionals. They're dedicated to——

Mr. BENTIVOLIO. I have no doubt in their professionalism. I'm not asking you about that. I'm asking you about their neutrality and how it affects their objectivity.

Do you believe that any person can sustain objectivity towards someone that they perceive as a threat to their livelihood?

Mr. KOSKINEN. I think they could be objective about it. I'm objective about continuing to hear—this is my eighth hearing, and I'm objective about it.

I have good friends on all the committees. Even though some of these hearings are a little more contentious than others, but I can be objective about it. It comes with the territory.

Mr. BENTIVOLIO. So what are they afraid of?

I mean, the emails just provide all the information. It seems to me that, if it was just, let's say, somebody got carried away, you could have said, "Well, we apologize. We'll fix it. It will never happen again."

But the IRS isn't doing that, are they?

Mr. KOSKINEN. Thus far, since—as I recall, Commissioner Werfel and I have said it. There—people were unfairly selected. That was a mistake.

I've apologized to anyone who was actually discriminated against, and I've said I am committed that that won't happen again.

Mr. BENTIVOLIO. But we're concerned about where it comes from. Because it wouldn't be this big of an issue if there was really just some loose cannons in the outfit, so to speak. I mean, it seems to me that you could've said they made a mistake, they shouldn't have done it, we've punished them, let's move on. But they didn't really do that.

Mr. KOSKINEN. The people involved in the chain of command in this issue are all gone.

Mr. BENTIVOLIO. I think there's—or retired?

Chairman ISSA. They were——

Mr. KOSKINEN. They're no longer with the agency.

Mr. BENTIVOLIO. Right. Except the ones in 1600 Pennsylvania Avenue.

Thank you very much. I yield back.

Mr. JORDAN. Would the gentleman yield?

Mr. BENTIVOLIO. Yes. I yield to——

Mr. HORSFORD. Would the gentleman yield to the gentleman——

Chairman ISSA. He's already yielded to the gentleman from Ohio.

Mr. JORDAN. I thank the gentleman.

Mr. Koskinen, earlier you said that you did not tell Treasury—when you learned in April, from who you can't remember, when you can't remember, sometime in April, you said you did not communicate with the White House or with Treasury; is that accurate?

Mr. KOSKINEN. That's correct.

Mr. JORDAN. Here's a story from last week in Politico. It says, "In April of this year"—this is from Neil Eggleston, the White House Counsel. "In April of this year, Treasury's Office of General Counsel informed the White House Counsel's Office that it appeared Ms. Lerner's custodial email account contained very few emails."

So they were informed in April, the White House Counsel, from the Treasury's Chief Counsel. So how did the Treasury Chief Counsel find out?

Mr. KOSKINEN. I don't know.

Mr. JORDAN. Did you tell people in the IRS, don't go tell anybody this stuff until we get all the information? Did you give that instruction to your folks?

Mr. KOSKINEN. No.

Mr. JORDAN. So someone—did you—so someone at IRS told Treasury's Chief Counsel?

Mr. KOSKINEN. I assume that must be what happened.

We meet with the Treasury regularly. I meet every 2 weeks——

Mr. JORDAN. Why you didn't you them, then?

Mr. KOSKINEN. Pardon?

Mr. JORDAN. Why didn't you tell them?

Mr. KOSKINEN. Because I'm not reporting to the Treasury about this investigation. It's under our—it's our responsibility, and we're taking responsibility——

Mr. JORDAN. You don't know who told them?

Mr. KOSKINEN. Pardon?

Mr. JORDAN. You don't know who told them?

Mr. KOSKINEN. I have no ideal who told them.

Mr. JORDAN. Did you tell someone else to go tell Treasury just so——

Mr. KOSKINEN. No.

Mr. JORDAN. —you wouldn't have to?

Mr. KOSKINEN. No.

Mr. JORDAN. You have no idea how the White House and how Treasury learned that this happened, that Lerner emails were lost in April and we didn't know till June. You have no idea how that happened.

Mr. KOSKINEN. No. I've not had any discussions——

Mr. JORDAN. Well, we'd like to know who at IRS told the Treasury Chief Counsel, who then told the White House Chief Counsel, and they knew 2 months before we did. So we'd like to know who that person at the IRS is who informed them about something that important and you didn't feel it was incumbent upon you to tell us. Can you find us that person?

Mr. KOSKINEN. I thought I was—I don't know who it is, but——

Mr. JORDAN. Well, find out. You run the agency.

Mr. KOSKINEN. Fine. I was going to say, the——

Mr. JORDAN. Why don't you send an email to all the employees in the IRS saying, "Whoever told the White House Counsel that we lost Lois Lerner emails or that at least there was the potential that we were going to lose them, I want to know who that person is so I can tell—I can tell the chairman of this committee and we can question them"? Can you do that for us?

Chairman ISSA. The gentleman's time has expired. You may answer.

Mr. KOSKINEN. Can I—so you can question them. And what will you——

Mr. JORDAN. Of course. We want to know why they told them. You didn't want to tell them.

Mr. KOSKINEN. I didn't not want to—I told you, we run the investigation. I have not talked to—and the production of documents. I am not—Treasury doesn't tell me what to do. I don't tell Treasury what we're doing——

Mr. JORDAN. I'm not talking Treasury. I'm talking IRS.

Mr. KOSKINEN. I'm telling you about the IRS.

Mr. JORDAN. Someone from the IRS told Treasury.

Chairman ISSA. I thank the——

Mr. JORDAN. I want to know who that person is. Because it wasn't you.

Mr. CUMMINGS. Regular order, please. Regular order.

Mr. HORSFORD. Mr. Chairman, point of order. You've gone over a minute——

Chairman ISSA. State your point of order.

Mr. HORSFORD. The point of order is that the——

Chairman ISSA. State your——

Mr. HORSFORD. —gentleman is over 1——

Chairman ISSA. State your point of order.

Mr. HORSFORD. The point of order is the gentleman is over his time.

Mr. JORDAN. The real point of order is he won't answer the question.

Mr. HORSFORD. Point of order. The chairman cut me off when——

Chairman ISSA. I'm cutting you off again. We will maintain decorum.

Mr. HORSFORD. There is no decorum.

Chairman ISSA. The parliamentarians will provide anyone with the proper way to state a point of order, which is, as Ms. Speier did, to cite within the rules a point of order as to whether rules are being properly adhered to. Congresswoman Speier did a very good job of citing a point of order. And I would ask all folks to please use the parliamentarians before they cite a point of order.

We now go to the gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Commissioner, have you reviewed Dave Camp's letter from June 3rd, 2011, that he sent to the IRS?

Mr. KOSKINEN. I have not reviewed it. I only saw it this afternoon briefly.

Mr. DESANTIS. Well, this is one of the—so he writes a letter. Lois Lerner's hard drive crashes 10 days later. You're supposedly now in charge of writing the IRS. And you haven't looked at that letter? You haven't reviewed that letter?

Mr. KOSKINEN. I scanned that letter. I'm not doing the investigation of what happened around——

Mr. DESANTIS. Well, that letter requested that email records be preserved and turned over to the committee, the Ways and Means Committee.

And, according to your testimony, when her hard drive crashed, they never went to the backup servers to retrieve her emails, correct?

Mr. KOSKINEN. No. No. They never went to the backup tapes.

Mr. DESANTIS. Exactly.

Mr. KOSKINEN. The backup server is very different. There is no backup server. There's a server that operates the emails.

Mr. DESANTIS. Right. And then the tapes that they're stored on offsite, they never got the emails back. So even though——

Mr. KOSKINEN. I think——

Mr. DESANTIS. —the Congress requested it, the IRS didn't care. They just decided they're not going to go the extra mile to get those.

Now, you testified last week in the Ways and Means Committee that you knew there was a problem February 2014 with Lois Lerner's emails, correct?

Mr. KOSKINEN. I was advised there was an issue.

Mr. DESANTIS. Right. And in mid-March, the IRS, according to your testimony, review team learned additional facts about her mysterious computer crash, correct?

Mr. KOSKINEN. That's correct.

Mr. DESANTIS. And then you testified in this committee at the end of March. And you promised this committee—they played the montage. Gowdy, Chaffetz, Jordan, Issa, everyone: Get us Lois Lerner's emails, get us Lois Lerner's emails. You said, yes, we'll do it.

You never mentioned, you never disclosed that there were real problems about whether you were, in fact, going to be able to turn over those emails, correct?

Mr. KOSKINEN. At that time, I did not know they were real problems. At that time——

Mr. DESANTIS. Well, here's what you told Dave Camp. You said, "In February"—and this is page 6 of your testimony last week. "In February, what we knew was there was a problem because we were looking at from it the standpoint of where—what timeframe it was in which her emails appeared, and it appeared that there were not enough emails in that timeframe."

So in mid-February you had reason to believe that you were short of emails in that critical timeframe, per your testimony last week, correct?

Mr. KOSKINEN. When I say "we," the review team did that. I knew simply that there was a problem in the way the emails were spread throughout the timeframe. I did not know the details of it.

Mr. DESANTIS. Well, your testimony said "we," meaning the IRS. So I guess——

Mr. KOSKINEN. The IRS, that's correct.

Mr. DESANTIS. —now you're saying that you did not know that, that you were somehow, even though the Commissioner——

Mr. KOSKINEN. No.

Mr. DESANTIS. —you're not in the loop.

Now, here's the issue.

Mr. KOSKINEN. Good.

Mr. DESANTIS. Jason Chaffetz was going back and forth with you at the March hearing, and you basically told him, "We will get Lerner's emails. They are stored in servers," is what you said.

Now, my question for you is, why say that if you knew, one, there was a problem with Lerner's email, and, two, you knew that the backup tapes were only saved for 6 months? Why tell Chaffetz that you were going to be able to retrieve it when you had reason to believe that that may not be the case?

Mr. KOSKINEN. Because, at that time, we had pulled all of the emails out of her hard drives and others and had put them into a server system known as Clearwell, is my understanding, which is the way we search them.

Now, they have to be searched—it's a pool. You have to then pull out—it's got video——

Mr. DESANTIS. No, I understand that. But, again, your testimony—there was reason in mid-February that there were not enough emails. So whatever pool you had, there was a time period in question with the computer crash, you testified that there was a possibility that this was coming up short.

So the question is, you made a choice, as you testified, not to disclose this fact to Congress. Now, you've been asked, when did you know for sure there were emails missing? You said April. When in April? You said April. You wouldn't get any more definitive from that.

And then you said you were advised not to disclose it. Who advised you——

Mr. KOSKINEN. Nobody.

Mr. DESANTIS. —not to disclose it?

Mr. KOSKINEN. I did not say I was advised not to disclose it.

Mr. DESANTIS. Then why didn't you disclose it?

Mr. KOSKINEN. Because my sense was what we needed to do was find out the facts and the details, and when we found those, we would give you all of the information.

My experience, as I explained to Congressman Camp, is last Monday we did provide information that we had just learned that day, our staff did, that we had custodians who had lost—who had hard-drive crashes.

Mr. DESANTIS. I understand that. But you've acknowledged——

Mr. KOSKINEN. And, immediately thereafter, people leaped to conclusions in the public with press releases which, 3 days later, turned out to be wrong.

So my point is——

Mr. DESANTIS. I think that you have a duty of candor to Congress and the American people. And you certainly had some reason to believe that there were going to be issues with producing her emails in your March testimony——

Mr. KOSKINEN. We——

Mr. DESANTIS. —because you've admitted it with Ways and Means, that there were issues.

Now, maybe you weren't kept up or maybe you weren't following closely enough. I don't know. But I think this is very important, because the average taxpayer looks at this, and if they are ever in a situation where they can't produce documents, they are presumed guilty, period, end of story. It's not even a question. And yet the

IRS is in a situation where they can say, well, we had a computer crash.

The probability of that is very small, as Mr. Massie indicated. Just so happened to happen 10 days after Dave Camp asked for information.

And so I don't think that the American people are satisfied with this. And, with all due respect, I don't think your testimony is going to be satisfactory to those who have real concerns about whether we're going to get to the bottom of what happened with the IRS.

And I yield back.

Mr. KOSKINEN. Can I make just one point——

Chairman ISSA. It is the practice of the committee to always let a witness answer a question if there's a question pending. The gentleman may answer.

Mr. KOSKINEN. I appreciate it. This is just a statement I want the public to be confident about, and that is: When we're dealing with taxpayers, and if they can't produce a record, we are open to their producing other evidence that would be consistent with that.

So if somebody said, we've lost some emails but I've reconstructed 24,000 of them, we would take that into consideration. And, in fact, there's a legal precedent that says, if your actions and the evidence generally produces support for what you say happened, even if you don't have the documents, that's acceptable.

So the idea that if you've lost a document it means you've lost the case with the IRS, that's incorrect. We actually will work with taxpayers, trying to make sure that they've got supporting information of any kind.

Our notices out to corporations say: Here's what we'd like in documents, but if you haven't got them all, if you've got something close to that, if you can give us other information, we'll take that.

So I just want the record to be clear——

Mr. DESANTIS. Well, we'd be happy to accept whatever alternatives you could produce to show what Lerner did.

Chairman ISSA. The gentleman's time has expired.

Commissioner, the good news is there aren't as many Members left for the second round, so this should be fairly brief.

Mr. KOSKINEN. I liked it in the old days where you only had one round.

Chairman ISSA. How old is that?

Mr. KOSKINEN. Oh, it must be very old.

Chairman ISSA. Well, we'll try to be fairly short.

Mr. Cummings?

Mr. CUMMINGS. Commissioner, let me say this. I really thank you. I thank you from the depths of my heart for taking on this task.

I cannot begin to tell you how pained I feel listening to all of this. You know, when you've got a person who has given what you've given and have been brought into difficult circumstances—and I don't know how old you are, but, you know, at my age, I begin to think about my own mortality and think about my reputation.

First of all, I want to thank you for being who you are. I want to thank you for giving a damn and caring about our country.

Some of the statements that have been made here today make it look like, you know, you're just coming up here trying to fool people, when under Republican and Democratic administrations you have been highly regarded.

I've said it before, and I'll say it again: We're better than that. We are a better country than that. And we are a better committee than that.

You know, when I re-reviewed the IRS employees' interviews, you know what they said? It was very interesting; they said something similar to what you said. They said they were constantly asked about their party affiliation and that kind of thing. Some of them were Republicans; some were Democrats. One even described himself as a very conservative Republican. But you know what they said? They said they left their party hats at the door. You know why? Because they wanted to make sure, when they went in there and did their job, that they did it in a way that was fair to all Americans.

And so, yeah, there are issues, but I don't—you know, sometimes I sit here and I listen to all this—and somebody asked me about this committee the other day, and they said that if you were to leave the committee today, what will you most regret? I said, I would mourn for what could have been. I would mourn for what could have been.

We are a Committee of Oversight and Government Reform. And I am glad that the IRS took the nine recommendations of the IG—who, by the way, was appointed by a Republican, the same IG that said no White House involvement. But we just push the facts over there, say, oh, he's coming up here, let's see what we can do to him.

But you know what? After the hearing is over, I care about your reputation. I care about what people think of you. And I really mean that. And I don't want a moment to go by without you knowing that I appreciate you coming into this institution, giving it the best you've got, and then having to come in here and go through this hell.

And that's not to say everything was done perfectly. I don't think anybody up here is perfect. All of us have had problems. As I say to my constituents, all of us are the walking wounded, and if we aren't the walking wounded, we just keep on living.

And so, again, I want to thank you very much.

And, by the way, if there was any kind of inappropriate criteria, I've said it before, I have a problem with that with regard to conservatives, I also have a problem with regard to progressives and anybody else.

And I'm sure I speak for all our Members when I say thank—I really do thank you.

Mr. KOSKINEN. Thank you.

Mr. CUMMINGS. With that, I yield back.

Chairman ISSA. I thank the gentleman.

The gentleman from Ohio is next in seniority.

Mr. JORDAN. I thank the chairman.

Look, I agree with the ranking member; we're all imperfect, we all are in need of God's grace. And we do appreciate the public servants who work hard every day on behalf of the American people.

But I will tell you something. I also care about the thousands of people who were denied their First Amendment rights when this targeting scheme took place. I care about people like Catherine Englebrecht, who was visited six times by the FBI after she applied for tax-exempt status, who after she applied had her personal and business finances audited by the IRS for the previous 2 years, who got visited by ATF, OSHA. I care about those people, too, and that's why we're so concerned about getting to the truth.

And so I just have one question, and I'll be quick.

Mr. Koskinen, you've testified several times here tonight, answered many questions where we talked about, you knew there were problems in February, you knew there were more problems in mid-March, you came in front of this committee in late March, you didn't disclose to us, but then someone—and the reason you said you didn't disclose to us was because this was so important, so critical that you get all the information, get all the facts, get all the information, and then give it to us, correct? You wanted to get the full story before you went public with any of this, correct?

Mr. KOSKINEN. And I would remind you, when I testified here in March, I had no idea whether there was a serious problem or not. I just knew there was an issue.

Mr. JORDAN. You knew there was an issue, you knew there was problems.

Mr. KOSKINEN. Right.

Mr. JORDAN. Based on your testimony, you knew that there had been a crash of her computer. I mean, that's in your testimony.

But your testimony is you wanted to get all the facts before you went public, right?

Mr. KOSKINEN. Yes.

Mr. JORDAN. You thought that was important.

Mr. KOSKINEN. Yes.

Mr. JORDAN. To get all the information.

Mr. KOSKINEN. Yes.

Mr. JORDAN. And yet, one of your employees told the Treasury and the White House in early April——

Mr. KOSKINEN. One of our——

Mr. JORDAN. Whoa, whoa, whoa, whoa, whoa. So all I'm asking is, if it was so important, so critical to get the full picture before this information got out, why didn't—why didn't you tell all the people who work in your agency, we're not going to say anything, we're not going to communicate about this until we get the full picture?

Why didn't you give that instruction to—if it's so critical that you can't share with Congress—you waited 2 months after you knew in April that there were lost emails. If it's that important, then why didn't you tell your employees, don't talk about this, don't tell the White House Counsel, don't tell the Treasury Counsel? Why didn't you give that instruction?

Mr. KOSKINEN. Because I didn't think that—if somebody actually told anyone—I didn't tell them they shouldn't tell this committee. I was not telling people what not to do. I set forward a program in which I said, we need to find all of the facts, we need to pull it all together, and we will make a public disclosure of it, which we did.

Mr. JORDAN. But that's not what happened, Mr. Koskinen. The Chief Counsel at Treasury knew about it and talked to the Chief Counsel at the White House in April, right after you found out about it. That's what we're concerned about.

All I'm saying is, if it's so important, I think a proactive leader, a good manager would say, hey, let's get to the truth first, let's get all this, let's not communicate this, let's tell everyone at the same time, let's tell Congress the same—if it's okay to tell the White House, why isn't it okay to tell the people's house?

Mr. KOSKINEN. Because the White House is not going to do what the Ways and Means Committee did with the piece of information we gave them piecemeal—that is, they're not going to make a big issue about it—until all the facts out.

Mr. JORDAN. Maybe it's because the White House is the same party. Right? Maybe that had—could that have anything to do with it, Mr. Koskinen?

Mr. KOSKINEN. I have no idea. But I would stress again in your earlier statement——

Mr. JORDAN. Oh, well, you may not have any idea, but the facts are the facts.

Mr. KOSKINEN. The facts are the facts.

Mr. JORDAN. Treasury knew——

Mr. KOSKINEN. No one in the——

Mr. JORDAN. —White House knew in April. We didn't know till late June.

Mr. KOSKINEN. No one in the IRS talked to the White House. You——

Mr. JORDAN. Whoa, whoa, whoa. Then how'd they find out?

Mr. KOSKINEN. Pardon?

Mr. JORDAN. How'd they find out?

Mr. KOSKINEN. I am told by the people who've read the White House letter the White House found out from Treasury. Nobody from the IRS talked with the White House.

Mr. JORDAN. Someone from the IRS talked to Treasury, then.

Mr. KOSKINEN. That's what I understand.

Mr. JORDAN. Well, and, as I've said before, we'd like to know who that person is.

Mr. KOSKINEN. Fine.

Mr. JORDAN. I hope you'll find out. Can you make a commitment to this committee tonight that you're going to go find out who that individual was, who those individuals were, who talked to the Treasury Chief Counsel, who then talked to the White House, 2 months before the people's house got that same information? Can you make that commitment?

Mr. KOSKINEN. I'll do my best.

Mr. JORDAN. Well, let's hope it's better than that.

I yield back.

Chairman ISSA. Would the gentleman yield?

Mr. JORDAN. I'd be happy to yield.

Chairman ISSA. And I appreciate your trying to find out. It would save us a lot of trouble of going through all the people to find out.

But you just said something that I wanted to make sure I understood. You said, and I'm phrasing, maybe the White House

wouldn't release it the way Ways and Means released a document. Is that right?

Mr. KOSKINEN. Yes. In other words, my experience has been in this issue that any information that comes out piecemeal immediately gets an overreaction to it.

Chairman ISSA. So, I—well, "overreaction" is your statement. I guess the question I have is, hasn't the White House selectively leaked documents in the past?

Mr. KOSKINEN. I have no—I'm not involved in any of those issues if they have.

Chairman ISSA. You've probably read the Wall Street Journal, the New York Times, or the Washington Post. Isn't it true the White House does put out piecemeal documents that favor them when they get them and hold back ones when they don't?

Mr. KOSKINEN. I'm not familiar with what the White House activities are.

Chairman ISSA. I guess I'll wait for my own time. But I must admit, I'm a little insulted to hear that the White House is trustworthy and Congress isn't, in your opinion.

The gentleman from Nevada, Mr. Horsford, is recognized.

Mr. HORSFORD. Thank you, Mr. Chairman.

It's kind of interesting how positions change over time, because, looking back on some of the record, it appears that when the Bush White House lost millions of emails related to the leak of covert CIA agent Valerie Plame's identity and the U.S. attorney firings, this same committee held a hearing in 2008. At that hearing, Chairman Issa said this: "I think it is fair that we recognize that software moves on and that archiving in the digital age is not as easy as it might seem to the public."

At the same hearing, Chairman Issa discussed how Congress needs to provide more funding to help agencies improve their archiving technology. He said this: "The House of Representatives needs to begin making sure you are funded. And that is part of what we do in oversight, fund it to deal with ever-evolving technologies, where archiving isn't just putting them away, it is being able to retrieve it."

Now it appears that Chairman Issa's perspective has changed. With respect to the loss of Ms. Lerner's emails, he believes the loss of her emails is evidence of, "nefarious conduct." Chairman Issa has repeatedly stated this assertion, but yet said something completely different in a previous hearing.

Commissioner, as far as you can tell, the only difference between the statements Chairman Issa made in 2008 and the statements he made now is that there was a Republican administration then and that there is a Democratic administration now. The fact is that the IRS and many other Federal agencies have struggled to improve their electronic record retention for years. GAO, the National Archivist, and others have been reporting on these problems repeatedly.

So I have a main question that I'd like to ask, Commissioner, and that's, what can you do to explain to this committee the steps that are being taken to restore the public's trust in the IRS and the function that it provides to the American people in this regard to the data and the protection of that data?

Mr. KOSKINEN. We are reviewing all of our activities—I've asked for this some time ago—to see if, at a minimum, we couldn't create an electronic records system that would be more searchable. We have spent, as everybody now knows, between $18 million and $20 million trying to produce documents as quickly as we can and emails as quickly as we can because of the archaic system that requires us to go to 90,000 individual hard drives or, in this case, 83 custodian individual hard drives. We're going to continue to do that.

The Archivist last year made a recommendation that, as a way to begin to do this, we take the top 35—it's called the capstone proposal; I'm sure he'll testify tomorrow about it—that, as a start, recognizing the cost, that we develop systems with the top 35 people in the agency, where their records are automatically electronically put into a records system as the first step. And we're going to take a look at that, which would obviously be less expensive than trying to archive the entire agency's records.

But I do think it's important for us to preserve official records. It's important for history. It's important for people to understand the basis on which we make decisions. And we're going to continue to do that.

We are constrained. The issues are how we spend our money. It's an important issue as to how we do it, but it is in a situation where we have substantially fewer funds than we had 4 years ago, 10,000 fewer employees, and substantially increased responsibilities. But it is an important issue for us to consider, and we're going to do that.

Mr. HORSFORD. Thank you, Commissioner.

And, again, I want to commend you. You know, I say often on this committee, we are the Oversight Committee, but we're also the Government Reform Committee. And I would like to hear your recommendations as we move forward on how we put those recommendations in place and what this committee can do to support you in those endeavors.

It's one thing to have as many hearings as we've had without any substantiated evidence to suggest continuing. But to not have one hearing on how we can implement any of the recommendations to improve the system, I think, is a flaw in the way this committee is managed.

And, Mr. Chairman, I know my time is up, but under rule 9, sub A, I think that the chairman needs to ensure that there is equal time given to each side and that Members should not have their mics cut off and then Members in the majority allowed to speak well over their permitted time.

Chairman ISSA. We now go to Mr. Massie for 5 minutes or such time less that he may consume.

Mr. MASSIE. Thank you. We could probably——

Mr. KOSKINEN. That's right; he's not required to use the full 5 minutes, right?

Mr. MASSIE. And I'll try and——

Chairman ISSA. He is not required, but seldom yielded back.

Mr. MASSIE. It really depends on the answer. I'm going to try and be short. And I really appreciate your patience and your stamina here tonight, so I'll be short with this question.

On June 3rd, 2011, Ways and Means Chairman Dave Camp sent the IRS a letter demanding to explain the allegations of targeting Tea Party and other conservative groups. He also requested that emails be provided or preserved. Within 10 days, Lois Lerner's hard drive crashed.

Now, we know her hard drive crashed because there was a—we know this for sure because there was a ticket filed with the IT department, is that correct, for a repair?

Mr. KOSKINEN. That's correct.

Mr. MASSIE. Could you provide us with all of the tickets filed in the month of June 2011 at the IRS for failed hard drives?

Mr. KOSKINEN. Yes.

Mr. MASSIE. Thank you very much.

I yield back.

Chairman ISSA. Would the gentleman yield?

Mr. MASSIE. Yes.

Chairman ISSA. I thank the gentleman.

We are nearing the end, but there will be—I'll need a few more minutes. So I want to be—I want to be brief, but I want to be thorough.

Ms. Lerner you didn't know. You say you never met her. My understanding is from the reports that the hard drive that failed was on her laptop; is that correct?

Mr. KOSKINEN. I'm not familiar. I know Nikole Flax's travel computer is where the hard drive failed, not her office computer.

Chairman ISSA. Right.

Mr. KOSKINEN. I'm assuming, in light of where the archives were, that it was her office computer where the hard drive failed.

Chairman ISSA. So I want just to understand, from a procedural standpoint, employees of the IRS download emails, which may include 6103 information, to their laptops and leave the building with them. Is that correct?

Mr. KOSKINEN. That's right. Most of—a number of employees, their office computer is, in fact, a laptop.

Chairman ISSA. And, as a result, when they leave the office, they take with them emails that may include 6103 information.

Mr. KOSKINEN. That's possible, yes.

Chairman ISSA. To your knowledge, are laptops in the IRS universally limited so they may not employ USB drives?

Mr. KOSKINEN. They are now. There was, as I understand, a situation some years ago in which they were—well, I guess what I should say is, years ago, USB drives, thumb drives were usable that were not encrypted. And there was an issue that came to my attention 3 or 4 months ago where, fortunately, no information was misused by the public. Since that time, which is several years ago, all thumb drives are encrypted so that if a thumb drive is lost nobody can access the data.

Chairman ISSA. I appreciate that. Congress has implemented a similar thing. But we also can go buy at Best Buy normal thumb drives.

So if Lois Lerner's laptop was, in fact, or any of these other people's laptops or office computers, in fact, had a USB on any of them that downloaded information, including 6103 information, to their

local drives, could have, in fact, moved them to USB-based external drives or to thumb drives of their own purchase. Is that correct?

Mr. KOSKINEN. That sounds right. I don't know what the equipment looked like 3 years ago, but I would assume that that sounds right.

Chairman ISSA. So, for the American people, it is very possible and, in fact, probable that every day individuals leave the IRS with personally identifiable information covered under 6103 on their hard drives inside laptops that they take home, on trips, to conferences, and the like.

Mr. KOSKINEN. I think that's correct, to the extent of my knowledge. I may be corrected when I get back, but that sounds correct.

Chairman ISSA. So that means that, in fact, Lois Lerner, an attorney, may have made a copy of the information on her hard drive that died and she could have it on a USB product or, you know, any kind of product but normally a USB-based thumb drive or external hard drive, to your knowledge. You have no reason to know that she couldn't have done that.

Mr. KOSKINEN. That's correct.

Chairman ISSA. So, in fact, Lois Lerner may have made copies of this before the failure of her computer.

To your knowledge, when the Department of Justice questioned Lois Lerner, was she asked any of those questions?

Mr. KOSKINEN. I have no idea.

Chairman ISSA. To your knowledge, did she have a USB or any other product that could've taken copies off of her computer?

Mr. KOSKINEN. I have no knowledge that she did.

Chairman ISSA. To your knowledge, did she also have a laptop or dual-purpose computer that she took home with her or left the building with?

Mr. KOSKINEN. I don't know.

Chairman ISSA. Okay.

I would now ask unanimous—or let me rephrase that. Let me just do one more.

You have 90,000 computers that basically use their local hard drives to store information, emails, instead of on the server, because after so many days it disappears off of—after half a year, they disappear off the server. Is that right?

Mr. KOSKINEN. No. No, no. The server will keep your emails until you get to 6,000, and then you'll get a notice saying you have to either archive them or delete them.

The backup tapes that preserve information for 6 months are separate. The server—you may have emails on your server for 5 years if you've——

Chairman ISSA. If you don't hit that number.

Mr. KOSKINEN. If you don't hit the 6,000.

Chairman ISSA. Okay. Obviously, Lois Lerner, with tens of thousands, did.

I now would recognize myself for my own time.

Continuing on, I spent a lot of time in the electronics industry, and so I have a bit of a passion for this.

Are you aware that if you back up your systems every 6 months, that the cost that we would be looking at for what it would've cost to have backed them up essentially once a month would be cost of

the tape drive that, in fact, those tapes or cartridges that would be retained. And my understanding, pretty obviously, is that wouldn't be $10 million, would it be?

Mr. KOSKINEN. No, I don't think so.

Chairman ISSA. So, with your limited budget, if instead of throwing away or recycling after 6 months the cartridges and simply reusing them, because you're only using them for disaster recovery, if you bought 12 sets of cartridges so that every month you made a backup and then, in fact, used the incremental backup systems that exist, you could've backed up your systems and retained them for 7 years for a fraction of $10 million, couldn't you?

Mr. KOSKINEN. That's correct, but you would simply have a capacity to—as a disaster recovery system, that process is not a searchable email system.

Chairman ISSA. I appreciate your telling me that, because I served on this committee in this room in that position when Henry Waxman—because the Bush White House, in conversion from Lotus Notes to Windows Exchange Server, or Microsoft Exchange Server, failed to have good backups and they used their image backups at a cost of a great deal of money to restore countless emails so that the Presidential Records Act and the Federal Records Act would be fully maintained.

Do you have any recollection of those hearings or that activity?

Mr. KOSKINEN. I do not.

Chairman ISSA. To this committee, it's pretty famous. Mr. Waxman did not care that it cost an estimated $24 million to recover every single one of those emails. This committee aggressively said they had to do it, and they did image backup restorations.

Had you done image backups and retained them, prior to your arrival, but had the IRS done it, it would have cost probably tens of thousands of dollars to maintain 6 or 7 years' worth of those, and we wouldn't be having the same discussion today, would we?

Mr. KOSKINEN. No. It would've cost a lot of money, as you know, to then get emails off of those recovery tapes. But that's right; if we had—if we had them, we could then send the millions of dollars it would take to pull it off the disaster recovery tapes. But that's not what the disaster recovery tapes are meant to do.

Chairman ISSA. What's interesting is the images, or disaster recover tapes, the reason it cost so much with the White House is they wanted every email retained or recovered. We only wanted Lois Lerner's.

I'd like to enter in the record now a document given to us by the National Archives.

And I'll show it, because it's a little hard to see, but—there we go.

Mr. KOSKINEN. A little hard to read from here.

Chairman ISSA. Well, I'll read you just a piece of it.

Andrew Jackson of the State of Tennessee, the first day of December, 1799, is still burned. And he's complaining through Congress—this is from—this is essentially a Congressional Record, where he petitions the United States Congress in 1803 to recover—and he started in 1801 with an affidavit—for his loss of revenues paid in 1799 because his stills burned after they collected the revenue in advance for his hundreds of gallons of liquor.

And I only put that in the record for one reason. The National Archives and the Archivist, who will be with us tomorrow, maintains an amazing amount of documents and recovers documents.

Now, Andy Jackson, General Jackson, wanting his money back on his still may not be anything other than humorous this late at night, but it's part of the wealth of information the American people have access to just across the street.

Your agency came here and said, on a $1.8-billion budget—you did this tonight—that, in fact, you needed more money if you were going to maintain records. I would certainly hope that when you go back and you scrub that $10 million in order to do X and more to do Y that you go back and you really ask, within the best practices, whether or not to meet—for your CIO to meet the requirement of the National Archives having access to the kind of information, the wealth of information they need. Working with the National Archives, you can do it and do it for a reasonable price.

Mr. Horsford was correct. I have been a big believer that, in fact, maintaining for the American people the transparency not just of what Mr. Cummings and I are doing here tonight but for the next generation, the generation beyond, as much information as we possibly can is an obligation.

Earlier, Mr. DesJarlais, maybe cynically, maybe just doing the arithmetic, looked at that, sort of, nickel a page to print out and stick in a file drawer and later turn over to the National Archives paper. I strongly suggest that this committee and you, you for your agency, this committee for all of government, really take a look at how much less expensive it is to maintain it digitally, to deliver it digitally, so that it can be machine-searchable for the next generation and, in fact, be of a benefit to all of us.

Lastly, I'm going to guess that on the $111 per employee's computer—because that's what $10 million is—you could easily have covered that expense, that $10 million expense, by simply downgrading those local drives. Because, in fact, there's very little reason for them to have large local drives.

Lastly—and I'm going to close with this, and this is really not as much questions—you're familiar with the interrogatories we sent, some 50 questions?

Mr. KOSKINEN. On Saturday afternoon, yes.

Chairman ISSA. Yes, 48 hours before the hearing. You're aware that, for the most part, there was no response, other than a short oral briefing this afternoon in which presentations were made that were not part of the interrogatories, in some cases?

Mr. KOSKINEN. It's a little hard to get everybody together on a Sunday, even though it is counted as the 48 hours. We got——

Chairman ISSA. No, I understand——

Mr. KOSKINEN. —your email, or your request, at about 4:30 Saturday afternoon.

Chairman ISSA. No, I understand that. But there was 8 hours of workday today.

The questions we have, for the most part, are the questions that you should've already asked. They should've been answerable immediately.

There will be some additional questions that I will send interrogatories to you. They will ask you to please see if you can figure out

whether it was the 1st of April that you learned about the real loss of documents, 7 days after you testified, or 30 days after, to narrow down the April and to narrow down who told you—who told you about it.

There obviously is the question of how the White House came to know, while Congress was never informed about these losses of documents until your seven-page letter.

So, for that purpose, we will now recess. If I'm able to get the interrogatories and the follow-up calls done in a timely fashion, I will be pleased to adjourn this. But for now, we are recessing subject to recall.

We stand in recess.

[Whereupon, at 10:53 p.m., the committee recessed, to reconvene at 9:30 a.m., Tuesday, June 24, 2014.]

APPENDIX

Material Submitted for the Hearing Record

Opening Statement of Chairman Darrell Issa
"IRS Obstruction: Lois Lerner's Missing E-mails"
June 23, 2014

- The Committee meets today as we continue our efforts to get the full, unobstructed truth about the IRS's targeting of Americans because of their political beliefs.

- When IRS Commissioner John Koskinen appeared before this Committee in March, he promised that he would produce what this Committee had made its top priority: all of Lois Lerner's e-mails.

- Commissioner Koskinen made these promises without any qualifications or limitations.

- Here is what he said: [video montage].

- No one is above the law. Not the IRS. And certainly not you, Mr. Koskinen.

- The Committee requested all of Lois Lerner's e-mails over a year ago. And we subpoenaed the e-mails in August 2013 and again in February 2014.

- Transparency clearly did not compel the IRS to tell the truth about Lois Lerner's lost e-mails. You worked to cover up the fact they were missing and only came forward to fess up on a Friday afternoon after you had been caught red-handed.

- I'm struck that your acknowledgement of missing Lois Lerner e-mails came just two weeks after we had found some of them at the Justice Department.

- You didn't even give this Committee the courtesy of a direct communication about missing e-mails after your false testimony. Instead, your staff shared a communication you made to a Senate Committee controlled by the President's party.

- In your previous testimony, you had said it might take years to deliver all these e-mails.

- Did you hope you could run out the clock on this scandal?

- Perhaps you thought Congress would never realize there were missing e-mails until we found them at the Justice Department?

- Commissioner Koskinen, I called you to testify tonight because the American people deserve answers about what happened to Lois Lerner's e-mails and why the IRS hid this for over a year.

- I subpoenaed you to appear tonight because frankly I am sick and tired of your game-playing in response to congressional oversight.

- You, Commissioner Koskinen, are the President's hand-picked man to restore trust and accountability at the IRS.

- You testified under oath in March that you would produce all of Lois Lerner's e-mails subpoenaed by this Committee.

- You gave your commitment to producing all those e-mails to this Committee.

- You gave your word, sir. And now we know just how little your word is worth.

- The American people have no trust in the IRS. And for good reason.

- It is hard to have trust in an agency that behaves like the IRS – an agency that has one set of rules for the taxpayer and another set of rules for itself.

- Commissioner Koskinen, you may say that the IRS has produced thousands of documents. And the Committee certainly appreciates that.

- But, of course, it doesn't matter how large a production you make if the IRS omits the most critical documents.

- And I would remind you that your promise under oath was not a promise to produce a majority or a portion of Lois Lerner's e-mails.

- You promised to produce them <u>all</u>.

- Commissioner Koskinen, you personally did not cause the targeting. You personally did not destroy the e-mails. But by your actions and your deception, you now own this scandal.

- You need to be more forthcoming and candid with the Committee today than you were during your last appearance.

- I hope you will give full answers to these pressing questions – this includes disclosure of other truths the IRS is hiding.

- And, most of all, I hope that you will finally accept responsibility and apologize for the actions of your broken agency.

From: [redacted]
Sent: Friday, August 05, 2011 6:38 PM
To: Lerner Lois G
Cc: [redacted]
Subject: Re: Careful What You Ask For - UPDATE

Hello Ms Lerner, I was just about to send you an update.

Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecoverable.

I am very sorry. Everyone involved tried their best.

[redacted]
Field Director, HQ CSSC
[redacted]

Sent using BlackBerry

From: Lerner Lois G
Sent: Friday, August 05, 2011 07:06 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Careful What You Ask For - UPDATE

Thanks! just saw this--any further word/

Lois G. Lerner
Director of Exempt Organizations

From: [redacted]
Sent: Monday, August 01, 2011 7:57 PM
To: Lerner Lois G
Cc: [redacted]
Subject: RE: Careful What You Ask For - UPDATE

Ms Lerner,

As a last resort, we sent your hard drive to CI's forensic lab to attempt data recovery. The CI tech working on the recovery is unexpectedly out until Aug 3rd and promised to update me when he returns.

I will send you a status on Friday morning.

[redacted]
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
OS:CTO:EU:C:HQ
[redacted]

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 4:40 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Careful What You Ask For

Thanks for the update--I'll keep my fingers crossed

Lois G Lerner
Director of Exempt Organizations

From: [redacted]
Sent: Wednesday, July 20, 2011 12:10 PM
To: Lerner Lois G
Cc: [redacted]
Subject: RE: Careful What You Ask For

Ms. Lerner,

I checked with the technician and he still has your drive. He wanted to exhaust all avenues to recover the data before sending it to the "hard drive cemetery." Unfortunately, after receiving assistance from several highly skilled technicians including HP experts, he still cannot recover the data.

I do have one other possibility that I am looking into and I hope to update you on the progress soon.

[redacted]
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
OS:CTO:EU:C:HQ
[redacted]

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 10:46 AM
To: [redacted]

Cc: [redacted]
Subject: RE: Careful What You Ask For

We can only try--but it may be too late--don't they send them off to the hard drive cemetery? In any event, thanks to all.

Lois G. Lerner
Director of Exempt Organizations

From: [redacted]
Sent: Tuesday, July 19, 2011 6:43 PM
To: Lerner Lois G
Cc: [redacted]
Subject: Re: Careful What You Ask For

Lois,

[redacted] will call [redacted] in the morning. If she can't fix it nobody can.

[redacted]

From: Lerner Lois G
Sent: Tuesday, July 19, 2011 05:21 PM
To [redacted]
Cc: [redacted]
Subject: Careful What You Ask For

It was nice to meet you this morning--although I would have preferred it was under different circumstances. I'm taking advantage of your offer to try and recapture my lost personal files. My computer skills are pretty basic, so nothing fancy--but there were some documents in the files that are irreplaceable. Whatever you can do to help, is greatly appreciated. I've cced my exec assistant. It's always a good idea to include her emails to me because she gets to my emails far faster than I do. Thanks!

Lois G. Lerner
Director of Exempt Organizations

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Opening Statement
Rep. Elijah E. Cummings, Ranking Member

Hearing on "IRS Obstruction: Lois Lerner's Missing E-Mails"

June 23, 2014

I want to get right to the heart of the accusation Republicans have been making for the past week. What are they really saying? They are saying that Lois Lerner intentionally—intentionally—destroyed her emails, and that IRS officials helped cover it up. Chairman Issa has been leading the charge. These are some of the accusations he has made:

- On June 13, Chairman Issa suggested that this was "nefarious conduct that went much higher than Lois Lerner."
- On June 18, he said "the emails of a prominent official don't just disappear without a trace unless that was the intention."
- On June 19, he said Ms. Lerner "made the decision not to have this drive recovered."
- And just this morning, he said "the Justice Department, the IRS, and the White House are interested in her succeeding in hiding what she's hiding."

Chairman Issa made these accusations on national television, without first obtaining a briefing from IT officials at the IRS who could have explained what really happened. And he made them before hearing from the IRS Commissioner.

Mr. Koskinen testified last Friday before the Ways and Means Committee. And now that we have the facts, they tell a vastly different story.

Our Committee has obtained no evidence to support Chairman Issa's claim that Lois Lerner intentionally destroyed her emails. To the contrary, we have now obtained contemporaneous evidence from 2011 showing the exact opposite—that this was a technological problem with her computer.

In Mr. Koskinen's testimony last Friday, he walked through email after email from 2011 showing that Ms. Lerner sought help from IT staff at the IRS, and that they went to great lengths to recover her data, but at the end of that process, they could not do so.

Mr. Koskinen also testified last week that the IRS took the extraordinary step of sending Ms. Lerner's hard drive to experts in the forensic lab at the IRS Criminal Investigation Division, but even they could not recover her data.

On August 5, 2011, Ms. Lerner received an email with the bad news. It said this: "Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecoverable. I am very sorry. Everyone involved tried their best."

So, if anyone wants *actual evidence* of what happened in this case, now we have it. I ask unanimous consent that all of these emails—from July 19, July 20, August 1, and August 5—be entered into the official hearing record. These emails are all from 2011, well *before* any congressional investigation began. And they show that Ms. Lerner's computer crashed *before* she was informed that IRS employees in Cincinnati were using inappropriate search terms, according to the Inspector General.

Now, we can certainly take issue with why the IRS did not have backup tapes for this data. As Mr. Koskinen testified last week, IRS policy in 2011 was to recycle backup tapes after six months to save money. He also explained that this policy was changed in 2013 to save all backup tapes.

The fact is that there are longstanding problems with electronic record-keeping at federal agencies. The Bush Administration lost millions of emails relating to the U.S. Attorney firings, the outing of covert CIA agent Valerie Plame, and other investigations. In 2007, White House spokeswoman Dana Perino admitted that they lost five million emails. As she said at the time, "We screwed up, and we're trying to fix it."

There has been some progress since then, but I have always believed we need to do more. That is why nearly a year and a half ago, I introduced the Electronic Message Preservation Act. My bill would have required federal agencies to preserve email records electronically. Although this Committee voted on a bipartisan basis to approve my legislation, it has languished since then, and House Republicans have declined to bring it to the House floor for a vote.

I believe our Committee's work should be a responsible effort to obtain the facts. It should not be an unseemly race against other Republicans to hold the first hearing in front of the cameras. And it should not be a ludicrous competition for the most hyperbolic sound-bites based on the least amount of evidence.

In this case, Republicans have been trying desperately—and unsuccessfully—for more than a year to link this scandal to the White House. Rather than continuing on this path, I sincerely hope we will turn to constructive legislation with concrete solutions to help federal agencies run more effectively and efficiently.

Contact: Jennifer Hoffman, Communications Director, (202) 226-5181.

Statement of Congressman Gerald E. Connolly (VA-11)
Committee on Oversight and Government Reform
IRS Obstruction: Lois Lerner's Missing E-Mails, Parts I & II
June 23 & 24, 2014

"And I don't want to delve too much into software, but I think it is fair that we recognize that software moves on and that archiving in the digital age is not as easy as it might seem to the public, and hopefully this hearing is good for the public to understand."

- Representative Darrell Issa, February 26, 2008

*"During the Bush administration, unfortunately, the move from Lotus Notes to Microsoft Exchange made us acutely aware that the quantity of digital information, if not lost but simply misstored, could end up costing us tens of millions of dollars to recover. In fact, **the digital age is more complex and, if not handled correctly, is both more subject to loss of critical records** and cost to preserve and recover them" **(Emphasis added).***

- Representative Darrell Issa, May 3, 2011

"...official records, like the e-mails of a prominent official, don't just disappear without a trace unless that was the intention."

- Representative Darrell Issa, June 18, 2014

This evening's hearing is characterized by a stark dichotomy between the majority's accusations matched with the U.S. Internal Revenue Service's (IRS) mundane explanations. A dichotomy that is further highlighted by the majority's astonishingly irresponsible and disrespectful attacks lodged against an honorable, patriotic public servant of the utmost integrity.

As the quotes printed above demonstrate, the Chairman appears to have undergone a convenient evolution with respect to the complexity of archiving electronic records in the digital age. As recently as May 3, 2011 – the same year in which Ms. Lerner's hard drive failed and she exhausted all IRS resources in an unsuccessful effort to recover the data – the Chairman acknowledged the digital age as both "...more complex," and "...more subject to loss of critical records..." than the earlier days dominated by paper records.

Yet, this same digital age of 2011 that the Chairman accurately described as complex and prone to the loss of critical records, appears to have retroactively transformed itself. No longer is it "...fair that we recognize that software moves on and that archiving in the digital age is not as easy as it might seem to the public," which the Chairman wisely noted at a 2008 hearing of this Committee. Rather, in astounding defiance of laws of time and space, 2011 has become a simple and straightforward digital age, where, "...official records, like the e-mails of a prominent official, don't just disappear without a trace unless that was the intention."

As with everything, the truth lies somewhere in between the extremes of nefarious, implausible conspiracy theories and a blameless IRS. The Ranking Member of the Committee on Ways and Mean succinctly summarized the current situation in noting:

"Was her computer crash a conspiracy? No. Was the Internal Revenue Service's system for backing up its email system entirely underfunded and wholly deficient? Yes."

Unfortunately, we know that this issue is not limited to the IRS. As Ranking Member of the Subcommittee that has legislative jurisdiction over the National Archives and Records Administration and Federal information technology and data standards, I have supported efforts aimed at dramatically strengthening Federal digital recordkeeping and worked to facilitate the adoption of cloud computing, which could enhance agency computing capabilities to promote better management and retention of agency emails. I have been pleased to collaborate with Chairman Issa on these issues.

Indeed, awareness of this long-standing, government-wide problem has been bipartisan, as evidenced by this Committee's actions in March 2013 to favorably report with, unanimous support, Ranking Member Cummings' legislation, the *Electronic Message Preservation Act*; in addition to the House passing on a roll call vote of 420 to 0 in January of this year – the Ranking Member's *Presidential and Federal Records Act Amendments of 2014.*

Congressional action on these good government measures reflects a bipartisan understanding that managing and preserving records in the digital age is a complex, government-wide challenge that transcends Presidential administrations and Congresses. Respectfully, I would urge the majority to rein in its partisan urges and once more engage with us in a measured, serious fashion to bring these much-needed bills across the finish line.

Finally, I must note that it was with dismay that I watched excerpts of the June 20, 2014, hearing held by the Committee on Ways and Means, which featured unfounded and unbecoming attacks by the majority against Commissioner Koskinen's honesty and integrity.

The majority appears to have forgotten that in 2008, Ken Wilson, an advisor to former Secretary of the Treasury Hank Paulson, asked Commissioner Koskinen if he would be willing to answer the call of a Republican Administration to help out a "local company" the government was taking over, Freddie Mac, because of Commissioner Koskinen's "integrity, judgment, and experience in restructuring companies."

The majority appears to have forgotten that Commissioner Koskinen was able to garner support for his confirmation to head the IRS from the Republican Ranking Member of the Senate Finance Committee and a former Republican Director of the Office of Management and Budget, precisely because of his esteemed record as an effective troubleshooter.

The majority appears to have forgotten that Commissioner Koskinen earned his bipartisan reputation as an excellent manager and turnaround expert by serving as Freddie Mac's Non-Executive Chairman from 2008 to 2011, and as its acting CEO in 2009; President of the United States Soccer Foundation from 2004 to 2008; Deputy Mayor and City Administrator of Washington D.C., from 2000 to 2003; Assistant to the President and Chair of the President's Council on Year 2000 Conversion from 1998 to 2000, and Deputy Director of Management at the Office of Management and Budget from 1994 to 1997.

Indeed, the majority appears to have forgotten that our Nation is fortunate that such an accomplished public servant, such as Commissioner Koskinen, was willing to forgo the comfort of a well-earned retirement or a well-paying private sector position, to step into the partisan crossfire in an effort to save the IRS, which is our Nation's accounts receivables department.

Commissioner Koskinen's decision to return to public service should surprise no one familiar with his recent history. As the Wall Street Journal (WSJ) noted in 2009 when reporting on Commissioner Koskinen's appointment by the Bush Administration to rescue Freddie Mac, "Now, approaching his 70th birthday June 30, Mr. Koskinen has what may be his most thankless assignment: chairman as well as interim chief executive and finance chief of Freddie Mac, a big mortgage company on Treasury Department life support." Apparently, even the WSJ could not envision how thankless the IRS position could be five years later.

I commend Commissioner Koskinen for demonstrating true leadership and perseverance in stating last Friday:

"If there is one point I want to come out from this; is I want to totally refute the suggestion that sometime in the next 6 to 10 months I will fade away. I am firmly committed that I will serve the remaining three and half years of my term, come whatever it may be. And I think it's important for those employees, dedicated as they are to the mission of this agency, to have confidence that their leader, the Commissioner of the IRS, is not going to cut and run, is not going to decide it was a bad choice to take this job, is delighted to be working with them, and that I look forward to the next three and half years of my term doing that."

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Union Calendar No. 93

113TH CONGRESS
1ST SESSION

H. R. 1234

[Report No. 113–128]

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2013

Mr. CUMMINGS introduced the following bill; which was referred to the Committee on Oversight and Government Reform

JUNE 25, 2013

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Electronic Message
5 Preservation Act".

6 **SEC. 2. RECORDS MANAGEMENT.**

7 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
8 TRONIC MESSAGES.—

9 (1) IN GENERAL.—Chapter 29 of title 44,
10 United States Code, is amended by adding at the
11 end the following new section:

12 **"§ 2911. Preservation of electronic messages and**
13 **other records**

14 "(a) REGULATIONS REQUIRED.—Not later than 18
15 months after the date of the enactment of this section,
16 the Archivist shall promulgate regulations governing Fed-
17 eral agency preservation of electronic messages that are
18 determined to be records (as such term is defined under
19 section 3301 of this title). Such regulations shall, at a
20 minimum—

21 "(1) require the electronic capture, manage-
22 ment, and preservation of such electronic records in
23 accordance with the records disposition requirements
24 of chapter 33 of this title;

1 "(2) require that such electronic records are
2 readily accessible for retrieval through electronic
3 searches;
4 "(3) establish mandatory minimum functional
5 requirements for electronic records management sys-
6 tems to ensure compliance with the requirements in
7 paragraphs (1) and (2);
8 "(4) establish a process to certify that Federal
9 agencies' electronic records management systems
10 meet the functional requirements established under
11 paragraph (3); and
12 "(5) include timelines for Federal agency com-
13 pliance with the regulations that ensure compliance
14 as expeditiously as practicable but not later than
15 four years after the date of the enactment of this
16 section.
17 "(b) COVERAGE OF OTHER ELECTRONIC
18 RECORDS.—To the extent practicable, the regulations pro-
19 mulgated under subsection (a) shall also include require-
20 ments for the capture, management, and preservation of
21 other electronic records.
22 "(c) COMPLIANCE BY FEDERAL AGENCIES.—Each
23 Federal agency shall comply with the regulations promul-
24 gated under subsection (a).

1 "(d) REVIEW OF REGULATIONS REQUIRED.—The
2 Archivist shall periodically review and, as necessary,
3 amend the regulations promulgated under subsection (a).
4 "(e) REPORTS ON IMPLEMENTATION OF REGULA-
5 TIONS.—
6 "(1) AGENCY REPORT TO ARCHIVIST.—Not
7 later than four years after the date of the enactment
8 of this section, the head of each Federal agency shall
9 submit to the Archivist a report on the agency's
10 compliance with the regulations promulgated under
11 this section.
12 "(2) ARCHIVIST REPORT TO CONGRESS.—Not
13 later than 90 days after receipt of all reports re-
14 quired by paragraph (1), the Archivist shall submit
15 to the Committee on Homeland Security and Gov-
16 ernmental Affairs of the Senate and the Committee
17 on Oversight and Government Reform of the House
18 of Representatives a report on Federal agency com-
19 pliance with the regulations promulgated under sub-
20 section (a).".
21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 29 of title 44,
23 United States Code, is amended by adding after the
24 item relating to section 2910 the following new item:

"2911. Preservation of electronic messages and other records.".

1 *(b) DISCLOSURE REQUIREMENT FOR OFFICIAL BUSI-*
2 *NESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MES-*
3 *SAGING ACCOUNT.—*
4 *(1) AMENDMENT.—Chapter 29 of title 44, United*
5 *States Code, as amended by subsection (a)(1), is fur-*
6 *ther amended by adding at the end the following new*
7 *section:*
8 ***"§ 2912. Disclosure requirement for official business***
9 ***conducted using non-official electronic***
10 ***messaging accounts***
11 *"(a) IN GENERAL.—An officer or employee of an exec-*
12 *utive agency may not create or send a record using a non-*
13 *official electronic messaging account unless such officer or*
14 *employee—*
15 *"(1) copies an official electronic messaging ac-*
16 *count of the officer or employee in the original cre-*
17 *ation or transmission of the record; or*
18 *"(2) forwards a complete copy of the record to an*
19 *official electronic messaging account of the officer or*
20 *employee within five days after the original creation*
21 *or transmission of the record.*
22 *"(b) ADVERSE ACTIONS.—The intentional violation of*
23 *subsection (a) (including any rules, regulations, or other*
24 *implementing guidelines), as determined by the appropriate*
25 *supervisor, shall be a basis for disciplinary action in ac-*

cordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

"(c) DEFINITIONS.—In this section:

"(1) ELECTRONIC MESSAGES.—The term 'electronic messages' has the meaning given that term in section 2901.

"(2) ELECTRONIC MESSAGING ACCOUNT.—The term 'electronic messaging account' means any account that sends electronic messages.

"(3) EXECUTIVE AGENCY.—The term 'executive agency' has the meaning given that term in section 105 of title 5.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 29 of title 44, United States Code, as amended by subsection (a)(2), is further amended by adding at the end the following new item:

"2912. Disclosure requirement for official business conducted using non-official electronic messaging accounts.".

~~(b)~~ *(c)* DEFINITIONS.—Section 2901 of title 44, United States Code, is amended—

(1) by striking "and" at the end of paragraph (14); and

(2) by striking paragraph (15) and inserting the following new paragraphs:

"(15) the term 'electronic messages' means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals; and

"(16) the term 'electronic records management system' means software designed to manage electronic records, including by—

"(A) categorizing and locating records;

"(B) ensuring that records are retained as long as necessary;

"(C) identifying records that are due for disposition; and

"(D) ensuring the storage, retrieval, and disposition of records.".

SEC. 3. PRESIDENTIAL RECORDS.

(a) ADDITIONAL REGULATIONS RELATING TO PRESIDENTIAL RECORDS.—

(1) IN GENERAL.—Section 2206 of title 44, United States Code, is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following:

"(5) provisions for establishing standards necessary for the economical and efficient management of electronic Presidential records during the President's term of office, including—

"(A) records management controls necessary for the capture, management, and preservation of electronic messages;

"(B) records management controls necessary to ensure that electronic messages are readily accessible for retrieval through electronic searches; and

"(C) a process to certify the electronic records management system to be used by the President for the purposes of complying with the requirements in subparagraphs (A) and (B).".

(2) DEFINITIONS.—Section 2201 of title 44, United States Code, is amended by adding at the end the following new paragraphs:

"(6) The term 'electronic messages' has the meaning given that term under section 2901(15) of this title.

"(7) The term 'electronic records management system' has the meaning given that term under section 2901(16) of this title.".

1 (b) CERTIFICATION OF PRESIDENT'S MANAGEMENT
2 OF PRESIDENTIAL RECORDS.—
3 (1) CERTIFICATION REQUIRED.—Chapter 22 of
4 title 44, United States Code, is amended by adding
5 at the end the following new section:

6 **"§ 2208. Certification of the President's management**
7 **of Presidential records**

8 "(a) ANNUAL CERTIFICATION.—The Archivist shall
9 annually certify whether the electronic records manage-
10 ment controls established by the President meet require-
11 ments under sections 2203(a) and 2206(5) of this title.
12 "(b) REPORT TO CONGRESS.—The Archivist shall re-
13 port annually to the Committee on Homeland Security and
14 Governmental Affairs of the Senate and the Committee
15 on Oversight and Government Reform of the House of
16 Representatives on the status of the certification.".
17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of chapter 22 of title 44,
19 United States Code~~, as amended by subsection~~
20 ~~(a)(4), is further amended~~ *is amended* by adding at
21 the end the following new item:

"2208. Certification of the President's management of Presidential records.".

22 (c) REPORT TO CONGRESS.—Section 2203(f) of title
23 44, United States Code, is amended by adding at the end
24 the following:

"(4) One year following the conclusion of a President's term of office, or if a President serves consecutive terms one year following the conclusion of the last term, the Archivist shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on—

"(A) the volume and format of electronic Presidential records deposited into that President's Presidential archival depository; and

"(B) whether the electronic records management controls of that President met the requirements under sections 2203(a) and 2206(5) of this title.".

(d) EFFECTIVE DATE.—The amendments made by ~~this section~~ *subsections (a), (b), and (c)* shall take effect one year after the date of the enactment of this Act.

(e) DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNT.—

(1) AMENDMENT.—Chapter 22 of title 44, United States Code, as amended by subsection (b)(1), is further amended by adding at the end the following new section:

1 ***"§ 2209. Disclosure requirement for official business***
2 ***conducted using non-official electronic***
3 ***messaging accounts***

4 *"(a) IN GENERAL.—An officer or employee of an exec-*
5 *utive agency may not create or send a Presidential record*
6 *using a non-official electronic messaging account unless*
7 *such officer or employee—*

8 *"(1) copies an official electronic messaging ac-*
9 *count of the officer or employee in the original cre-*
10 *ation or transmission of the Presidential record; or*

11 *"(2) forwards a complete copy of the Presidential*
12 *record to an official electronic messaging account of*
13 *the officer or employee within five days after the*
14 *original creation or transmission of the Presidential*
15 *record.*

16 *"(b) ADVERSE ACTIONS.—The intentional violation of*
17 *subsection (a) (including any rules, regulations, or other*
18 *implementing guidelines), as determined by the appropriate*
19 *supervisor, shall be a basis for disciplinary action in ac-*
20 *cordance with subchapter I, II, or V of chapter 75 of title*
21 *5, as the case may be.*

22 *"(c) DEFINITIONS.—In this section:*

23 *"(1) ELECTRONIC MESSAGES.—The term 'elec-*
24 *tronic messages' has the meaning given that term in*
25 *section 2901.*

1 *"(2) ELECTRONIC MESSAGING ACCOUNT.—The*
2 *term 'electronic messaging account' means any ac-*
3 *count that sends electronic messages.*
4 *"(3) EXECUTIVE AGENCY.—The term 'executive*
5 *agency' has the meaning given that term in section*
6 *105 of title 5.".*
7 *(2) CLERICAL AMENDMENT.—The table of sec-*
8 *tions at the beginning of chapter 22 of title 44,*
9 *United States Code, as amended by subsection (b)(2),*
10 *is further amended by adding at the end the following*
11 *new item:*

"2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts.".

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman

Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Misled America about Disparate Treatment

Staff Report
113th Congress

April 7, 2014

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Executive Summary

In the immediate aftermath of Lois Lerner's public apology for the targeting of conservative tax-exempt applicants, President Obama and congressional Democrats quickly denounced the IRS misconduct.[1] But later, some of the same voices that initially decried the targeting changed their tune. Less than a month after the wrongdoing was exposed, prominent Democrats declared the "case is solved" and, later, the whole incident to be a "phony scandal."[2] As recently as February 2014, the President explained away the targeting as the result of "bone-headed" decisions by employees of an IRS "local office" without "even a smidgeon of corruption."[3]

To support this false narrative, the Administration and congressional Democrats have seized upon the notion that the IRS's targeting was not just limited to conservative applicants. Time and again, they have claimed that the IRS targeted liberal- and progressive-oriented groups as well – and that, therefore, there was no political animus to the IRS's actions.[4] These Democratic claims are flat-out wrong and have no basis in any thorough examination of the facts. Yet, the Administration's chief defenders continue to make these assertions in a concerted effort to deflect and distract from the truth about the IRS's targeting of tax-exempt applicants.

The Committee's investigation demonstrates that the IRS engaged in disparate treatment of conservative-oriented tax-exempt applicants. Documents produced to the Committee show that initial applications transferred from Cincinnati to Washington were filed by Tea Party groups. Other documents and testimony show that the initial criteria used to identify and hold Tea Party applications captured conservative organizations. After the criteria were broadened in July 2012 to be cosmetically neutral, material provided to the Committee indicates that the IRS still intended to target only conservative applications.

A central plank in the Democratic argument is the claim that liberal-leaning groups were identified on versions of the IRS's "Be on the Look Out" (BOLO) lists.[5] This claim ignores significant differences in the placement of the conservative and liberal entries on the BOLO lists

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[1] *See, e.g.*, The White House, Statement by the President (May 15, 2013) (calling the IRS targeting "inexcusable"); *"The IRS: Targeting Americans for their Political Beliefs": Hearing before the H. Comm. on Oversight & Gov't*, 113th Cong. (2013) (statement of Ranking Member Elijah E. Cummings) ("The inspector general has called the action by IRS employees in Cincinnati, quote, "inappropriate," unquote, but after reading the IG's report, I think it goes well beyond that. I believe that there was gross incompetence and mismanagement in how the IRS determined which organizations qualified for tax-exempt status."); Press Release, Rep. Nancy Pelosi, Pelosi Statement on Reports of Inappropriate Activities at the IRS (May 13, 2013) ("While we look forward to reviewing the Inspector General's report this week, it is clear that the actions taken by some at the IRS must be condemned. Those who engaged in this behavior were wrong and must be held accountable for their actions.").

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

[3] *"Not even a smidgeon of corruption": Obama downplays IRS, other scandals*, FOX NEWS, Feb. 3, 2014.

[4] *See, e.g.*, Lauren French & Rachael Bade, *Democratic Memo: IRS Targeting Was Not Political*, POLITICO, July 17, 2013.

[5] *See Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013).

and how the IRS used the BOLO lists in practice. The Democratic claims are further undercut by testimony from IRS employees who told the Committee that liberal groups were not subject to the same systematic scrutiny and delay as conservative organizations.[6]

The IRS's independent watchdog, the Treasury Inspector General for Tax Administration (TIGTA), confirms that the IRS treated conservative applicants differently from liberal groups. The inspector general, J. Russell George, wrote that while TIGTA found indications that the IRS had improperly identified Tea Party groups, it "did not find evidence that the criteria [Democrats] identified, labeled 'Progressives,' were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited."[7] He concluded that TIGTA "found no indication in any of these other materials that 'Progressives' was a term used to refer cases for scrutiny for political campaign intervention."[8]

An analysis performed by the House Committee on Ways and Means buttresses the Committee's findings of disparate treatment. The Ways and Means Committee's review of the confidential tax-exempt applications proves that the IRS systematically targeted conservative organizations. Although a small number of progressive and liberal groups were caught up in the application backlog, the Ways and Means Committee's review shows that the backlog was 83 percent conservative and only 10 percent were liberal-oriented.[9] Moreover, the IRS approved 70 percent of the liberal-leaning groups and only 45 percent of the conservative groups.[10] The IRS approved every group with the word "progressive" in its name.[11]

In addition, other publicly available information supports the analysis of the Ways and Means Committee. In September 2013, *USA Today* published an independent analysis of a list of about 160 applications in the IRS backlog.[12] This analysis showed that 80 percent of the applications in the backlog were filed by conservative groups while less than seven percent were filed by liberal groups.[13] A separate assessment from *USA Today* in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve a single tax-exempt application filed by a Tea Party group.[14] During that same period, the IRS approved "perhaps dozens of applications from similar liberal and progressive groups."[15]

The IRS, over many years, has undoubtedly scrutinized organizations that embrace different political views for varying reasons – in many cases, a just and neutral criteria may have

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[6] *See, e.g.*, Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013); Transcribed interview of Stephen Daejin Seok, Internal Revenue Serv., in Wash., D.C. (June 19, 2013); Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).
[7] Letter from J. Russell George, Treasury Inspector Gen. for Tax Admin., to Sander M. Levin, H. Comm. on Ways & Means (June 26, 2013).
[8] *Id.*
[9] *Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 113th Con. (2013) (opening statement of Chairman Charles Boustany) [hereinafter "Ways and Means Committee September 18th Hearing"].
[10] *Id.*
[11] *Id.*
[12] *See* Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.
[13] *Id.*
[14] Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA TODAY, May 15, 2013.
[15] *Id.*

been fairly utilized. This includes the time period when Tea Party organizations were systematically screened for enhanced and inappropriate scrutiny. But the concept of *targeting*, when defined as a systematic effort to select applicants for scrutiny simply because their applications reflected the organizations' political views, only applied to Tea Party and similar conservative organizations. While use of term "targeting" in the IRS scandal may not always follow this definition, the reality remains that there is simply no evidence that any liberal or progressive group received enhanced scrutiny because its application reflected the organization's political views.

For months, the Administration and congressional Democrats have attempted to downplay the IRS's misconduct. First, the Administration sought to minimize the fallout by preemptively acknowledging the misconduct in response to a planted question at an obscure Friday morning tax-law conference. When that strategy failed, the Administration shifted to blaming "rogue agents" and "line-level" employees for the targeting. When those assertions proved false, congressional Democrats baselessly attacked the character and integrity of the inspector general. Their attempt to allege bipartisan targeting is just another effort to distract from the fact that the Obama IRS systematically targeted and delayed conservative tax-exempt applicants.

Findings

- The IRS treated Tea Party applications distinctly different from other tax-exempt applications.
- The IRS selectively prioritized and produced documents to the Committee to support misleading claims about bipartisan targeting.
- Democratic Members of Congress, including Ranking Member Elijah Cummings, Ranking Member Sander Levin, and Representative Gerry Connolly, made misleading claims that the IRS targeted liberal-oriented groups based on documents selectively produced by the IRS.
- The IRS's "test" cases transferred from Cincinnati to Washington were exclusively filed by Tea Party applicants: the Prescott Tea Party, the American Junto, and the Albuquerque Tea Party.
- The IRS's initial screening criteria captured exclusively Tea Party applications.
- Even after Lois Lerner broadened the screening criteria to maintain a veneer of objectivity, the IRS still sought to target and scrutinize Tea Party applications.
- The IRS targeting captured predominantly conservative-oriented applications for tax-exempt status.
- Myth: IRS "Be on the Lookout" (BOLO) entries for liberal groups meant that the IRS targeted liberal and progressive groups. Fact: Only Tea Party groups on the BOLO list experienced systematic scrutiny and delay.
- Myth: The IRS targeted "progressive" groups in a similar manner to Tea Party applicants. Fact: The IRS treated "progressive" groups differently than Tea Party applicants. Only seven applications in the IRS backlog contained the word "progressive," all of which were approved by the IRS. The IRS processed progressive applications like any other tax-exempt application.
- Myth: The IRS targeted ACORN successor groups in a similar manner to Tea Party applicants. Fact: The IRS treated ACORN successor groups differently than Tea Party applicants. ACORN successor groups were not subject to a "sensitive case report" or reviewed by the IRS Chief Counsel's office. The central issue for the ACORN successor groups was whether the groups were legitimate new entities or part of an "abusive" scheme to continue an old entity under a new name.
- Myth: The IRS targeted Emerge affiliate groups in a similar manner to Tea Party applicants. Fact: The IRS treated Emerge affiliate groups differently than Tea Party

applicants. Emerge applications were not subjected to secondary screening like the Tea Party cases. The central issue in the Emerge applications was private benefit, not political speech.

- Myth: The IRS targeted Occupy groups in a similar manner to Tea Party applicants. Fact: The IRS treated Occupy groups differently than Tea Party applicants. No applications in the IRS backlog contained the words "Occupy." IRS employees testified that they were not even aware of an Occupy entry on the BOLO list.

Coordinated and misleading Democratic claims of bipartisan IRS targeting

As the IRS targeting scandal grew, the Administration and congressional Democrats began peddling the allegation that the IRS targeting was not just limited to conservative tax-exempt application, but that the IRS had targeted liberal-leaning groups as well. These assertions kick-started when Acting IRS Commissioner Daniel Werfel told reporters that IRS "Be on the Look Out" lists included entries for liberal-oriented groups. Congressional Democrats seized upon his announcement and immediately began feeding the false narrative that liberal groups received the same systematic scrutiny and delay as conservative applicants. In the ensuing months, the IRS even reconsidered its previous redactions to provide congressional Democrats with additional fodder to support their assertions. Although TIGTA and others have rebuffed the Democratic argument, senior members of the Administration and in Congress continue this coordinated narrative that the IRS targeting was broader than conservative applicants.

The IRS acknowledges that portions of its BOLO lists included liberal-oriented entries

On June 24, 2013, Acting IRS Commissioner Daniel Werfel asserted during a conference call with reporters that the IRS's misconduct was broader than just conservative applicants.[16] Werfel told reporters that "[t]here was a wide-ranging set of categories and cases that spanned a broad spectrum."[17] Although Mr. Werfel refused to discuss details about the "inappropriate criteria that was [*sic*] in use," the IRS produced to Congress hundreds of pages of self-selected documents that supported his assertion.[18] The IRS prioritized producing these documents over other material, producing them when the Committee had received less than 2,000 total pages of IRS material. Congressional Democrats had no qualms in putting these self-selected documents to use.

Virtually simultaneous with Mr. Werfel's conference call, Democrats on the House Ways and Means Committee trumpeted the assertion that the IRS targeted liberal groups similarly to conservative organizations.[19] Ranking Member Sander Levin (D-MI) released several versions of the IRS BOLO list.[20] Because these versions included an entry labeled "progressives," Ranking Member Levin alleged that "[t]he [TIGTA] audit served as the basis and impetus for a wide range of Congressional investigations and **this new information shows that the**

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[16] *See* Alan Fram, *Documents show IRS also screened liberal groups*, ASSOC. PRESS, June 24, 2013.
[17] *Id.*
[18] *See* Letter from Leonard Oursler, Internal Revenue Serv., to Darrell Edward Issa, H. Comm. on Oversight & Gov't Reform (June 24, 2013).
[19] Press Release, H. Comm. on Ways & Means Democrats, New IRS Information Shows "Progressives" Included on BOLO Screening List (June 24, 2013).
[20] *Id.*

foundation of those investigations is flawed in a fundamental way."[21] (emphasis added). These documents would initiate a sustained campaign designed to falsely allege that the IRS engaged in bipartisan targeting.

Ways and Means Committee Democrats allege bipartisan IRS targeting

During a hearing of the Ways and Means Committee on June 27, 2013, Democrats continued to spin this false narrative, arguing that liberal groups were mistreated similarly to conservative groups. Ranking Member Levin proclaimed during his opening statement:

> This week we learned for the first time the three key items, one, the screening list used by the IRS included the term "progressives." Two, progressive groups were among the 298 applications that TIGTA reviewed in their audit and received heightened scrutiny. And, three, the inspector general did not research how the term "progressives" was added to the screening list or how those cases were handled by a different group of specialists in the IRS. The failure of the I.G.'s audit to acknowledge these facts is a fundamental flaw in the foundation of the investigation and the public's perception of this issue.[22]

Other Democratic Members picked up this thread. While questioning the hearing's only witness, Acting IRS Commissioner Werfel, Representative Charlie Rangel (D-NY) raised the specter of bipartisan targeting. He stated:

> Mr. RANGEL: You said there's diversity in the BOLO lists. And you admit that conservative groups were on the BOLO list. Why is it that we don't know whether or not there were progressive groups on the BOLO list?
>
> Mr. WERFEL: Well, we do know that – that the word "progressive" did appear on a set of BOLO lists. We do know that. When I was articulating the point about diversity, I was trying to capture that the types of political organizations that are on these BOLO lists are wide ranging. But they do include progressives.[23]

Similarly, Representative Joseph Crowley (D-NY) alleged that the IRS mistreated progressive groups identically to Tea Party groups. He said:

> As the weeks have gone on, we have seen that there is a culture of intimidation, but not from the White House, but rather from my Republican colleagues. **We know for a fact that there has been targeting of both tea party and**

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[21] *Id.*

[22] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (statement of Ranking Member Sander Levin).

[23] *Id.* (question and answer with Representative Charlie Rangel).

progressive groups by the IRS. . . . Then, as we see, the progressive groups were targeted side by side with their tea party counterpart groups.[24] (emphasis added).

Acting IRS Commissioner volunteers to testify at the Oversight Committee's July 17, 2013 subcommittee hearing

On July 17, 2013, the Oversight Committee convened a joint subcommittee hearing on ObamaCare security concerns, featuring witnesses from the federal agencies involved in the law's implementation.[25] The Chairmen invited Sarah Hall Ingram, the Director of the IRS ObamaCare office, to testify.[26] Prior to the hearing, however, Acting IRS Commissioner Werfel personally intervened and volunteered himself to testify as the IRS witness in Ms. Ingram's place. Committee Democrats used Mr. Werfel's appearance as an opportunity to continue pushing their false narrative of bipartisan IRS targeting.

During the hearing, Ranking Member Elijah Cummings (D-MD) used the majority of his five-minute period to question Mr. Werfel not on the subject matter of the hearing, but rather on the IRS's treatment of liberal tax-exempt applicants. They engaged in the following exchange:

Mr. CUMMINGS.	I would like to ask you about the ongoing investigation into the treatment of Tea Party applicants for tax exempt status. During our interviews, we have been told by more than one IRS employee that there were progressive or left-leaning groups that received treatment similar to the Tea Party applicants. As part of your internal review, have you identified non-Tea Party groups that received similar treatment?
Mr. WERFEL.	Yes.
Mr. CUMMINGS.	We were told that one category of applicants had their applications denied by the IRS after a 3-year review; is that right?
Mr. WERFEL.	Yes, that's my understanding that there is a group or seven groups that had that experience, yes.[27]

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[24] *Id.* (question and answer with Representative Joseph Crowley).

[25] *"Evaluating Privacy, Security, and Fraud Concerns with ObamaCare's Information Sharing Apparatus": J. Hearing before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Gov't Reform and the Subcomm. on Cybersecurity, Infrastructure Protection, and Security Technologies of the H. Comm. on Homeland Security*, 113th Cong. (2013) [hereinafter "July 17th Hearing"].

[26] *See* Letter from James Lankford, H. Comm. on Oversight & Gov't Reform, & Patrick Meehan, H. Comm. on Homeland Security, to Sarah Hall Ingram, Internal Revenue Serv. (July 10, 2013).

[27] July 17th Hearing, *supra* note 25.

It is certain that Ranking Member Cummings would not have had the opportunity to ask these questions had Ms. Ingram testified as originally requested.

The circumstances of Mr. Werfel's statements are striking. He volunteered to replace the undisputed IRS expert on ObamaCare at a hearing focusing on ObamaCare security, after being at the IRS for less than two months. He volunteered to testify at a subcommittee the day before the Committee convened a hearing that would feature testimony about the IRS's targeting of conservative applicants. By all indications, Mr. Werfel's testimony allowed congressional Democrats to continue to perpetuate the myth of bipartisan IRS targeting.

Democrats attack the Inspector General during the Oversight Committee's July 18, 2013 hearing

Unsurprisingly, Democrats on the Oversight Committee highlighted Mr. Werfel's assertions as their main narrative during a Committee hearing on the IRS targeting the following day. During his opening statement, Ranking Member Cummings criticized Treasury Inspector General for Tax Administration J. Russell George, accusing him of ignoring liberal groups targeted by the IRS.[28] Ranking Member Cummings stated:

> I also want to ask the Inspector General why he was unaware of documents we have now obtained showing that the IRS employees were also instructed to screen for progressive applicants and why his office did not look into the treatment of left-leaning organizations, such as Occupy groups. I want to know how he plans to address these new documents. Again, we represent conservative groups on both sides of the aisle, and progressives and others, and so all of them must be treated fairly.[29]

Representative Danny Davis (D-IL) utilized Mr. Werfel's testimony from the day before to also criticize the inspector general. Representative Davis said:

> **Yesterday, the principal deputy commissioner of the Internal Revenue Service, Danny Werfel, testified before this committee that progressive groups received treatment from the IRS that was similar to Tea Party groups when they applied for tax exempt status.** In fact, Congressman Sandy Levin, who is the ranking member of the Ways and Means Committee, explained these similarities in more detail. He said the IRS took years to resolve these cases, just like the Tea Party cases. And he said the IRS, one, screened for these groups, transferred them to the Exempt Organizations Technical Unit, made them the subject of a sensitive case report, and had them reviewed by the Office of Chief Counsel. According to the information provided to the Committee on Ways and Means, some of these progressive groups actually had their applications denied

[28] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of Ranking Member Elijah E. Cummings) [hereinafter "July 18th Hearing"].
[29] *Id.*

> after a 3-year wait, and the resolution of these cases happened during the time period that the inspector general reviewed for its audit.[30] (emphasis added).

Inspector General George testified at the hearing to defend his work and debunk Democratic myths of bipartisan targeting. Committee Democrats took the opportunity to harshly interrogate Mr. George, using Mr. Werfel's testimony. Representative Gerry Connolly (D-VA) said to him:

> Well, so I want to make sure—you're under oath, again—it is your testimony today, as it was in May, but let's limit it to today, that at the time you testified here in May you had absolutely no knowledge of the fact that in any screening, BOLOs or otherwise, the words "Progressive," "Democrat," "MoveOn," never came up. You were only looking at "Tea Party" and conservative-related labels. You were unaware of any flag that could be seen as a progressive—the progressive side of things.[31]

Similarly, Representative Jackie Speier (D-CA) told Mr. George:

> Now, that seems completely skewed, Mr. George, if you are indeed an unbiased, impartial watch dog. It's as if you only want to find emails about Tea Party cases. These search terms do not include any progressive or liberal or left-leaning terms at all. Why didn't you search for the term "progressive"? It was specifically mentioned in the same BOLO that listed Tea Party groups.[32]

Representative Carolyn Maloney (D-NY) said:

> How in the world did you get to the point that you only looked at Tea Party when liberals and progressives and Occupy Wall Street and conservatives are just as active, if not more active, and would certainly be under consideration. That is just common plain sense. And I think that some of your statements have not been—it defies—it defies logic, it defies belief that you would so limit your statements and write to Mr. Levin and write to Mr. Connolly that of course no one was looking at any other area.[33]

Armed with self-selected IRS documents and Mr. Werfel's testimony, congressional Democrats vehemently attacked TIGTA in an attempt to undercut its findings that the IRS had targeted conservative tax-exempt applicants. Their *ad hominen* attacks on an independent inspector general sought to distract and deflect from the real misconduct perpetrated by the IRS.

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[30] *Id.* (question and answer with Representative Danny Davis).
[31] *Id.* (question and answer with Representative Gerry Connolly).
[32] *Id.* (question and answer with Representative Jackie Speier).
[33] *Id.* (question and answer with Representative Carolyn Maloney).

The IRS reinterprets legal protections for taxpayer information to bolster Democratic allegations

The IRS was not an unwilling participant in spinning this false narrative. Section 6103 of federal tax law protects confidential taxpayer information from public dissemination.[34] Under the tax code, however, the IRS may release confidential taxpayer information to the House Ways and Means Committee and the Senate Finance Committee.[35] The IRS cited this provision of law to withhold vital details about the targeting scandal from the American public. The prohibition did not stop the IRS from releasing information helpful to its cause.

In August 2013, the IRS suddenly reversed its interpretation of the law. In a letter to Ways and Means Ranking Member Levin – who already had access to confidential taxpayer information – Acting IRS Commissioner Werfel wrote: "Consistent with our continuing efforts to provide your Committee and the public with as much information as possible regarding the Service's treatment of tax exempt advocacy organizations, we are re-releasing certain redacted documents that had been previously provided to your Committee."[36] Mr. Werfel explained the reversal as the result of "our continuing review of the documents" and "a thorough section 6103 analysis."[37] The reinterpretation allowed the IRS to release information related to "ACORN Successors" and "Emerge" groups.[38]

Congressional Democrats embraced the IRS's sudden reversal. Releasing new IRS documents, Ranking Member Levin and Ranking Member Cummings issued a joint press release announcing that "**new information from the IRS that provides further evidence that progressive groups were singled out for scrutiny in the same manner as conservative groups**."[39] (emphasis added). Ranking Member Levin proclaimed: "These new documents make it clear the IRS scrutiny of the political activity of 501(c)(4) organizations covered a broad spectrum of political ideology and was not politically motivated."[40] Ranking Member Cummings similarly intoned: "This new information should put a nail in the coffin of the Republican claims that the IRS's actions were politically motivated or were targeted at only one side of the political spectrum."[41]

The IRS's sudden reinterpretation of section 6103 allowed congressional Democrats to continue their assault on the truth. Again using documents self-selected by the IRS, these defenders of the Administration carried on their rhetorical campaign to convince Americans that the IRS treated liberal applicants identically to Tea Party applicants.

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[34] I.R.C. § 6103.
[35] *Id.* § 6103(f).
[36] Letter from Daniel I. Werfel, Internal Revenue Serv., to Sander Levin, H. Comm. on Ways & Means (Aug. 19, 2013), *available at* http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/IRS%20Letter%20to%20Levin%20August%2019%2C%202013.pdf.
[37] *Id.*
[38] *Id.*
[39] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[40] *Id.*
[41] *Id.*

Recent Democratic efforts to perpetuate the myth of bipartisan IRS targeting

Democratic efforts to spin the IRS targeting continue through the present. On January 29, 2014, Senator Chris Coons raised the allegation while questioning Attorney General Eric Holder about the Administration's investigation into the IRS's targeting. Senator Coons stated:

> Well, thank you, Mr. Attorney General. I -- I join a number of colleagues in urging and hoping that the investigation into IRS actions is done in a balanced and professional and appropriate way. And I assume it is, unless demonstrated otherwise. **And what I've heard is that there were progressive groups, as well as tea party groups, that were perhaps allegedly on the receiving end of reviews of the 501(c)(3) applications**. And it's my expectation that we'll hear more in an appropriate and timely way about the conduct of this investigation.[42] (emphasis added).

On February 3, 2014, during his daily briefing, White House Press Secretary Jay Carney echoed the Democratic line that the IRS targeted liberal groups in the same manner in which it targeted conservative groups. In defending the President's comments about "not even a smidgeon of corruption," Mr. Carney said:

> Q Jay, in the President's interview with Bill O'Reilly last night, he said that there was "not even a smidgen of corruption," regarding the IRS targeting conservative groups. Did the President misspeak?
>
> A No, he didn't. But I can cite – I think have about 20 different news organizations that cite the variety of ways that that was established, including by the independent IG, who testified in May and, as his report said, that **he found no evidence that anyone outside of the IRS had any involvement in the inappropriate targeting of conservative – or progressive, for that matter – groups in their applications for tax-exempt status**. So, again, I think that this is something –[43] (emphasis added).

During debate on the House floor on H.R. 3865, the Stop Targeting of Political Beliefs by the IRS Act of 2014, Ways and Means Committee Ranking Member Levin spoke in opposition to the bill. He said:

> On a day when the Chairman of the Ways and Means Committee, Mr. Camp, is unveiling a tax measure that requires serious bipartisanship to be successful, we are here on the floor considering a totally political bill in an attempt to resurrect an alleged scandal that never existed. . . . **And what have we learned? That**

[42] *"Oversight of the U.S. Department of Justice": Hearing before the S. Comm. on the Judiciary*, 113th Cong. (2014) (question and answer with Senator Chris Coons).

[43] The White House, Press Briefing by Press Secretary Jay Carney, 2/3/14, http://www.whitehouse.gov/photos-and-video/video/2014/02/03/press-briefing#transcript.

> **both progressive and conservative groups were inappropriately screened out by name and not by activity.**[44] (emphasis added).

As recently as early March 2014, Democrats have been spreading the myth that liberal-oriented groups were targeted in the same manner as conservative organizations. Appearing on *The Last Word with Lawrence O'Donnell*, Representative Gerry Connolly continued the Democratic allegations of bipartisan targeting. Representative Connolly said:

> You know, that's true, but I think we need to back up. This is not an honest inquiry. This is a Star Chamber operation. **This is cherry picking information, deliberately colluding with a Republican idea in the IRS to make sure the investigation is solely about tea party and conservative groups even though we know that the tilt is included progressive titles as well as conservative titles and that they were equally stringent.** It was a foolish thing to do. And it's wrong, but it was not just targeted at conservatives. But Darrell Issa wants to make sure that information does not get out.[45] (emphasis added).

The Democratic myth of bipartisan IRS targeting simply will not die. Working hand in hand with the Obama Administration's IRS, congressional Democrats vigorously asserted that the IRS mistreated liberal tax-exempt applicants in a manner identical to Tea Party groups. The IRS – the very same agency under fire for its actions – assisted these efforts by producing self-selected documents and volunteering helpful information. The result has been a fundamental misunderstanding of the truth about the IRS's targeting of conservative tax-exempt applicants.

The Truth: The IRS engaged in disparate treatment of conservative applicants

Contrary to Democratic claims, substantial documentary and testimonial evidence shows that the IRS systematically engaged in disparate treatment of conservative tax-exempt applicants. The Committee's investigation shows that the initial applications sent to the Washington as "test" cases were all filed by Tea Party-affiliated groups. The IRS screening criteria used to identify and separate additional applications also initially captured exclusively Tea Party organizations. Even after the criteria were changed, documents show the IRS intended to identify and separate Tea Party applications for review.

No matter how hard the Administration and congressional Democrats try to spin the facts about the IRS targeting, it remains clear that the IRS treated conservative tax-exempt applicants differently. As detailed below, the IRS treated Tea Party and other conservative tax-exempt applicants unlike liberal or progressive applicants.

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[44] Press Release, H. Comm. on Ways & Means Democrats, Levin Floor Statement on H.R. 3865 (Feb. 26, 2014).
[45] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).

The Committee's evidence shows the IRS sought to identify and scrutinize Tea Party applications

To date, the Committee has reviewed over 400,000 pages of documents produced by the IRS, TIGTA, the IRS Oversight Board, and others. The Committee has conducted transcribed interviews of 33 IRS employees, totaling over 217 hours. From this exhaustive undertaking, one fundamental finding is certain: the IRS sought to identify and scrutinize Tea Party applications separate and apart from any other tax-exempt applications, including liberal or progressive applications.

The initial "test" cases were exclusively Tea Party applications

From documents produced by the IRS, the Committee is aware that the initial test cases transferred to Washington in spring 2010 to be developed as templates were applications filed by Tea Party-affiliated organizations. According to one document entitled "Timeline for the 3 exemption applications that were referred to [EO Technical] from [EO Determinations]," the Washington office received the 501(c)(3) application filed by the Prescott Tea Party, LLC on April 2, 2010.[46] The same day, the Washington office received the 501(c)(4) application filed by the Albuquerque Tea Party, Inc.[47] After Prescott Tea Party did not respond to an IRS information request, the IRS closed the application "FTE" or "failure to establish." The Washington office asked for a new 501(c)(3) application, and it received the application filed by American Junto, Inc., on June 30, 2010.[48]

Testimony provided by veteran IRS tax law specialist Carter Hull, who was assigned to work the test cases in Washington, confirms that they were exclusively Tea Party applications. He testified:

> Q Now, sir, in this period, roughly March of 2010, was there a time when someone in the IRS told you that you would be assigned to work on two Tea Party cases?
>
> A Yes.
>
> ***
>
> Q Do you recall when precisely you were told that you would be assigned two Tea Party cases?
>
> A When precisely, no.
>
> Q Sometime in –

[46] Internal Revenue Serv., Timeline from the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]
[47] *Id.*
[48] *Id.*

A Sometime in the area, but I did get, they were assigned to me in April.

***

Q Okay, and just to be clear, April of 2010?

A Yes.

***

Q And sir, were they cases 501(c)(3)s, or 501(c)(4)s?

A One was a 501(c)(3), and one was a 501(c)(4).

Q So one of each?

A One of each.

Q What, to your knowledge, was it intentional that you were sent one of each?

A Yes.

Q Why was that?

A I'm not sure exactly why. I can only make assumptions, but those are the two areas that usually had political possibilities.

***

Q The point of my question was, no one ever explained to you that you were to understand and work these cases for the purpose of working similar cases in the future?

***

A All right, I -- I was given -- they were going to be test cases to find out how we approached (c)(4), and (c)(3) with regards to political activities.

***

Q Mr. Hull, before we broke, you were talking about these two cases being test cases, is that right? Do you recall that?

A I realized that there were other cases. I had no idea how many, but there were other cases. And they were trying to find out how we should approach these organizations, and how we should handle them.

***

Q And when you say these organizations, you mean Tea Party organizations?

A The two organizations that I had.[49]

Hull's testimony also confirms that the Washington IRS office requested a similar 501(c)(3) application to replace the Prescott Tea Party's application. He testified:

Q Did you send out letters to both organizations the 501(c)(3) and 501(c)(4)?

A I did.

Q Did you get responses from both organizations?

A I got response from only one organization.

Q Which one?

A The (c)(4).

Q (C)(4). What did you do with the case that did not respond?

A I tried to contact them to find out whether they were going to submit anything.

Q By telephone?

A By telephone. And I never got a reply.

Q Then what did you do with the case?

A I closed it, failure to establish.

***

Q So at this time, when the (c)(3) became the FTE, did you begin to work only on the (c)(4)?

[49] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

A I notified my supervisor that I would need another (c)(3) if they wanted me to work one of each.

***

Q How did you phrase the request to Ms. Hofacre? Was it -- were you asking for another (c)(3) Tea Party application?

A I was asking for another (c)(3) application in the lines of the first one that she had sent up. I'm not sure if I asked her for a particular organization or a particular type of organization. I needed a (c)(3) that was maybe involved in political activities.

Q And the first (c)(3), it was a Tea Party application?

A Yes, it was.[50]

[50] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

Fig. 1: IRS Timeline of Tea Party "test" cases[51]

A. Timeline for the 3 exemption applications that were referred to EOT from EOD

1. Prescott Tea Party, LLC	**2. American Junto, Inc.**	**3. Albuquerque Tea Party, Inc.**
The Applicant sought exemption under §501(c)(3) formed to educate the public on current political issues, constitutional rights, fiscal responsibility, and support for a limited government. It planned to undertake this educational activity through rallies, protests, educational videos and through its website. The organization also intended to engage in legislative activities. The case was closed FTE on May 26, 2010.	The organization applied for exemption under §501(c)(3), stating it was formed to educate voters on current social and political issues, the political process, limited government, and free enterprise. It also indicated it would be involved in political campaign intervention and legislative activities. The case was closed FTE on January 4, 2012.	The organization applied for exemption under §501(c)(4) as a social welfare organization for purposes of issue advocacy and education. A proposed adverse is being prepared on the basis that the organization's primary activity is political campaign intervention supporting candidates associated with a certain political faction, its educational activities are partisan in nature, and its activities are intended to benefit candidates associated with a specific political faction as opposed to benefiting the community as a whole.
Timeline: **2009** • **11/09/2009** → Application received by EOD. • **12/18/2009** → Case assigned to EOD specialist. **2010** • **3/08/2010** → **Date the case was referred to EOT.** Case pulled from	**Timeline:** **2010** • **2/11/2010** → Application was received by EOD	**Timeline:** **2010** • **1/4/2010** → Application was received by EOD.
EOD files to send to EOT for review. • **3/11/2010** → EOD prepared a memo to transfer the case to EOT as part of EOT's review of some of the "advocacy organization" cases being received in EOD. • **4/02/2010** → Case assigned to EOT. • **4/14/2010** → 1st development letter mailed to Taxpayer (Response due by 5/06/2010). • **5/26/2010** → Case closed FTE (90-day suspense date ended on 8/26/2010).	• **4/11/2010** → Case assigned to a specialist in EOD. • **4/25/2010** → EOD emailed EOT (Manager Steve Grodnitzky) regarding who EOD should contact for help on "advocacy organization" cases being held in screening. • **5/25/2010** → EOT requested a §501(c)(3) "advocacy organization" case be transferred from EOD to replace Prescott Tea Party, LLC, a §501(c)(3) advocacy organization applicant that had been closed FTE. • **6/25/2010** → Memo proposing to transfer the case to EOT was prepared by EOD specialist. • **6/30/2010** → **Date the case was referred to EOT.** • **7/7/2010** → 1st development letter sent (Response due by 7/28/2010). • **7/28/2010** → EOT received Taxpayer's response to 1st development letter.	• **2/22/2010** → Case assigned to EOD specialist. • **3/11/2010** → EOD prepared memo to transfer the case to EOT as part of EOT's help reviewing the "advocacy organization" cases received in EOD. • **4/02/2010** → Case assigned to EOT. • **4/21/2010** → 1st development letter sent (Response due by 5/12/2010). • **4/29/2010** → Taxpayer requested extension for time to respond to 1st development letter. TLS granted extension until 6/11/2010. • **6/8/2010** → EOT received the Taxpayer's response to 1st development letter.

[51] Internal Revenue Serv., Timeline from the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]

The initial screening criteria captured exclusively Tea Party applications

Documents and testimony provided to the Committee show that the IRS's initial screening criteria captured only conservative organizations. According to a briefing paper prepared for Exempt Organizations Director Lois Lerner in July 2011, the IRS identified applications and held them if they met any of the following criteria:

- "Tea Party," "Patriots" or "9/12 Project" is referenced in the case file
- Issues include government spending, government debt or taxes
- Education of the public by advocacy/lobbying to "make America a better place to live"
- Statements in the case file criticize how the country is being run.[52]

Based on these criteria, which skew toward conservative ideologies, the IRS sent applications to a specific group in Cincinnati.

Fig. 2: IRS Briefing Document Prepared for Lois Lerner[53]

Background:

- EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
- EOD Screening identified this type of case as an emerging issue and began sending cases to a specific group if they meet any of the following criteria:
  - "Tea Party," "Patriots" or "9/12 Project" is referenced in the case file
  - Issues include government spending, government debt or taxes
  - Education of the public by advocacy/lobbying to "make America a better place to live"
  - Statements in the case file criticize how the country is being run

Testimony presented by the two Cincinnati employees shows that the initial applications in the growing IRS backlog were exclusive Tea Party applications. Elizabeth Hofacre, who oversaw the cases from April 2010 to October 2010, testified during her transcribed interview that "we were looking at Tea Parties." She testified:

> Q And you mentioned the Tea Party cases. Do you have an understanding of whether the Tea Party cases were part of that grouping of organizations with political activity, or were they separate?
>
> A That was the group of political cases.
>
> Q So why do you call them Tea Parties if it includes more than –

[52] Justin Lowe, Internal Revenue Serv., Increase in (c)(3)/(c)(4) Advocacy Org. Applications (2011). [IRSR 2735]
[53] *Id.*

A Well, at that time that's all they were. That's all that we were -- that's how we were classifying them.

Q In 2010, you were classifying any organization that had political activity as a Tea Party?

A No, it's the latter. I mean, we were looking at Tea Parties. I mean, political is too broad.

Q What do you mean when you say political is too broad?

A No, because when -- what do you mean by "political"?

Q Political activity -- if an application has an indication of political activity in it.

A I mean, I was tasked with Tea Party, so that's all I'm aware of. So I wasn't tasked with political in general.

Q Was there somebody who was tasked with political in general?

A Not that I'm aware of.[54] (emphasis added).

During the Committee's July 2013 hearing about the IRS's systematic scrutiny of Tea Party applications, Hofacre specifically rejected claims that liberal-oriented groups were part of the IRS backlog. She testified:

Mr. MICA. Okay, the beginning of 2010. And you—this wasn't a targeting by a group of your colleagues in Cincinnati that decided we're going to go after folks. And most of the cases you got, were they "Tea Party" or "Patriot" cases?

Ms. HOFACRE. Sir, they were all "Tea Party" or "Patriot" cases.

Mr. MICA. Were there progressive cases? How were they handled?

Ms. HOFACRE. **Sir, I was on this project until October of 2010, and I was only instructed to work "Tea Party"/ "Patriot"/"9/12" organizations.**[55] (emphasis added)

Ron Bell, who replaced Hofacre in overseeing the growing backlog of applications in Cincinnati, similarly testified during a transcribed interview that he only received Tea Party applications from October 2010 until July 2011. He testified:

[54] Transcribed interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. (May 31, 2013).
[55] July 18th Hearing, *supra* note 28.

Q Okay. So at this point between October 2010 and July 2011, were all the Tea Party cases going to you?

A Correct.

Q And to your knowledge, during this same time period, was it only Tea Party cases that were being assigned to you or were there other advocacy cases that were part of this group?

***

A Does that include 9/12 and Patriot?

Q Yes, yes.

A Yes.

Q Okay. So it was just those type of cases, not other type of advocacy cases that maybe had a different -- a different political -- a liberal or progressive case?

A Correct.

***

Q Okay. And to your knowledge, when you were first assigned these cases in October 2010 and through July 2011, do you know what criteria the screening unit was using to identify the cases to send to you?

A Yes.

Q And what was that criteria?

A It was solicited on the Emerging Issues tab of the BOLO report.

Q And what did that say? What did that Emerging Issue tab on the BOLO say?

A In July 20 –

Q In October 2010 we'll start.

A I don't know exactly what it said, but it just -- Tea Party cases, 9/12, Patriot.

Q And do you recall how many cases you inherited from Ms. Hofacre?

A 50 to 100.

Q And were those only Tea Party-type cases as well?

A To the best of my knowledge.[56]

The IRS continued to target Tea Party groups after the BOLO criteria were broadened

From material produced to the Committee, it is apparent that Exempt Organizations Director Lois Lerner began orchestrating in late 2010 a "c4 project that will look at levels of lobbying and pol[itical] activity" of nonprofits, careful that the effort was not a "*per se* political project."[57] Consistent with this goal, Lerner ordered the implementation of new screening criteria for the Tea Party cases in summer 2011, broadening the BOLO language to "advocacy organizations." According to testimony received by the Committee, Lerner ordered the language changed from "Tea Party" because she viewed the term to be "too pejorative."[58] While avoiding *per se* political scrutiny, other documents obtained by the Committee suggest that Lerner's change was merely cosmetic. These documents show that the IRS still intended to target and scrutinize Tea Party applications, despite the facial changes to the BOLO criteria.

An internal "Significant Case Report" summary chart prepared in August 2011 illustrates that Lerner's change was merely cosmetic (figures 3A and 3B). While the name of entry was changed "political advocacy organizations," the description of the issue continued to reference the Tea Party movement.[59] The issue description read: "Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)."[60]

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[56] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).
[57] E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin et al., Internal Revenue Serv. (Sept. 16, 2010). [IRSR 191030]
[58] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).
[59] Internal Revenue Serv., Significant Case Report (Aug. 31, 2011). [IRSR 151653]
[60] *Id.*

Fig. 3A: IRS Significant Case Report Summary, August 2011[61]

A. Open SCs:

	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	Political Advocacy Organizations	T2/Ron Shoemaker	[redacted]	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)	Chip Hull & Hilary Goehausen	3/31/2011 (Orig) 05/31/2011 (Rev) 07/31/2011 (Rev) 10/06/2011 (Rev) 12/31/2011 (Rev)	Developing both a (c)(3) and (c)(4) cases. Proposed (c)(4) favorable is currently being reviewed. Proposed denial currently being reviewed on (c)(3). Cases were discussed with Judy Kindell on 04/06/11. Judy requested staff to get additional information from taxpayers regarding certain activities. Development letters were sent. Proposed favorable (c)(4) ruling forwarded to Chief Counsel for comments on 06/04/11. Information from (c)(3) organization regarding activities due on 05/18/2011. Waiting on taxpayer response. : Met with Director EO on June 29, 2011. Met with Counsel on 3/10/11 to discuss the cases. Counsel recommended further development of the cases by getting information on the organizations' 2010 activities. Counsel gave us directions on the type of information needed. [redacted] Next Action: [redacted]	No

Fig. 3B: IRS Significant Case Report Summary, August 2011 (enlarged)[62]

	Name of Org/Group	Group #/Manager	EIN	Received	Issue
1.	Political Advocacy Organizations	T2/Ron Shoemaker	[redacted]	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)

Likewise, in comparing the individual sensitive case report prepared for the Tea Party cases in June 2011 with the report prepared in September 2012, it is apparent that the BOLO criteria changed was superficial. The reports' issue summaries are nearly identical, except for replacing "Tea Party" with "advocacy organizations."[63] The June 2011 sensitive case report (figure 4A) identified the issue as: "The various 'tea party' organizations are separately organized, but appear to be a part of a national political movement that may be involved in political activities. The 'tea party' organizations are being followed closely in national newspapers (such as The Washington Post) almost on a regular basis."[64]

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[61] *Id.*
[62] *Id.*
[63] *Compare* Internal Revenue Serv., Sensitive Case Report (June 17, 2011) [IRSR 151687-88], *with* Internal Revenue Serv., Sensitive Case Report (Sept. 18, 2012). [IRSR 150608-09]
[64] Internal Revenue Serv., Sensitive Case Report (June 17, 2011). [IRSR 151687-88]

Fig. 4A: IRS Sensitive Case Report for Tea Party cases, June 17, 2011[65]

CASE OR ISSUE SUMMARY:
The various "tea party" organizations are separately organized, but appear to be a part of a national political movement that may be involved in political activities. The "tea party" organizations are being followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati is holding three applications from organizations which have applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and approximately twenty-two applications from organizations which have applied for recognition of exemption under section 501c)(4) as social welfare organizations. Two organizations that we believe may be "tea party" organizations already have been recognized as exempt under section 501(c)(4). EOT has not seen the case files, but are requesting copies of them. The issue is whether these organizations are involved in campaign intervention or, alternatively, in nonexempt political activity.

The September 2012 sensitive case report (figure 4B) identified the issue as: "These organizations are 'advocacy organizations,' and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis."[66]

Fig. 4B: IRS Sensitive Case Report for "Advocacy Organizations," Sept. 18, 2012[67]

CASE OR ISSUE SUMMARY:
These organizations are "advocacy organizations," and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati has in its inventory a number of applications from these types of organizations that applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and from organizations that applied for recognition of exemption under section 501(c)(4) as social welfare organizations.

Reading these items together, it is clear that although the BOLO language was changed to broader "political advocacy organizations," the IRS still intended to identify and single out Tea Party applications for scrutiny. Ron Bell testified that after the BOLO change in July 2011, he received more applications than just Tea Party cases. He testified:

> Q And do you recall when that – when the BOLO was changed after – you said it was after the meeting [with Lerner], they changed the BOLO after the meeting, do you recall when?
>
> A July.
>
> Q Of 2011?
>
> A Yes, sir.

[65] *Id.*
[66] Internal Revenue Serv., Sensitive Case Report (Sept. 18, 2012). [IRSR 150608-09]
[67] *Id.*

Q And you were going to say the BOLO became more, and then you were cut off. What were you going to say?

A It became more – they had more the advocacy, more organizations to the advocacy, like I mentioned about maybe a cat rescue that's advocating for let's not kill the cats that get picked up by the local government in whatever cities.[68]

Bell also stated that while he could not process the Tea Party applications because he was awaiting guidance from Washington, he could process the non-Tea Party applications. He testified:

Q Mr. Bell, in July 2011, when the BOLO was changed where they chose broad language, after that point, did you conduct secondary screening on any of the cases that were being held by you?

A You mean the cases that I inherited from Liz are the ones that had already been put into the whatever timeframe, Tea Party advocacy, slash advocacy?

Q Other type, yes.

A No, these were new ones coming in that someone thought that they perhaps should be in the advocacy, slash, Tea Party inventory.

Q Okay.

A They were assigned to Group 7822, and I reviewed them, and you know, maybe some were, but a vast majority was like outside the realm we were looking for.

Q And so they were like the . . . cat type cases you were discussing earlier?

A Yes.

***

Q After the July 2011 change to the BOLO, how long did you perform the secondary screening?

A Up until July 2012.

Q So, for a whole year?

A Yeah.

[68] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

Q And you would look at the cases and see if they were not a Tea Party case, you would move that either to closing or to further development?

A Yeah, and then the BOLO changed about midway through that timeframe.

Q Okay.

A To make it where we put the note on there that we don't need the general advocacy.

Q And after the BOLO changed in January 2012, did that affect your secondary screening process?

A There was less cases to be reviewed.

Q Okay. **So during this whole year, the Tea Party cases remained on hold pending guidance from Washington while the other cases that you identified as non-Tea Party cases were moved to either closure or further development; is that right?**

A **Correct.**[69] (emphasis added).

The IRS's own retrospective review shows the targeted applications were predominantly conservative-oriented

In July 2012, Lerner asked her senior technical advisor, Judith Kindell, to conduct an assessment of the political affiliation of the applications in the IRS backlog. On July 18, Kindell reported back to Lerner that of all the 501(c)(4) applications, having been flagged for additional scrutiny, at least 75 percent were conservative, "while fewer than 10 [applications, or 5 percent] appear to be liberal/progressive leaning groups based solely on the name."[70] Of the 501(c)(3) applications, Kindell informed Lerner that "slightly over half appear to be conservative leaning groups based solely on the name."[71] Unlike Tea Party cases, the Oversight Committee's review has received no testimony from IRS employees that any progressive groups were scrutinized because of their organization's expressed political beliefs.

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[69] *Id.*
[70] E-mail from Judith Kindell, Internal Revenue Serv., to Lois Lerner, Internal Revenue Serv. (July 18, 2012). [IRSR 179406]
[71] *Id.*

Fig. 5: E-mail from Judith Kindell to Lois Lerner, July 18, 2012[72]

From:	Kindell Judith E
Sent:	Wednesday, July 18, 2012 10:54 AM
To:	Lerner Lois G
Cc:	Light Sharon P
Subject:	Bucketed cases

Of the 84 (c)(3)

cases, slightly over half appear to be conservative leaning groups based solely

on the name. The remainder do not obviously lean to either side of the

political spectrum.

Of the 199 (c)(4)

cases, approximately 3/4 appear to be conservative leaning while fewer than 10

appear to be liberal/progressive leaning groups based solely on the name.

The remainder do not obviously lean to either side of the political

spectrum.

Documents and testimony obtained by the Committee demonstrate that the IRS sought to identify and scrutinize Tea Party applications. For fifteen months beginning in February 2010, the IRS systematically identified, separated, and delayed Tea Party applications – and only Tea Party applications. Even after the IRS broadened the screening criteria in the summer of 2011, internal documents confirm that that agency continued to target Tea Party groups.

The IRS treated Tea Party applications differently from other applications

Evidence obtained by the Committee in the course of its investigation proves that the IRS handled conservative applications distinctly from other tax-exempt applications. In February 2011, Lerner directed Michael Seto, the manager of Exempt Organizations Technical Unit, to put the Tea Party test cases through a "multi-tier" review.[73] Lerner wrote to Seto: "This could be the vehicle to go to court on the issue of whether Citizen's [*sic*] United overturning ban on corporate

[72] *Id.*
[73] Transcribed interview of Michael Seto, Internal Revenue Serv., in Wash., D.C. (July 11, 2013).

spending applies to tax exempt rule. Counsel and Judy Kindell need to be in on this one please."[74]

Carter Hull, an IRS specialist with almost 50 years of experience, testified that this multi-tier level of review was unusual. He testified:

Q Have you ever sent a case to Ms. Kindell before?

A Not to my knowledge.

Q This is the only case you remember?

A Uh-huh.

Q Correct?

A This is the only case I remember sending directly to Judy.

***

Q Had you ever sent a case to the Chief Counsel's office before?

A I can't recall offhand.

Q You can't recall. So in your 48 years of experience with the IRS, you don't recall sending a case to Ms. Kindell or a case to IRS Chief Counsel's office?

A To Ms. Kindell, I don't recall ever sending a case before. To Chief Counsel, I am sure some cases went up there, but I can't give you those.

Q Sitting here today you don't remember?

A I don't remember.[75]

Similarly, Elizabeth Hofacre, the Cincinnati-based revenue agent initially assigned to develop cases, told the Committee during a July 2013 hearing that the involvement of Washington was "unusual."[76] She testified:

I never before had to send development letters that I had drafted to EO

[74] E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRSR 161810]
[75] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).
[76] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of Elizabeth Hofacre).

Technical for review, and I never before had to send copies of applications and responses that were assigned to me to EO Technical for review. I was frustrated because of what I perceived as micromanagement with respect to these applications.[77]

Hofacre's successor on the cases, Ron Bell, also told the Committee that it was "unusual" to have to wait on Washington to move forward with an application.[78] He testified:

Q So did you see something different in these Tea Party cases applying for 501(c)(4) status that was different from other organizations that had political activity, political engagement applying for 501(c)(4) status in the past?

A I'm not sure if I understand that.

Q I guess what I'm getting at is you said you had seen previous applications from an organization applying for 501(c)(4) status that had some level of political engagement, and these Tea Party groups are also applying for 501(c)(4) status and they have some level of political engagement. Was there any difference in your mind between the Tea Party groups and the other groups that you'd seen in your experience at the IRS?

A No.

Q So, do you think that Tea Party groups are treated the same as these other groups from your previous experience?

A No.

***

Q In your experience, was there anything different about the way that the Tea Party 501(c)(4) cases were treated that was as opposed to the previous 501(c)(4) applications that had some level of political engagement?

A Yes.

Q And what was different?

A Well, they were segregated. They seemed to have been more scrutinized. I hadn't interacted with EO technical [in] Washington on cases really before.

Q You had not?

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[77] *Id.*

[78] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

A Well, not a whole group of cases.[79]

Another Cincinnati employee, Stephen Seok, testified that the type of activities that the conservative applicants conducted made them different from other similar applications he had worked in the past. He testified:

Q And to your knowledge, the cases that you worked on, was there anything different or novel about the activities of the Tea Party cases compared to other (c)(4) cases you had seen before?

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A **Normal (c)(4) cases we must develop the concept of social welfare, such as the community newspapers, or the poor, that types. These organizations mostly concentrate on their activities on the limiting government, limiting government role, or reducing government size, or paying less tax. I think it[']s different from the other social welfare organizations which are (c)(4).**

***

Q **So the difference between the applications that you just described, the applications for folks that wanted to limit government, limit the role of government, the difference between those applications and the (c)(4) applications with political activity that you had worked in the past, was the nature of their ideology, or perspective, is that right?**

A **Yeah, I think that's a fair statement**. But still, previously, I could work, I could work this type of organization, applied as a (c)(4), that's possible, though. Not exactly Tea Party, or 9-12, but dealing with the political ideology, that's possible, yes.

Q **So you may have in the past worked on applications from (c)(4), applicants seeking (c)(4) status that expressed a concern in ideology, but those applications were not treated or processed the same way that the Tea Party cases that we have been talking about today were processed, is that right?**

A **Right**. Because that [was] way before these – these organizations were put together. So that's way before. If I worked those cases, way before this list is on.[80] (emphases added).

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[79] *Id.*

[80] Transcribed interview of Stephen Daejin Seok, Internal Revenue Serv., in Wash., D.C. (June 19, 2013).

This evidence shows that the IRS treated conservative-oriented Tea Party applications differently from other tax-exempt applications, including those filed by liberal-oriented organizations. Testimony indicates that the IRS instituted new procedures and different hurdles for the review of Tea Party applications. What would otherwise be a routine review of an application became unprecedented scrutiny and delays for these Tea Party groups.

Myth versus fact: How Democrats' claims of bipartisan targeting are not supported by the evidence

In light of the evidence available to the Committee and under close examination, each Democratic argument fails. Despite their claims that liberal-leaning groups were targeted in the same manner as conservative applicants, the facts do not bear out their assertions. Instead, the Committee's investigation and public information shows the following:

- IRS BOLO entries for liberal groups and terms only appear on lists used for awareness and were never used as a litmus test for enhanced scrutiny;
- Some liberal-oriented organizations were identified for scrutiny because of objective, non-political concerns, but not because of their political beliefs;
- Substantially more conservative-leaning applicants than liberal-oriented applicants were caught in the IRS's backlog;
- The IRS treated Tea Party applicants differently from "progressive" groups;
- The IRS treated Tea Party applicants differently from ACORN successor groups;
- The IRS treated Tea Party applicants differently from Emerge affiliate groups; and
- The IRS treated Tea Party applicants differently from Occupy groups.

When carefully examined, these facts refute the myths perpetrated by congressional Democrats and the Administration that the IRS engaged in bipartisan targeting. The facts show, instead, that the IRS targeted Tea Party groups for systematic scrutiny and delay.

Perhaps most telling is the IRS's own actions. When Lois Lerner publicly apologized for the IRS's targeting of Tea Party applicants, she offered no such apology for its targeting of any liberal groups. When asked if the IRS had treated liberal groups inappropriately, Lerner responded: "I don't have any information on that."[81] This admission severely undercuts Democratic *ex post* allegations of bipartisan targeting.

BOLO entries for liberal groups and terms only appear on lists used for awareness and were never used as a litmus test for enhanced scrutiny

Congressional Democrats and some in the Administration claim that the IRS targeted liberal groups because some liberal-oriented organizations appeared on entries of the IRS BOLO

[81] Aaron Blake, *'I'm not good at math': The IRS's public relations disaster*, WASH. POST, May 10, 2013.

lists.[82] This claim is not supported by the facts. The presence of an organization or a group of organizations on the IRS BOLO list did not necessarily mean that the IRS targeted those groups. As the Ways and Means Committee phrased it, "being on a BOLO is different from being targeted and abused by the IRS."[83] A careful examination of the evidence demonstrates that only conservative groups on the IRS BOLO lists experienced systematic scrutiny and delay.

The Democratic falsehood rests on a fundamental misunderstanding of the structure of the BOLO list. The BOLO list was a comprehensive spreadsheet document with separate tabs designed for information intended for different uses. For example, the "Watch List" tab on the BOLO document was designed to notify screeners of potential applications that the IRS has not yet received.[84] The "TAG Issues" tab listed groups with potentially fraudulent applications. The "Emerging Issues" tab, contrarily, was designed to alert screeners to groups of applications that the IRS has *already received* and that presented special problems.[85] Therefore, whereas the Watch List tab noted hypothetical applications that could be received and TAG Issues tab noted fraudulent applications, the Emerging Issues tab highlighted non-fraudulent applications that the IRS was actively processing.

The Tea Party entry on the IRS BOLO appears on the "Emerging Issues" tab, meaning that the IRS had already received Tea Party applications. The liberal-oriented groups on the BOLO list appear on either the Watch List tab, meaning that the IRS was merely notifying its screeners of the potential for those groups to apply, or the TAG Issues tab, indicating a concern for fraud. In effect, then, whereas the appearance of Tea Party groups on the BOLO signifies the *actuality* of review and subsequent delay, the appearance of the liberal groups on the BOLO signifies either the *possibility* that some group may apply in the future or the potential for fraud in a group's application.

The differences in where the entries appear on the BOLO document manifests in the IRS's differential treatment of the groups. According to evidence known to the Committee, only Tea Party applications appearing on the Emerging Issues tab resulted in systematic scrutiny and delay. Although some liberal groups appeared on versions of the BOLO, their mere presence on the document did not result in systematic scrutiny and delay – contrary to Democratic claims of bipartisan IRS targeting.

The IRS identified some liberal-oriented groups due to objective, non-political concerns, but not because of their political beliefs

Where the IRS identified liberal-oriented groups for scrutiny, evidence shows that it did so for objective, non-political reasons and not because of the groups' political beliefs. For

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[82] *See, e.g.*, *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013); The White House, Press Briefing by Press Secretary Jay Carney, 2/3/14, http://www.whitehouse.gov/photos-and-video/video/2014/02/03/press-briefing#transcript.
[83] H. Comm. on Ways & Means, Being on a BOLO is Different from Being Targeted and Abused by the IRS (June 24, 2013), http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=340314.
[84] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[85] *Id.*

instance, the IRS scrutinized Emerge America applications for conveying impermissible benefits to a private entity, which is prohibited for nonprofit groups.[86] The IRS scrutinized ACORN successor groups due to concerns that the organizations were engaged in an abusive scheme to rebrand themselves under a new name.[87] Likewise, the IRS included an entry for "progressive" on its BOLO list out of concern that the groups' partisan campaign activity "may not be appropriate" for 501(c)(3) status, under which there is an absolute prohibition on campaign intervention.[88] Unlike the Tea Party applications, which the IRS scrutinized for their social-welfare activities, the Committee has received no indication that the IRS systematically scrutinized liberal-oriented groups because of their political beliefs.

Substantially more conservative groups were caught in the IRS application backlog

Another familiar refrain from the Administration and congressional Democrats is that the IRS targeted liberal groups because left-wing groups were included in the IRS backlog along with conservative groups. Ways and Means Ranking Member Sander Levin (D-MI) alleged that the IRS engaged in bipartisan targeting because some "progressive groups were among the 298 applications that TIGTA reviewed in their audit and received heightened scrutiny."[89] Similarly, Representative Gerry Connolly (D-VA) said that "the tilt . . . included progressive titles as well as conservative titles and that they were equally stringent."[90] These allegations are misleading. Several separate assessments of the IRS backlog prove that substantially more conservative groups than liberal groups were caught in the IRS backlog.

An internal IRS analysis conducted for Lois Lerner in July 2012 found that 75 percent of the 501(c)(4) applications in the backlog were conservative, "while fewer than 10 [applications] appear to be liberal/progressive leaning groups based solely on the name."[91] The same analysis found that "slightly over half [of the 501(c)(3) applications] appear to be conservative leaning groups based solely on the name."[92] A Ways and Means examination conducted in 2013 similar found that the backlog was overwhelmingly conservative: 83 percent conservative and only 10 percent liberal.[93]

In September 2013, *USA Today* independently analyzed a list of about 160 applications in the IRS backlog.[94] This review showed that conservative groups filed 80 percent of the

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[86] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).
[87] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).
[88] *See, e .g.*, Internal Revenue Serv., Be on the Look Out List (Nov. 9, 2010). [IRS 1349-64]
[89] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (statement of Ranking Member Sander Levin).
[90] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).
[91] E-mail from Judith Kindell, Internal Revenue Serv., to Lois Lerner, Internal Revenue Serv. (July 18, 2012). [IRSR 179406]
[92] *Id.*
[93] Ways and Means Committee September 18th Hearing, *supra* note 9.
[94] *See* Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.

applications in the backlog while liberal groups filed less than seven percent.[95] An earlier analysis from *USA Today* in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve any tax-exempt applications filed by Tea Party groups.[96] During that same period, the IRS approved "perhaps dozens of applications from similar liberal and progressive groups."[97]

Testimony received by the Committee supports this conclusion. During a hearing of the Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs, Jay Sekulow – a lawyer representing 41 groups targeted by the IRS – testified that substantially more conservative groups were targeted and that all liberal groups targeted eventually received approval.[98] In an exchange with Representative Matt Cartwright (D-PA), Sekulow testified:

Mr. CARTWRIGHT. And Mr. Sekulow, you were helpful with some statistics this morning, and I wanted to ask you about that. **You mentioned 104 conservative groups targeted. Was that the number?**

Mr. SEKULOW. This is from the report of the IRS dated through July 29th of 2013 – **104 conservative organizations in that report were targeted.**

Mr. CARTWRIGHT. Thank you. **And then seven progressive targeted groups**?

Mr. SEKULOW. **Seven progressive targeted groups, all of which received their tax exemption.**

Mr. CARTWRIGHT. Does it give the total number of applications? In other words, 104 conservative groups targeted. How many – how many applied? How many conservative groups applied?

Mr. SEKULOW. In the TIGTA report there was – I think the number was 283 that they had become part of the target. But actually, applications, a lot of the IRS justification for this, at least purportedly, was an increase in applications, and there was actually a decrease in the number.

Mr. CARTWRIGHT. Right. And does it give the number of progressive groups that applied for tax-exempt status?

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[95] *Id.*
[96] Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA TODAY, May 15, 2013.
[97] *Id.*
[98] *"The IRS Targeting Investigation: What Is the Administration Doing?": Hearing before the Subcomm. on Economic Growth, Job Creation, and Regulatory Affairs of the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014) (question and answer with Rep. Matt Cartwright).

Mr. SEKULOW. No, the only report that has the progressive –

Mr. CARTWRIGHT. No, no?

Mr. SEKULOW. The one that I have just is the – the report I have in front of me is the one through the – which just has the seven.

Mr. CARTWRIGHT. OK. All right, thank you.

MR. SEKULOW. None of those have been denied, though.[99] (emphases added).

Contrary to the Democratic claim that the IRS targeting of liberal groups was "equally stringent" to conservative groups,[100] the overwhelming majority of applications in the IRS backlog were filed by conservative-leaning organizations. This evidence further demonstrates that the IRS did not engage in bipartisan targeting.

The IRS treated Tea Party applicants differently than "progressive" groups

Democrats in Congress and the Administration argue that the IRS treated "progressive" groups in a manner similar to Tea Party applicants. Because the IRS BOLO list had an entry for "progressives," Democrats allege that "progressive groups were singled out for scrutiny in the same manner as conservative groups,"[101] and that "the progressive groups were targeted side by side with their tea party counterpart groups."[102] Again, the evidence available to the Committee does not support these Democratic assertions. Rather, the evidence clearly shows that the IRS did not subject "progressive" groups to the same type of systematic scrutiny and delay as conservative applicants.

Perhaps the most significant difference between the IRS's treatment of Tea Party applicants and "progressive" groups is reflected in the IRS BOLO lists. The Tea Party entry was located on the tab labeled, "Emerging Issues," meaning that the IRS was actively screening for similar cases.[103] The "progressive" entry, however, was located on a tab labeled "TAG historical," meaning that the IRS interest in those cases was dormant.[104] Cindy Thomas, the manager of the IRS Cincinnati office, explained this difference during a transcribed interview with Committee staff.[105] She told the Committee that unlike the systematic scrutiny given to the

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[99] *Id.*
[100] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).
[101] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[102] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Representative Joseph Crowley).
[103] *See* Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[104] *Id.*
[105] Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).

conservative-oriented applications as a result of the BOLO, "progressive" cases were never automatically elevated to the Washington office as a whole. She testified:

Q Ms. Thomas, is this an example of the BOLO from looks like November 2010?

A I don't know if it was from November of 2010, but –

Q This is an example of the BOLO, though?

A Yes.

Q Okay. And, ma'am, under what has been labeled as tab 2, TAG Historical?

A Yes.

***

Q Let's turn to page 1354.

A Okay.

Q Do you see that, it says -- the entry says progressive?

A Yes.

Q This is under TAG Historical, is that right?

A Yes.

Q So this is an issue that hadn't come up for a while, is that right?

A Right.

Q And it doesn't note that these were referred anywhere, is that correct? What happened with these cases?

A This would have been on our group as – because of – remember I was saying it was consistency-type cases, so it's not necessarily a potential fraud or abuse or terrorist issue, but any cases that were dealing with these types of issues would have been worked by our TAG group.

Q **Okay. And were they worked any different from any other cases that EO Determinations had?**

A **No. They would have just been worked consistently by one group of agents.**

Q Okay. And were they cases sent to Washington?

A I'm not – I don't know.

Q Not that you are aware?

A I'm not aware of that.

Q As the head of the Cincinnati office you were never aware that these cases were sent to Washington?

A There could be cases that are transferred to the Washington office according to, like, our [Internal Revenue Manual] section. I mean, there's a lot of cases that are processed, and I don't know what happens to every one of them.

Q Sure. But these cases identified as progressive as a whole were never sent to Washington?

A Not as a whole.[106]

The difference in where the entries appeared in the BOLO list resulted in disparate treatment of Tea Party and "progressive" groups. Unlike the systematic scrutiny given to Tea Party applicants, "progressive" cases were never similarly scrutinized.

The House Ways and Means Committee, with statutory authority to review confidential taxpayer information, concluded that the IRS treated conservative tax-exempt applicants differently than "progressive" groups. The Ways and Means Committee's review found that while the IRS approved only 45 percent of conservative applicants, it approved 100 percent of groups with "progressive" in their name.[107] Likewise, Acting IRS Commissioner Daniel Werfel testified before the Way and Means Committee:

Mr. REICHERT. Mr. Werfel, isn't it true that 100 percent of tea party applications were flagged for extra scrutiny?

Mr. WERFEL. I think that – yes. The framework from the BOLO. It's my understanding, the way the process worked is if there's "tea party" in the application it was automatically moved into -- into this area of further review, yes.

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[106] *Id.*

[107] *Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 113th Con. (2013) (opening statement of Chairman Boustany).

Mr. REICHERT.	OK, and you – you know how many progressive groups were flagged?
Mr. WERFEL.	I do not have that number.
Mr. REICHERT.	I do.
Mr. WERFEL.	OK.
Mr. REICHERT.	Our investigation shows that there were seven flagged. Do you know how many were approved?
Mr. WERFEL.	I do not have that number at my fingertips.
Mr. REICHERT.	All of those applications were approved.[108]

The IRS's independent inspector general has repeatedly confirmed the Ways and Means Committee's assessment. During the Oversight Committee's July 2013 hearing, TIGTA J. Russell George told Members that "progressive" groups were not subjected to the same systematic treatment as Tea Party applicants. He testified:

> With respect to the 298 cases that the IRS selected for political review, as of the end of May 2012, three have the word "progressive" in the organization's name; another four were used—are used, "progress," none of the 298 cases selected by the IRS, as of May 2012, used the name "Occupy."[109]

Mr. George also informed Congress that at least 14 organizations with "progressive" in their name were not held up and scrutinized by the IRS.[110] "In total," Mr. George wrote, "**30 percent of the organizations we identified with the words 'progress' or 'progressive' in their names were process as potential political cases. In comparison, our audit found that 100 percent of the tax-exempt applications with Tea Party, Patriots, or 9/12 in their names were processed as potential political cases** during the timeframe of our audit."[111] (emphasis added).

Documents produced by the IRS support the finding of disparate treatment toward Tea Party groups. Notes from one training session in July 2010 reflect that the IRS ordered screeners to transfer Tea Party applications to a special group for "secondary screening."[112] The same notes show that the screeners were asked to "flag" progressive groups.[113] But multiple

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[108] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Representative Dave Reichert).
[109] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of J. Russell George).
[110] Letter from J. Russell George, Treasury Inspector Gen. for Tax Admin., to Sander M. Levin, H. Comm. on Ways & Means (June 26, 2013).
[111] *Id.*
[112] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]
[113] *Id.*

interviews with IRS employees who worked individual cases have yielded no evidence that these "flags" or frontline reviews for political activity led to enhanced scrutiny – except for Tea Party organizations. One sentence on the notes explicitly reminds screeners that "progressive' applications are not considered "Tea Parties.'"[114] These notes confirm testimony from Elizabeth Hofacre, the "Tea Party Coordinator/Reviewer," who told the Committee that she only worked Tea Party cases.[115]

Fig. 6: IRS Screening Workshop Notes, July 28, 2010[116]

Screening Workshop Notes - July 28, 2010 2

- The emailed attachment outlines the overall process.
- Glenn deferred additional statements and/or questions to John Shafer on yesterday's developments; how they affect the screening process and timeline.
- Concerns can be directed to Glenn for additional research if necessary.

Current/Political Activities: Gary Muthert

- Discussion focused on the political activities of Tea Parties and the like-regardless of the type of application.
- If in doubt Err on the Side of Caution and transfer to 7822.
- Indicated the following names and/or titles were of interest and should be flagged for review:
  - 9/12 Project,
  - Emerge,
  - Progressive
  - We The People,
  - Rally Patriots, and
  - Pink-Slip Program.

- Elizabeth Hofacre, Tea Party Coordinator/Reviewer
  - Re-empathize that applications with Key Names and/or Subjects should be transferred to 7822 for Secondary Screening. Activities must be primary.
  - "Progressive" applications are not considered "Tea Parties"

Despite creative interpretations of this individual document, the full evidence rebuts the Democratic claim that the IRS targeted "progressive" groups alongside Tea Party applicants. Although "progressive" groups were referenced in the IRS BOLO lists and internal training documents, Democrats in Congress and the Administration have repeatedly ignored critical distinctions that qualify their meaning. A careful evaluation of facts in context reveals one conclusion: the IRS treated Tea Party groups differently than "progressive" groups.

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[114] *Id.*
[115] Transcribed interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. (May 31, 2013).
[116] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

The IRS treated Tea Party applicants differently than ACORN successor groups

Democratic defenders of the IRS misconduct also argue that the IRS treated Tea Party applicants similar to ACORN successor groups. ACORN endorsed President Barack Obama in his election campaign and had established deep political ties before its network of affiliates delinked and rebranded themselves following scandalous revelations about the organization in 2009.[117] To support allegations about ACORN being targeted, Democrats have pointed to BOLO lists and training documents that "instructed [IRS] screeners to single out for heightened scrutiny . . . ACORN successors."[118]

But allegations of targeting fall flat. First, ACORN successor groups appear on the "Watch List" tab of the BOLO list, unlike Tea Party groups, which appear on the "Emerging Issues" tab.[119] According to IRS documents, the Watch List tab was intended to include applications "not yet received," or "issues [that] are the result of significant world events," or "organizations formed as a result of controversy."[120] The Emerging Issue tab was created to spot groups of applications *already* received by the IRS. An internal IRS training document specifically cites "Tea Party cases" as an example of an emerging issue; it does not similarly cite ACORN successor groups.

Second, Robert Choi, the director of EO Rulings and Agreements until December 2010, testified to several differences between how the IRS treated ACORN successors and how the IRS treated Tea Party applicants. He told the Committee that unlike the Tea Party "test" cases, he did not recall the ACORN successor applications being subject to a "sensitive case report" or worked by the IRS Chief Counsel's office.[121] Most importantly, he explained that the IRS had objective concerns about rebranded ACORN affiliates that had nothing to do with the organization's political views. The primary concern about the ACORN successor groups, according to Choi, was whether the groups were legitimate new entities or part of an "abusive" scheme to continue an old entity under a new name.[122] Mr. Choi testified:

> Q You said earlier in the last hour there was email traffic about the ACORN successor groups in 2010; is that right?
>
> A That's correct, yes.
>
> Q But the ACORN successor groups were not subject to a sensitive case report; is that right?

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[117] Stephanie Strom, *On Obama, Acorn and Voter Registration*, N.Y. TIMES, Oct. 10, 2008; Stanley Kurtz, *Inside Obama's Acorn*, NAT'L REVIEW ONLINE, May 29, 2008.
[118] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[119] *See* Internal Revenue Serv., Be on the Look Out list, "Filed 112310 Tab 5 – Watch List." [IRSR 2562-63]
[120] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[121] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).
[122] *Id.*

A I don't recall if they were listed in there, in the sensitive case report.

Q So you don't recall them being part of a sensitive case report?

A I think what I'm saying is they may be part of a sensitive case report. I do not have a specific recollection that they were listed in a sensitive case report.

Q But you do have a specific recollection that the Tea Party cases were on sensitive case reports in 2010.

A Yes.

Q To your knowledge, did any ACORN successor application go to the Chief Counsel's Office?

A I am not aware of it.

Q Are you aware of any ACORN successor groups facing application delays?

A I do not know if – well, when you say "delays," how do you –

Q Well –

A I mean, I'm aware of successor ACORN applications coming in, and I am aware of email traffic that talked about my concern of delays on those cases and, you know, that there was discussion about seeing an influx of these applications which appear to be related to the previous organization.

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Q And the concern behind the reason that they weren't being processed was that they were potentially the same organization that had been denied previously?

A Not that they were denied previously. **These appeared to be successor organizations, meaning these were newly formed organizations with a new EIN, employer identification number, located at the same address as the previous organization and, in some instances, with the same officers. And it was an issue of concern as to whether or not these were, in fact, the same organizations just coming in under a new name**; whether, in fact, the previous organizations, if they were, for example, 501(c)(3) organizations, properly disposed of their assets. Did they transfer it to this new organization? Was this perhaps an abusive

scheme by these organizations to say that they went out of business and then not really but they just carried on under a different name?

Q And that's the reason they were held up?

A Yes.[123] (emphasis added).

Choi's testimony shows that the inclusion of ACRON successor groups on the BOLO list centered on a concern for whether the new groups were improperly standing in the shoes of the old groups. As the Committee has documented previously, ACORN groups received substantial attention in 2009 and 2010 for misuse of taxpayer funds and other fraudulent endeavors.[124] In fact, Congress even cut off funding for ACORN groups given widespread concerns about the groups' activities.[125] Six Democratic current members of the Oversight Committee and seven Democratic current members of the Ways and Means Committee voted to stop ACORN funding.[126] The IRS included ACORN successor groups on a special watch list, according to Choi, due to concern "as to whether or not these were, in fact, the same organizations just coming in under a new name."[127]

This information undercuts allegations by congressional Democrats that the IRS's placement of ACORN successor groups on the BOLO list signified that those groups were targeted by the IRS in the same manner as Tea Party cases. Unlike the Tea Party applicants, ACORN successor groups were placed on the IRS BOLO out of specific and unique concern for potentially fraudulent or abusive schemes and not because of their political beliefs. Once identified, even ACORN successor groups were apparently not subjected to the same systematic scrutiny and delay as Tea Party applicants.

The IRS treated Tea Party applicants differently than Emerge affiliate groups

Congressional Democrats attempt to minimize the IRS's targeting of Tea Party applicants by alleging a false analogy to the IRS's treatment of Emerge affiliate groups. Emerge touts itself as the "premier training program for Democratic women" and states as a goal, "to increase the number of Democratic women in public office."[128] In particular, citing IRS training documents, Ranking Member Sander Levin and Ranking Member Elijah Cummings argued that "the IRS

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[123] *Id.*

[124] *See* H. COMM. ON OVERSIGHT & GOV'T REFORM MINORITY STAFF, IS ACORN INTENTIONALLY STRUCTURED AS A CRIMINAL ENTERPRISE? (July 23, 2009).

[125] *See* H. COMM. ON OVERSIGHT & GOV'T REFORM MINORITY STAFF, FOLLOW THE MONEY: ACORN, SEIU AND THEIR POLITICAL ALLIES (Feb. 18, 2010).

[126] *See* 155 Cong. Rec. H9700-01 (Sept. 17, 2009). The Democratic Members who opposed ACORN funding were Representatives Maloney (D-NY); Tierney (D-MA); Clay (D-MO); Cooper (D-TN); Speier (D-CA); Welch (D-VT); Levin (D-MI); Doggett (D-TX); Thompson (D-CA); Larson (D-CT); Blumenauer (D-OR); Kind (D-WI); and Schwartz (D-PA). *Id.*

[127] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).

[128] Emerge America, www.emergeamerica.org (last visited Apr. 2, 2014).

instructed its screeners to single out for heightened scrutiny 'Emerge' organizations."[129] The evidence, once more, fails to support their contention. The IRS did not target Emerge affiliate groups in any similar manner to Tea Party applicants.

The same training documents cited by congressional Democrats as proof of bipartisan IRS targeting clearly show differences between the treatment of Tea Party applications and those filed by Emerge affiliate. The IRS ordered its screeners to transfer Tea Party applications to a special group for "secondary screening," but it asked the screeners to merely "flag" Emerge groups.[130] While another training document specifically offers the Tea Party as an example of an emerging issue, the Emerge affiliate groups were not referenced on the document.[131]

Democrats cite testimony from IRS employee Steven Grodnitzky to support their argument that the IRS engaged in bipartisan targeting. Ranking Member Cummings referenced this testimony when questioning Acting IRS Commissioner Daniel Werfel during his unsolicited testimony before the Committee on July 17, 2013.[132] Although Grodnitzky did testify that some liberal applications experienced a three-year delay,[133] he also gave testimony that contradicts the Democrats' manufactured narrative. Grodnitzky testified that unlike the Tea Party cases, which were filed by unaffiliated groups with similar ideologies, the Emerge cases were affiliated entities with different "posts" in each state.[134] He also testified that unlike the Tea Party applications, where the IRS was focused on political speech, the central issue in the Emerge applications was that the groups were conveying an impermissible private benefit upon the Democratic Party.[135] Finally, Grodnitzky testified that there were far fewer Emerge cases than Tea Party applications.[136] While Grodnitzky's testimony supports a conclusion that specific and objective concerns at the IRS led to scrutiny and delayed applications from Emerge affiliates, it does not support a parallel between these organizations and what the IRS did to Tea Party applicants.

Emerge existed as a series of affiliated organizations. One IRS employee testified that whereas the Tea Party applicants waited years for IRS action, some of the Emerge applications were approved by Cincinnati IRS employees in a "matter of hours."[137] But the IRS eventually reversed course, out of concern about impermissible private benefit. Because Emerge affiliates were seen as essentially the same organization, the IRS wanted to flag new affiliates to ensure that these new applications were considered in a consistent manner. Testimony from IRS employee, Amy Franklin Giuliano, explains why the Emerge applicants "were essentially the same organization."[138] She testified:

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[129] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[130] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]
[131] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[132] *See* July 17th Hearing, *supra* note 25.
[133] Transcribed interview of Steven Grodnitzky, Internal Revenue Serv., in Wash., D.C. (July 16, 2013).
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).
[138] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).

Q The reason that the other five cases would be revoked if that case the Counsel's Office had was denied, was that because they were affiliated entities?

A It is because they were essentially the same organization. I mean, every – the applications all presented basically identical facts and basically identical activities.

Q And the groups themselves were affiliated.

A And the groups themselves were affiliated, yes.[139]

Giuliano also told the Committee that the central issue in these cases was not impermissible political speech activity – as it was with the Tea Party applications – but instead private benefit. She testified:

Q The issue in the case you reviewed in May of 2010 was private benefit.

A Yes.

Q As opposed to campaign intervention.

A We considered whether political campaign intervention would apply, and we decided it did not.[140]

Most striking, Giuliano told the Committee that the career IRS experts recommended *denying* an Emerge application, whereas the experts recommended *approving* the Tea Party application.[141] Even then, despite the recommended approval, the Tea Party applications still sat unprocessed in the IRS backlog.

Documents and testimony received by the Committee demonstrate that the IRS never engaged in systematic targeting of Emerge applicants as it did with Tea Party groups. IRS scrutiny of Emerge affiliates appears to have been based on objective and non-controversial concerns about impermissible private benefit. Taken together, this evidence strongly rebuts any Democratic claims that the IRS treated Emerge affiliates similarly to Tea Party applicants.

The IRS treated Tea Party applicants differently than Occupy groups

Finally, congressional Democrats defend the IRS targeting of Tea Party organization by arguing that liberal-oriented Occupy groups were similarly targeted.[142] Contrary to these claims, evidence available to the Committee indicates that the IRS did not target Occupy groups.

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[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] July 18th Hearing, *supra* note 28

TIGTA found that none of the applications in the IRS backlog were filed by groups with "Occupy" in their names.[143] Several IRS employees interviewed by the Committee testified that they were not even aware of any Occupy entry on the BOLO list until after congressional Democrats released the information in June 2013.[144] Further, there is no indication that the IRS systematically scrutinized and delay Occupy applications, or that the IRS subjected Occupy applicants to burdensome and intrusive information requests. To date, the Committee has not received evidence that "Occupy Wall Street" or an affiliate organization even applied to the IRS for non-profit status.

Conclusion

Democrats in Congress and the Administration have perpetrated a myth that the IRS targeted both conservative and liberal tax-exempt applicants. The targeting is a "phony scandal," they say, because the IRS did not just target Tea Party groups, but it targeted liberal and progressive groups as well. Month after month, in public hearings and televised interviews, Democrats have repeatedly claimed that progressive groups were scrutinized in the same manner as conservative groups.[145] Because of this bipartisan targeting, they conclude, there is not a "smidgeon of corruption" at the IRS.

The problem with these assertions is that they are simply not accurate. The Committee's investigation shows that the IRS sought to identify and single out Tea Party applications. The facts bear this out. The initial "test" applications were filed by Tea Party groups. The initial screening criteria identified only Tea Party applications. The revised criteria still intended to identify Tea Party activities. The IRS's internal review revealed that a substantial majority of applications were conservative. In short, the IRS treated conservative tax-exempt applications in a manner distinct from other applications, including those filed by liberal groups.

Evidence available to the Committee contradicts Democrats' claims about bipartisan targeting. Although the IRS's BOLO list included entries for liberal-oriented groups, only Tea Party applicants received systematic scrutiny because of their political beliefs. Public and nonpublic analyses of IRS data show that the IRS routinely approved liberal applications while holding and scrutinizing conservative applications. Even training documents produced by the IRS indicate stark differences between liberal and conservative applications: "'progressive' applications are not considered "Tea Parties."'"[146] These facts show one unyielding truth: Tea Party groups were target because of their political beliefs, liberal groups were not.

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[143] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of J. Russell George).

[144] *See, e.g.*, Transcribed interview of Elizabeth Kastenberg, Internal Revenue Serv., in Wash., D.C. (July 31, 2013); Transcribed interview of Sharon Light, Internal Revenue Serv., in Wash., D.C. (Sept. 5, 2013); Transcribed interview of Joseph Grant, Internal Revenue Serv., in Wash., D.C. (Sept. 25, 2013); Transcribed interview of Nancy Marks, Internal Revenue Serv., in Wash., D.C. (Oct. 8, 2013); Transcribed interview of Justin Lowe, Internal Revenue Serv., in Wash., D.C. (July 23, 2013).

[145] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).

[146] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

The New York Times

July 4, 2013

I.R.S. Scrutiny Went Beyond the Political

By JONATHAN WEISMAN

WASHINGTON — In 2010, a tiny Palestinian-rights group called Minnesota Break the Bonds applied to the Internal Revenue Service for tax-exempt status. Two years and a lot of prodding later, the I.R.S. sent the group's leaders a series of questions and requests almost identical to the ones it was sending to Tea Party groups at the time.

What are "the qualifications and experience" of Break the Bonds instructors? Does the group "present a sufficiently full and fair explanation of the relevant facts" about the West Bank and Gaza? Provide copies of pamphlets, brochures or other literature distributed at group events? Reveal all fees collected and "any voluntary contributions" made at group functions? Provide a template of petitions, postcards and any other material used to influeuce legislation, and a detailed accounting of the time and money spent to influence state legislators?

The controversy that erupted in May has focused on an ideological question: Were conservative groups singled out for special treatment based on their politics, or did the I.R.S. equally target liberal groups? But a closer look at the I.R.S. operation suggests that the problem was less about ideology and more about how a process instructing reviewers to "be on the lookout" for selected terms was applied to any group that mentioned certain words in its application.

Organizations approached by The New York Times based on specific "lookout list" warnings, like advocates for people in "occupied territories" and "open source software developers," told similar stories of long waits, intrusive inquiries and bureaucratic hassles that pointed to no particular bias but rather to a process that became too rigid and too broad. The lists often did point to legitimate issues: partisan political campaign organizations seeking tax-exempt status, or commercial businesses hoping to cloak themselves as nonprofit groups. But even I.R.S. officials say lookout list warnings were often pursued in a ham-handed or overly rigid way.

Last month, the acting I.R.S. commissioner, Daniel I. Werfel, formally ordered an end to such lists after discovering that they were still in use after the controversy flared up.

Sylvia Schwarz, a co-director of the Break the Bonds group, shrugged at the treatment meted out by the I.R.S. She was used to rough scrutiny in a country that tilts against the Palestinians,

she said. But the same questions, asked of conservative organizations, led to the dismissals of top I.R.S. officials, prompting criminal and Congressional investigations, scarring the reputation of the nation's tax collection agency and eliciting charges that the White House had used the agency to pursue its political opponents.

Two months of investigation by Congress and the I.R.S. has produced new documents that have clouded much of the controversy's narrative. In the more complicated picture now emerging, many organizations other than conservative groups were singled out: "progressive" organizations, medical marijuana purveyors, organizations formed to carry out President Obama's health care law, and open source software developers who create software tools for computer code writers and distribute them free of charge.

"As soon as you say the words 'open source,' like other organizations that use 'Tea Party' or 'Occupy,' it gets you red-flagged," said Luis Villa, a lawyer and a member of the board of directors of the Open Source Initiative. The I.R.S. feared that such groups were really moneymaking enterprises.

According to the Treasury inspector general for tax administration, the I.R.S. received 199,689 applications for tax-exempt status between 2010 and 2012. In 2012 alone, the agency received 73,319, of which about 22,000 were not approved in the initial review process. The inspector general looked at 296 applications flagged as potentially being from political groups. That means most of the applications pulled aside for further scrutiny in those years had nothing to do with politics, conservative or liberal, just as most of the red flags thrown up by the I.R.S.'s lookout lists were not overtly political.

Chi Eta Phi Sorority, a mainly African-American nurses' society that advertises its mission as "social change," applied for 501(c)(3) charitable status on June 24, 2011, days before the I.R.S. tightened its scrutiny of tax exemption applications. The organization fell under a "group rulings" flag in one of the lookout lists. Two years and 73 questions later, Chi Eta Phi is still waiting for the I.R.S.'s Cincinnati office, which handles the tax exemption applications, to respond.

Among the requests for more information: Describe in detail any legislative activities, with percentage of time and money devoted. Explain the following programs: sisterhood/brotherhood, networking, collaboration with other organizations, loving and caring, and commitment and service.

As for "occupied territory" advocacy groups like Ms. Schwarz's, an I.R.S. "be on the lookout" list warned screeners that "applications may be inflammatory, advocate a one-sided point of view, and promotional materials may signify propaganda."

Some Congressional Democrats say the new details show that the initial reaction to the I.R.S. findings was skewed.

"We replaced the leadership of the I.R.S. over this. We have subpoenas out. We are deposing employees. And we have damaged the president," said Representative Gerald E. Connolly, Democrat of Virginia and a member of the House committee that initiated the I.R.S. inquiry. "It turns out this has been a gross distortion of reality."

Even with the narrative muddied, most Republicans see no reason to back off. The House Oversight and Government Reform Committee last week voted along party lines that an I.R.S. official, Lois Lerner, had waived her Fifth Amendment rights against self-incrimination by offering a brief statement as she invoked the amendment when she appeared before the committee in May. The vote paves the way for the committee to bring Ms. Lerner back for more questioning.

Republican investigators say conservative groups singled out by the I.R.S. have received far rougher treatment than liberal groups.

Yet some Republicans have tempered their statements on the controversy.

"We haven't proved political motivation," said Representative Charles Boustany Jr., a Louisiana Republican who, as the chairman of the House Ways and Means Subcommittee on Oversight, is leading one inquiry.

Senator Roy Blunt, Republican of Missouri, said that in retrospect, suggestions that Mr. Obama had orchestrated an I.R.S. attack on his political enemies were unwarranted.

"Presidents have always been very careful about maintaining the appearance of keeping hands off the I.R.S.," he said. "I don't have any reason to believe there wasn't targeting of conservatives, but it might well have been a lot more than that as well."

Groups that produce and disseminate open source software — which is distributed at no cost to anyone for further software development — may have had it the roughest. A recent I.R.S. "be on the lookout" list warned screeners that such software groups "are usually the for-profit business or for-profit support technicians of the software."

"If you see a case, elevate it to your manager," the list orders.

That entreaty has proved to be the kiss of death, said Mr. Villa, of the Open Source Initiative. One group seeking a tax exemption was making software as a tool for political dissent abroad — with the blessing of the United States government. Another was making software, free, for struggling musicians seeking to distribute their work on the Internet. They were both rejected,

unlike most of the political groups, which have secured their tax exemptions.

"None of the groups have been able to find the magic words to get over the hurdle," Mr. Villa said.

Jesse von Doom, whose group CASH Music seeks to help musicians on the Internet, applied for 501(c)(3) status in February 2009. Finally, in June 2012, his application was rejected in a 13-page letter signed by Ms. Lerner, the I.R.S.'s director of tax-exempt organizations, who has been put on administrative leave.

Democrats are now aiming their anger at J. Russell George, the Treasury inspector general for tax administration, whose audit in May helped make the controversy public. That audit focused on the targeting of groups that had "Tea Party," "patriot" or "9/12" in their names.

Democrats say that they examined the 298 applications reviewed by the inspector general, and that some of them were from liberal groups. But Mr. George's audit did not mention them.

Mr. George's staff said he reviewed all the applications that the I.R.S. identified as potentially involving political groups, not just those from Tea Party groups. But the inspector concluded that only conservative groups got the extra scrutiny.

"When you serve in this capacity, you have to make determinations that, on occasions, upset people," Mr. George said in a statement. "This obviously is one of those occasions."

The IRS Had a Contract With an Email Backup Company

Peter Suderman | Jun. 20, 2014 2:33 pm

The Internal Revenue Service (IRS) said it can't provide emails sent between 2009 and 2011 that were requested by congressional investigators because of hard drive crashes.

The agency said that emails stored on dead drives were lost forever because its email backup tapes were recycled every six months, and employees were responsible for keeping their own long-term archives.

The IRS had a contract with email backup service vendor Sonasoft starting in 2005, according to FedSpending.org, which lists the contract as being for "automatic data processing services." Sonasoft's motto is "email archiving done right," and the company lists the IRS as a customer.

In 2009, Sonasoft even sent out a Tweet advertising its work for the IRS.

The extent and exact details of the service that Sonasoft provided to the IRS aren't clear. But the company advertises its email archiving solution as "ideal for small and medium businesses, government agencies, school districts, nonprofit organizations using Microsoft's Exchange Server." And a document posted on its website describing its services says that its system "archives all email content and so reduces the risk of non-compliance with legal, regulatory and other obligations to preserve critical business content."

Sonasoft connection and IRS contract details first noted on Morgenr's Twitter account.

Update: Sonasoft's contracts with Treasury were pretty modest: about $5,556 in 2005, $24,706 in 2008, and $13,983 in both 2009 and 2010. And the company itself is not very large (it has a market cap of $4.4 million). So it's quite possible that the extent of its services were pretty limited.

- The Daily Caller - http://dailycaller.com -

IRS CANCELLED Contract with Email-Storage Firm Weeks After Lerner's Computer Crash

Posted By Patrick Howley On 10:28 AM 06/22/2014 In | No Comments

The Internal Revenue Service (IRS) cancelled its longtime relationship with an email-storage contractor just weeks after ex-IRS official Lois Lerner's computer crashed and shortly before other IRS officials' computers allegedly crashed.

The IRS signed a contract with Sonasoft, an email-archiving company based in San Jose, California, each year from 2005 to 2010. The company, which partners with Microsoft and counts The New York Times among its clients, claims in its company slogans that it provides "Email Archiving Done Right" and "Point-Click Recovery." Sonasoft in 2009 tweeted, "If the IRS uses Sonasoft products to backup their servers why wouldn't you choose them to protect your servers?"

Sonasoft was providing "automatic data processing" services for the IRS throughout the January 2009 to April 2011 period in which Lerner sent her missing emails.

But Sonasoft's six-year business relationship with the IRS came to an abrupt end at the close of fiscal year 2011, as congressional investigators began looking into the IRS conservative targeting scandal and IRS employees' computers started crashing left and right.

Sonasoft's fiscal year 2011 contract with the IRS ended on August 31, 2011. Eight days later, the IRS officially closed out its relationship with Sonasoft in accordance with the federal government's contract close-out guidelines, which require agencies to fully audit their contracts and to get back any money that wasn't used by the contractor. Curiously, the IRS de-allocated 36 cents when it closed out its contract with Sonasoft on September 8, 2011.

Lois Lerner's computer allegedly crashed in June 2011, just ten days after House Ways and Means Committee chairman Rep. Dave Camp first wrote a letter asking if the IRS was engaging in targeting of nonprofit groups. Two months later, Sonasoft's contract ended and the IRS gave its email-archiving contractor the boot.

IRS official and frequent White House visitor Nikole Flax allegedly suffered her own computer crash in December 2011, three months after the IRS ended its relationship with Sonasoft.

Here's a Sonasoft commercial re-enacting how the company quickly and thoroughly saves its clients' emails after computer crashes:

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IRS Statement

The contractor's software application did not provide email archiving services for the IRS.

Based on our initial review, this contractor was used by a small portion of the IRS to assist with email issues for disaster recovery purposes between 2006 and 2011. The contractor handled these specifically for about 3,000 users in the IRS Office of Chief Counsel. It's important to note the Office Chief Counsel operated a separate email system than the rest of the IRS, including the Exempt Organizations area.

The application was used to replicate email data between critical Chief Counsel sites. So in the event of a natural disaster or system error, this data would be available at an alternate site and users would still have access to their emails. With the upgrade from Microsoft Exchange 2003 to Microsoft Exchange 2010, the SonaSoft Solution was no longer needed.

NO EVIDENCE OF WHITE HOUSE INVOLVEMENT OR POLITICAL MOTIVATION IN IRS SCREENING OF TAX-EXEMPT APPLICANTS

DEMOCRATIC STAFF REPORT
PREPARED FOR RANKING MEMBER ELIJAH E. CUMMINGS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
113TH CONGRESS

MAY 6, 2014

http://democrats.oversight.house.gov/

Executive Summary

On May 14, 2013, the Treasury Inspector General for Tax Administration reported that employees in the Cincinnati office of the Internal Revenue Service (IRS) used "inappropriate" criteria to screen applicants for tax-exempt status.

The Inspector General also reported that Lois Lerner, the former IRS official who oversaw the Exempt Organizations division of the IRS in Washington D.C., did not discover the use of these inappropriate criteria for more than a year, at which point she "immediately" ordered employees to stop using them.

Republican politicians and commentators quickly launched a sustained and coordinated campaign to accuse the White House and the Obama Administration of using the IRS to target conservative groups for political reasons, despite the fact that the Inspector General never made such an allegation and identified no evidence to support it.

On the day the Inspector General's report was issued, Chairman Darrell Issa claimed on national television: "This was the targeting of the president's political enemies effectively and lies about it during the election year, so that it wasn't discovered until afterwards."

After making this accusation, Chairman Issa directed Committee staff to spend the next year interviewing dozens of current and former employees of the IRS and the Department of the Treasury in order to identify evidence to support his claim.

The Committee has now conducted detailed, lengthy transcribed interviews of 39 witnesses, including Republicans, Democrats, Independents, and individuals with no political affiliation. These witnesses included employees from the Cincinnati and Washington D.C. offices at every level—from Screening Agents to the former IRS Commissioner to the Chief of Staff to the Treasury Secretary. The often day-long interviews consisted of prolonged questioning by multiple Committee attorneys that explored every possible allegation covered by the investigation.

Chairman Issa promised in June 2013 that "these transcripts will all be made public," but he has repeatedly rejected requests to do so from Ranking Member Elijah E. Cummings. Although Chairman Issa has claimed that releasing the transcripts could provide future witnesses with a "roadmap" to the Committee's questions, he has repeatedly leaked excerpts of the transcripts and allowed select reporters to review multiple transcripts in their entirety.

On April 10, 2014, Ranking Member Cummings made a motion during the Committee's business meeting to release all 39 transcripts in their entirety, with any redactions the Chairman believes are necessary to protect the integrity of the investigation. Chairman Issa blocked this motion. Instead, he suggested that he would welcome Ranking Member Cummings "going through and finding selected information that you believe is appropriate to make any case you want to make."

Therefore, at the request of Ranking Member Cummings, this report sets forth for Members of Congress and the public portions of all 39 interviews conducted by Committee staff. Based on these interviews, the report makes the following key findings regarding the tax-exempt application process:

No Evidence of White House Involvement:
The detailed and lengthy interviews conducted over the past year show definitively that none of the 39 witnesses interviewed by Committee staff identified any evidence whatsoever to support Republican accusations that the White House was involved in any way with the screening of tax-exempt applications.

No Evidence of Political Motivation:
In response to extensive questioning, none of the 39 witnesses reported any political motivation on their part, and none of the 39 witnesses reported ever observing any other individuals involved in the screening process acting on behalf of the White House or out of any political motivation.

Evidence Indicates Lack of Adequate Guidance and Need for Better Management:
When questioned by Committee attorneys about documents, emails, and other information, the witnesses explained repeatedly—and consistently—that IRS employees needed better guidance on how to process applications for tax-exempt status and were attempting to treat applications in a consistent manner.

Some examples of witness statements set forth in the report include the following:

- The Committee has now identified the specific Screening Agent in Cincinnati who first developed the search terms that were later identified by the Inspector General as "inappropriate." He explained to the Committee that he has no political affiliation, he specifically rejected any "outside influence by the White House," and he denied that "anyone at the IRS" that he worked with referred Tea Party cases for additional scrutiny "out of political bias."

- The Screening Agent's supervisor, a self-identified "conservative Republican" Screening Group Manager in Cincinnati, told the Committee that his subordinate flagged the first Tea Party case, and that he did not learn for about a year that his Screening Agent was using inappropriate criteria to screen similar cases. He explained: "I do not believe that the screening of these cases had anything to do other than consistency and identifying issues that needed to have further development."

- A Tax Law Specialist in Washington D.C. who identified herself as a Republican was asked if there was any evidence of targeting the President's political enemies. She responded: "No, not at all. That's kind of laughable that people think that. No, not at all. This is purely cases that, unfortunately, Cincinnati didn't have enough guidance on. That (c)(4) area is a very, very difficult area, and there's not much guidance. And so the lingering length of time, unfortunately, was just trying to apply the law to the specific facts of each case."

- A Technical Group Manager in Washington, D.C. who told the Committee that he votes in Republican primaries and who supervised one of the tax law specialists who was assigned Tea Party cases told the Committee that he had "seen or heard nothing that would suggest any political bias." When asked whether any of his actions regarding these cases had been motivated by political bias, he responded: "Definitely not."

- An attorney within the Office of Chief Counsel who was involved in reviewing one Tea Party-affiliated case told the Committee that she previously reviewed—and recommended denial for—a progressive organization's application for tax-exempt status. She stated that she used the same level of scrutiny when reviewing conservative and progressive applicants, and that her review of the conservative organization took "much less time" than her review of the progressive organization.

- Another attorney in the Office of Chief Counsel who was involved in reviewing a Tea Party applicant told the Committee that he also previously reviewed an application from a "progressive entity." He said he recommended denying the progressive group's application, but requested additional information to make a recommendation about the Tea Party applicant. When asked whether any of his actions were motivated by his political views, he responded: "Not at all."

- A Deputy Division Counsel who identified herself as a Republican told the Committee that she worked very closely with Ms. Lerner. She stated that she was not "aware of any political bias by Ms. Lerner against Tea Party Groups." When asked if she had any reason to believe that attorneys under her supervision acted based on political motivation, she replied: "Not at all."

- An Attorney Advisor in the Department of Treasury with no political affiliation who works closely with the IRS on regulations, guidance, and tax policy matters said that she never saw any evidence that any Treasury Department or White House official used the guidance process to adversely impact Tea Party groups. She told the Committee: "it's important for the tax laws to be ones that are fair to all similarly-situated taxpayers, and I don't know of any situations where that would not be the goal." When asked whether she knew of a directive to target the President's political enemies, she responded: "I've never seen any evidence of a directive to target anyone."

These first-hand witness accounts are consistent with the findings of the Inspector General, who testified before the House Committee on Ways and Means on May 17, 2013. In response to a question from Ranking Member Sander Levin about whether he had found "any evidence of political motivation in the selection of the tax exempt applicants," the Inspector General answered, "We did not, sir."

These witness accounts are also consistent with a review of more than 5,000 IRS employee email conducted by the Deputy Inspector General for Investigations, who concluded:

- There was no indication that pulling these selected applications was politically motivated. The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them.

Ranking Member Cummings continues to believe that the Committee should release the full transcripts of all 39 interviews to Members of Congress and the American people in order to provide the most complete account of the Committee's work.

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I. SUSTAINED AND SYSTEMATIC REPUBLICAN CAMPAIGN TO POLITICIZE IRS INVESTIGATION

Republican politicians and commentators have engaged in a sustained and coordinated campaign to accuse the White House and the Obama Administration of using the IRS to target conservative groups applying for tax-exempt status for political purposes, despite evidence that directly contradicts these accusations.

This campaign began when Committee Chairman Darrell Issa appeared on national television on May 14, 2013—before the Committee conducted even a single interview—and asserted: "This was the targeting of the president's political enemies effectively and lies about it during the election year, so that it wasn't discovered until afterwards."[1]

On the same day, Republican Senator Orrin Hatch said: "I've never seen anything quite like this, except in the past during the Nixon years."[2]

Two days later, Republican Senator Marco Rubio stated:

> The president doesn't have clean hands in this because as I said yesterday on the floor of the Senate, this organization of his, this administration has created a culture of intimidation. It's his campaign, it's this White House, it's basically an attempt to muscle anyone who is their political opponent and to use whatever power they have at their disposal to intimidate people who they don't agree with.[3]

This effort continued on June 3, 2013, when House Appropriations Committee Chairman Hal Rogers stated:

> Of course, the enemies list out of the White House that IRS was engaged in shutting down or trying to shut down the conservative political viewpoint across the country—an enemies list that rivals that of another president some time ago.[4]

---

[1] *Issa on IRS Scandal: "Deliberate" Ideological Attacks,* CBS This Morning (May 14, 2013) (online at www.cbsnews.com/video/watch/?id=50146771n).

[2] *Scandals Prompt Comparisons Between Nixon, Obama Administration,* Fox News (May 15, 2013) (online at www.foxnews.com/politics/2013/05/15/scandals-prompt-comparisons-between-nixon-obama-administrations/#ixzz2Z8DiOaPW).

[3] *Excerpts of Interview on FOX News' "America's Newsroom,"* Official Website of Senator Marco Rubio (May 16, 2013) (online at www.rubio.senate.gov/public/index.cfm/2013/5/icymi-rubio-on-irs-scandal-resignation-appropriate-but-not-nearly-enough).

[4] *Chairman Hal Rogers Talks IRS Targeting and Spending,* Fox News (June 3, 2013) (online at http://youtu.be/AzXaJF09A1c).

On the same day, Republican Senator Ted Cruz appeared on national television and stated:

> We have seen in recent weeks that the IRS has not honored its trust with the American people, that the Obama Administration has demonstrated a willingness to use the machinery of government to target their political enemies. And that's wrong. It was wrong when Richard Nixon did it, and it's wrong when Barack Obama did it. And it is a manifestation of too much power in the federal government. When the federal government has that much power in our individual lives, it's an invitation to being abused. And I think we ought to abolish the IRS and instead move to a simple flat tax.[5]

This campaign also involved media personalities and former officials. For example, on June 4, 2013, conservative commentator Lou Dobbs made this statement:

> They targeted—but that has too benign a ring to it, for me. "Selective targeting." This was a political arm—the Internal Revenue Service became a political arm of the Obama administration. And it's that straightforward. And it looks to be from top to bottom, and from agency to White House.[6]

On June 16, 2013, former Vice President Dick Cheney joined this effort, appearing on national television and concluding:

> It clearly was used for political purposes, to go after a particular category of organizations. ... I cannot conceive of a situation in which it didn't come from higher up.[7]

On June 18, 2013, Ranking Member Elijah E. Cummings released publicly the full transcript of the Committee's interview with an IRS Screening Group Manager in Cincinnati who provided a detailed, first-hand account of how conservative groups applying for tax-exempt status were first identified by the IRS.[8]

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[5] *Sen. Ted Cruz Leading the Charge on Abolishing the IRS,* Fox News (June 3, 2013) (online at http://video.foxnews.com/v/2429567001001/sen-ted-cruz-leading-the-charge-on-abolishing-the-irs/).

[6] *Lou Dobbs Tonight,* Fox Business Network (June 4, 2013) (online at http://mediamatters.org/video/2013/06/04/dobbs-uses-white-house-visits-to-claim-the-irs/194341).

[7] *Former Vice President Dick Cheney Talks NSA Surveillance Program,* Fox News Sunday (June 16, 2013) (online at www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2013/06/16/former-vice-president-dick-cheney-talks-nsa-surveillance-program#p//v/2482865656001).

[8] Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, *First-Hand Account: Cummings Releases Full Transcript of "Conservative Republican" IRS Manager Explaining Genesis of Tea Party Screening* (June 18,

A self-identified "conservative Republican" and 21-year veteran of the IRS, the Manager denied that he or anyone on his team was directed by the White House to take these actions or that they were politically motivated. Instead, he explained that the first case at issue in this investigation was initially flagged by one of his own screeners in 2010. He explained that he initiated the first effort to gather similar cases in order to ensure their consistent treatment, and that he took this action on his own, without any direction from his superiors. He also confirmed that one of his screeners developed terms subsequently identified by the Inspector General as "inappropriate," such as "Patriot" and "9/12 project," but that he did not become aware that his screener was using these terms until more than a year later.[9]

Despite this evidence, the next day, several Republicans spoke at a rally of Tea Party protesters and repeated their unsubstantiated accusations. For example, Republican Senator Rand Paul stated: "I'm like most Americans, horrified that my government has gotten out of control and is persecuting people for their religious and their political beliefs and it needs to end now."[10]

Similarly, Republican Senator Ted Cruz stated: "President Obama needs to tell the truth. When Richard Nixon tried to use the IRS to target his political enemies, it was wrong, and when the Obama administration does it, it's still wrong."[11]

Republicans also began making these unsubstantiated accusations in political campaign advertisements. For example, Senate Minority Leader Mitch McConnell issued a video paid for by McConnell Senate Committee '14 that received "Three Pinocchios" from the Washington Post Fact Checker.[12] Along with graphics of an "IRS Enemies List" and video footage of former President Richard Nixon, Senator McConnell stated in the video:

> Again and again, this Administration and its allies have used the resources of the government itself to intimidate or silence those who question or oppose it. I don't know about you, but I think that the leader of the free world and his advisers have better things

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2013) (online at http://democrats.oversight.house.gov/press-releases/firsthand-account-cummings-releases-full-transcript-of-conservative-republican-irs-manager-explaining-genesis-of-tea-party-screening/).

[9] *Id.*

[10] *Tea Party Rally Draws Thousands to Capitol Grounds,* ABC 7 News (June 19, 2013) (online at www.wjla.com/articles/2013/06/tea-party-rally-draws-thousands-to-capitol-grounds-90320.html).

[11] *Tea Party Sees "Barack O'Nixon" Behind IRS Targeting,* MSNBC's Politics Nation Blog (June 19, 2013) (online at http://tv.msnbc.com/2013/06/19/tea-party-sees-barack-onixon-behind-irs-targetting/).

[12] *Mitch McConnell's Campaign Ad Tying Obama to Nixon Over the IRS Scandal,* Washington Post Fact Checker (May 31, 2013) (online at www.washingtonpost.com/blogs/fact-checker/post/mitch-mcconnells-campaign-ad-tying-obama-to-nixon-over-the-irs-scandal/2013/05/30/bfe90034-c974-11e2-8da7-d274bc611a47_blog.html).

> to do than dig through other peoples' tax returns. … What they are trying to do is intimidate donors to outside groups that are critical of the Administration. They've got the IRS, the SEC, and other agencies going after contributors.[13]

Similarly, a campaign video issued by the Republican National Committee showed House Ways and Means Committee Chairman Dave Camp stating—while featuring a picture of the White House—"What the agency has yet to admit, and what we still need to find out, is just how widespread this activity was, who ordered it, and why it began in the first place."[14]

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[13] *Id.*

[14] *Americans Deserve Answers,* Republican National Committee (June 10, 2013) (online at www.youtube.com/watch?v=VDQuHaXYgE4).

II. NO EVIDENCE OF WHITE HOUSE INVOLVEMENT OR POLITICAL MOTIVATION

Despite an extremely aggressive investigation involving more than a half a million pages of documents and 39 interviews of IRS and Treasury employees, the overwhelming evidence before the Committee reveals no political motivation or White House involvement in the screening of tax-exempt applications. To the contrary, the evidence indicates that IRS employees sought guidance on how to process organizations applying for tax-exempt status in order to treat such applications consistently.

For example, on May 3, 2013, the Deputy Inspector General for Investigations briefed senior officials in the Inspector General's office on the results of his team's review of 5,500 emails of IRS employees. Explaining that the Inspector General tasked him with identifying any evidence that IRS officials directed staff to "target" Tea Party organizations, he found "no indication" that their actions were politically motivated. His full email stated:

> As a result of our meeting with Russell a couple of weeks ago, we agreed to pull e-mails from identified staff members of the EO organization in Cincinnati to find out 1). If an e-mail existed that directed the staff to "target" Tea Party and other political organizations and 2). If there was a conspiracy or effort to hide e-mails about the alleged directive.
>
> Audit provided us with a list of employees in question, key word search terms and a timeframe for the e-mails. We pulled the available IRS e-mails, which resulted in 5,500 responsive e-mails.
>
> Review of these e-mails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated. The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. This is a very important nuance.[15]

Committee staff have now conducted 39 transcribed interviews of IRS and Treasury employees in Cincinnati and Washington D.C.—including Republicans, Democrats, and employees with no political affiliation—and none of these employees reported any political motivation or White House involvement in the application review process.

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[15] Email from Deputy Inspector General for Investigations to Assistant Inspector General for Audit, *et al.* (May 3, 2013).

1. Screening Agent, Determinations Unit, Internal Revenue Service—Cincinnati

An IRS Screening Agent with no political affiliation who worked in Cincinnati told the Committee that he developed the search terms in 2010 that were subsequently identified by the Inspector General as "inappropriate." He explained to Committee staff that he had no knowledge of White House involvement or any political bias in the way he and other IRS employees screened Tea Party applications:

Q: Are you aware, based on your personal knowledge, of whether there was any outside influence on the Determinations Unit regarding how it handled Tea Party cases?
A: No.
Employee Counsel: When you say "outside influence," what are you referring to?
Q: Any outside influence by the White House?
A: No.[16]

***

Q: Do you have any reason to believe that there were any political motivations behind sending Tea Party cases to the Emerging Issues Unit?
A: No.[17]

***

Q: Did you ever send Tea Party cases to the Emerging Issues Unit out of any political bias?
A: No.
Q: Do you know of anyone at the IRS that you worked with who sent an Emerging Issue—sent a Tea Party case to the Emerging Issues Unit out of political bias?
A: No.[18]

***

Q: I was wondering if, in your opinion, the IRS is a place where you have observed an atmosphere where campaign politics is discussed on a regular basis?
A: No.
Q: Would you characterize the IRS Cincinnati office, since that's where you were, as political, or apolitical, generally?

---

[16] House Committee on Oversight and Government Reform, Interview of Screening Agent, Determinations Unit, Internal Revenue Service, at 150 (May 30, 2013).

[17] *Id.* at 85-86.

[18] *Id.* at 86.

A: Apolitical.
Q: Are you aware whether anyone in Cincinnati was following the role of Congress in any views it expressed on how applications for tax-exempt status were processed?
A: No.[19]

2. Screening Group Manager, Determinations Unit, Internal Revenue Service—Cincinnati

The Manager of the Screening Group in the Cincinnati Determinations Unit who agreed to elevate the first Tea Party case described himself as a "conservative Republican." He told Committee staff that political considerations never impacted his work:

Q: If you turn to page 2 and go to the bottom third of the page, the second part of the paragraph beginning, "During a May 14 appearance," there's a quote that says, "This was the targeting of the President's political enemies effectively and lies about it during the election year, so that it wasn't discovered until afterwards, Issa claimed." Do you see where I'm reading from?
A: Yes.[20]

***

Q: In your opinion, was the decision to screen and centralize the review of Tea Party cases the targeting of the President's political enemies?
A: I do not believe that the screening of these cases had anything to do other than consistency and identifying issues that needed to have further development.[21]

***

Q: Do you have any reason to believe that anyone in the White House was involved in the decision to screen Tea Party cases?
A: I have no reason to believe that.
Q: Do you have any reason to believe that anyone in the White House was involved in the decision to centralize the review of Tea Party cases?
A: I have no reason to believe that.[22]

***

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[19] *Id.* at 149.

[20] House Committee on Oversight and Government Reform, Interview of Screening Group Manager, Determinations Unit, Internal Revenue Service, at 139 (June 6, 2013).

[21] *Id.* at 140.

[22] *Id.* at 141.

Q: Are you aware of any political bias by employees in the Cincinnati office against conservative views?
A: I'm not aware of that.
Q: Are you aware of any political motivations behind the screening, centralizing, and development of Tea Party cases?
A: I'm not aware of that.
Q: Are you aware of any political motivations to benefit one political party in the Cincinnati office?
A: I am not aware of that.[23]

3. Determinations Specialist I, Determinations Unit, Internal Revenue Service—Cincinnati

The first Determinations Specialist in Cincinnati assigned to coordinate and review political advocacy cases from April 2010 through October 2010 explained that she had no political party affiliation and was not aware of any political bias in the Cincinnati office:

Q: Now, are you aware of any political bias by employees in the Cincinnati office against Tea Party organizations?
A: No, I am not.
Q: Are you aware of any political motivations behind the development and screening and grouping of Tea Party cases?
A: No, I'm not.[24]

4. Determinations Specialist II, Determinations Unit, Internal Revenue Service—Cincinnati

The second Determinations Specialist in Cincinnati assigned to coordinate and review political advocacy cases from October 2010 through December 2011, but who held cases in his inventory without conducting any development work, is a self-identified Republican. He told Committee staff that he was not aware of any political motivation or White House involvement in the treatment of Tea Party cases:

Q: Do you have any reason to believe that the White House directed the screening and centralization of Tea Party cases for enhanced scrutiny?
A: No.[25]

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[23] *Id.* at 135-36.

[24] House Oversight and Government Reform, Interview of Determinations Specialist I, Determinations Unit, Internal Revenue Service, at 155 (May 31, 2013).

[25] House Committee on Oversight and Government Reform, Interview of Determinations Specialist II, Determinations Unit, Internal Revenue Service, at 78 (June 13, 2013).

Q: Did you ever have contact with anyone in the White House about this?
A: No.
Q: Did you ever see an email, memo or written communication in any form from someone in the White House about the screening and centralization of Tea Party cases?
A: No.
Q: Did anyone ever tell you that they had contact with anyone from the White House about this?
A: No.[26]

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Q: Did you have any political motivations behind consolidating Tea Party applications for review under one group?
A: No.[27]

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Q: Were you aware of anyone else having political motivations for directing Tea Party cases specifically to you for review?
A: No.
Q: Did you or anyone else that you know of have a desire to treat these applications, Tea Party applications, with greater scrutiny out of political bias?
A: I didn't. No.
Q: Did you know anyone else that had a desire to treat Tea Party applications with greater scrutiny out of political bias?
A: No.
Q: Are you aware of political bias by employees in the Cincinnati office against conservative views?
A: Am I aware? No.
Q: Would you characterize the Cincinnati office as a political place?
A: No.[28]

5. **Determinations Specialist III, Determinations Unit, Internal Revenue Service—Cincinnati**

The third Determinations Specialist in Cincinnati assigned to coordinate and review political advocacy cases from December 2011 through October 2012 explained that he has no political affiliation, no bias against the views of the Tea Party movement, and no knowledge of political motivation or White House involvement:

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[26] *Id.* at 79.

[27] *Id.* at 73.

[28] *Id.* at 73-74.

Q: Were you ever instructed to subject these cases that were under the Advocacy Team to a greater degree of scrutiny than you ordinarily would to other tax-exempt applications?
A: I don't think so.
Q: So based on your experience as the team leader for the Advocacy Team, did you see any evidence that the decisions being made about these cases were based on an attempt to target the President's political enemies?
Employee Counsel: Did he see any evidence that the people he was working with on the Advocacy Team were motivated by trying to harm the President's political enemies, is that what you're asking?
Q: Yes.
A: No.[29]

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Q: Did you ever communicate directly with former Commissioner Shulman regarding the handling of—
A: No.
Q: —these cases? Did you ever communicate directly with anyone from the Treasury Department outside of the IRS?
A: No.
Q: Did you ever communicate with anyone from the White House regarding—
A: No.[30]

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Q: I just want to clarify whether you had any personal political bias in your handling of cases that were part of the Advocacy Team?
A: No, absolutely not.[31]

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Q: Did any of your team members tell you that their political bias impacted the way they developed cases on the Advocacy Team?
A: I don't think so, no.
Q: Do you have any other information that might lead you to believe political bias impacted how the members of the Advocacy Team reviewed the cases?

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[29] House Committee on Oversight and Government Reform, Interview of Determinations Specialist III, Exempt Organizations Determinations Unit, Internal Revenue Service, at 130 (June 19, 2013).

[30] *Id.* at 133.

[31] *Id.* at 126.

A: I do not have any information.[32]

6. Group Manager I, Determinations Unit, Internal Revenue Service—Cincinnati

The Group Manager in Cincinnati who was first assigned political advocacy cases and helped develop the spreadsheet that listed Tea Party cases as an emerging issue that would become known as the "BOLO" stated that he has no political affiliation, that he was not aware of any attempts by the White House to influence how the IRS treated cases, and described the IRS as an apolitical agency with no biases or political motivations in its handling of Tea Party cases:

Q: Based on your work both in 2010 and 2011 through the present, were you aware of anyone outside of the IRS attempting to influence the way IRS employees handled Tea Party cases?
A: I'm not aware of anyone.
Q: Are you aware of any attempts by the White House to influence how the IRS treated cases?
A: I'm not aware.[33]

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Q: And at the time were you aware of any political bias playing a role in the decision to filter Tea Party cases for group review in emerging issues?
A: I was not aware of any political bias.
Q: Are you aware of any political bias today?
A: I'm not aware of any political bias today.
Q: Would you characterize the IRS as a political or apolitical place?
A: Apolitical.[34]

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Q: Did anyone outside the IRS ever tell you to apply enhanced scrutiny to Tea Party cases?
A: No.
Q: Based on your involvement in these cases, is it fair to say you have no evidence that any IRS employee was motivated by political bias in how they processed Tea Party cases?
A: I have no evidence of that.[35]

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[32] *Id.* at 127.

[33] House Committee on Oversight and Government Reform, Interview of Group Manager I, Determinations Unit, Internal Revenue Service, at 190 (June 4, 2013).

[34] *Id.* at 128.

[35] *Id.* at 191.

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Q: How would you describe the process that, of reviewing Tea Party cases? Is there a description that you believe is more accurate?

A: I would say we centralized them to work them to be consistent.[36]

7. Group Manager II, Determinations Unit, Internal Revenue Service—Cincinnati

The Cincinnati Group Manager in charge of the employees handling political advocacy cases from May 2010 through February 2013 is a self-identified Republican who said he had no knowledge of any White House involvement or political bias in the handling of Tea Party applications:

Q: This is a recent article published in Politico on June 6, 2013. And on the second page, it quotes the chairman of our committee, Darrell Issa, describing the handling of Tea Party cases by the IRS. You can take a minute to look it over. On the second page, it states, During a May 14th appearance on CBS', quote, "This Morning," for instance, Issa claimed that the IRS scandal was a secret political operation designed to benefit Obama's reelection campaign, explosive allegations that have not been backed up by existing evidence. Quote, "This was the targeting of the President's political enemies, effectively, and lies about it during the election year so that it wasn't discovered until afterwards," end quote, Issa claims.
In your opinion, working at the IRS at this time, was the decision to screen and centralize the review of Tea Party cases the, quote, "targeting" of the President's political enemies?

A: I wouldn't know [who] the political enemies are of the White House.

Q: Do you have any reason to believe that the White House directed the screening of Tea Party cases for enhanced scrutiny?

A: Not to my knowledge.

Q: Do you have any reason to believe the handling of Tea Party cases was influenced at all by the fact that an election would take place in November 2012?

A: Not to my knowledge.[37]

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Q: Are you aware of whether there was any outside influence in the Determinations Unit to centralize the review of Tea Party political advocacy cases?

A: No, not that I'm aware of.

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[36] *Id.*

[37] House Committee on Oversight and Government Reform, Interview of Group Manager II, Determinations Unit, Internal Revenue Service, at 61-62 (June 12, 2013).

Q: Do you have any reason to believe that the White House directed the screening and centralization of Tea Party cases for enhanced scrutiny?
A: No, I have no idea what the White House is doing.
Q: Did you ever have contact from anyone at the White House?
A: No.
Q: Did anyone ever tell you they had contact with anyone from the White House about this process?
A: No.[38]

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Q: And you stated you were a registered Republican; is that accurate?
A: Yes.
Q: Are you aware of any political motivations behind the screening or development of Tea Party cases in Cincinnati?
A: No.
Q: Are you aware of any political motivations to benefit one political party over another in the handling of these cases?
A: No.
Q: Would you characterize the Cincinnati office as a political place?
A: Absolutely not.[39]

***

Q: If political bias didn't play a role, in your view, what is your understanding of the reasons that Tea Party cases were designated an emerging issue and centralized for review?
A: Because of their political advocacy narrative, the things that were in their application. Review of the application showed that we needed—wasn't the precedents there to help guide through the application process. So they were—we reached out to our Washington office for guidance.
Q: Would you describe it—these cases, as—I think you have actually described these cases as being novel.
A: That's my description.
Q: Was it important with these kind of cases without precedents to be examined in a consistent manner?
A: Very important of all—all cases, you know, that may present something of novel or no precedents that we work them consistently.[40]

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[38] *Id.* at 71.

[39] *Id.* at 60.

[40] *Id.* at 62.

8. Program Manager, Determinations Unit, Internal Revenue Service—Cincinnati

The head of the Exempt Organizations Determinations Unit in Cincinnati who oversaw all of the employees in the Cincinnati office stated that she had no political party affiliation and she was not aware of any White House involvement or political motivation in the screening of applicants for tax-exempt status:

Q: In a recent news article published in Politico, the chairman of our committee described the handling of Tea Party cases by the IRS as follows, quote: "This was the targeting of the President's political enemies effectively and lies about it during the election year so that it wasn't discovered until afterwards," end quote. Based on your experience working at the IRS, did you see any evidence that the decision to have EO Technical involved in the development and determination of Tea Party cases was based on an attempt to, quote, "target the President's political enemies"?

A: No, nothing based on what I know.

Q: Did you see any evidence that would cause you to believe that the White House was involved at all in the way the Tea Party cases were handled?

A: No.

Q: Do you have any reason to believe the White House directed Tea Party cases be consolidated and coordinated for review with EO Technical?

A: No.

Q: Did you ever have any contact with anyone in the White House about Tea Party cases—

A: No.

Q: —or any political advocacy case?

A: No.

Q: Did anyone that you worked with tell you they had contact with anyone from the White House about Tea Party cases?

A: No.

Q: Do you have any reason to believe that handling of Tea Party cases or any political activity case was influenced at all by the fact that an election would take place in November 2012?

A: I have no—nothing that I'm involved with.

Q: Have you seen any evidence that any IRS employee who was involved with reviewing or handling Tea Party cases used their position at the IRS to attempt to influence the outcome of the election in November 2012?

A: No.

Q: Are you aware of whether there was any outside influence, meaning anyone outside the IRS directing the Determinations Unit to send cases to EO Technical for review and development?

A: I'm not aware of anybody outside of IRS doing it, no.

Q: Are you aware of any involvement by anyone outside the IRS in giving direction as to how Tea Party cases should be handled?

A: No.[41]

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Q: [W]ere any of your actions from the time period you learned of the first Tea Party case in February 2010 through the present regarding the treatment of Tea Party cases or political advocacy cases motivated by your personal political views?
A: No.
Q: Were any of your actions regarding Tea Party cases or political activity cases motivated by your opinions about the political views that the Tea Party groups were promoting?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the Tea Party cases were motivated by their political views?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding Tea Party cases were motivated by their opinions about the political views these Tea Party groups supported?
A: No.
Q: Are you aware of any political bias by employees in the Cincinnati office against conservative viewpoints?
A: No.
Q: Are you aware of any political bias by employees of the people you worked with in EO Technical against conservative viewpoints?
A: No.
Q: Are you aware of any political bias by employees of any person you worked with in Rulings and Agreements against conservative viewpoints?
A: No.
Q: Based on your years of working in and overseeing the Determinations Unit, would you characterize the Cincinnati Determinations Unit office as a political place?
A: No.
Q: Would you characterize it as apolitical?
A: To my knowledge, I mean, we don't really talk about politics.[42]

9. Tax Law Specialist I, Technical Unit, Internal Revenue Service—Washington D.C.

A Tax Law Specialist in Exempt Organizations Technical Unit in Washington, D.C. who described herself as a Republican explained that she assigned the first two Tea Party cases to the

[41] House Committee on Oversight and Government Reform, Interview of Program Manager, Determinations Unit, Internal Revenue Service, at 146-48 (June 28, 3013).

[42] *Id.* at 145-46.

technical group in Washington that handled political advocacy and was aware of no White House involvement or political motivation in the screening of applicants for tax-exempt status:

Q: Based on your experience working at the IRS, did you see any evidence that the decision to have EO Technical involved with the development and determination of Tea Party cases was based on an attempt to target President Obama's political enemies?
A: No.
Q: Did you ever have contact with anyone in the White House about these Tea Party cases?
A: No.
Q: Did anyone ever tell you they had contact with anyone from the White House about these Tea Party cases?
A: No.
Q: Do you have any reason to believe that the White House directed the consolidation or coordinated review of Tea Party cases?
A: No.
Q: Do you have any reason to believe the handling of the Tea Party cases was influenced at all by the fact that an election would take place in either November 2010 or November 2012?
A: No.
Q: Have you seen any evidence that any IRS employee who was involved in the review of Tea Party cases used their position at the IRS to attempt to influence the outcome of either the election in November 2010 or November 2012?
A: No.
Q: Are you aware of whether there was any outside influence, meaning anyone outside of the IRS, who was involved in the decision to send cases to EO Technical for review and development?
A: No.[43]

***

Q: Are you aware of any political bias by employees of EO Technical against conservative views?
A: No.
Q: Were you aware of any one of your colleagues who wanted to treat these applications with greater scrutiny out of political bias?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding these Tea Party cases were motivated by their own political views?
A: No.

[43] House Committee on Oversight and Government Reform, Interview of Tax Law Specialist I, Technical Unit, Internal Revenue Service, at 58-59 (July 10, 2013).

Q: Are you aware of any political motivations behind the manner in which these Tea Party cases were handled?
A: No.[44]

10. Tax Law Specialist II, Technical Unit, Internal Revenue Service—Washington, D.C.

A second Tax Law Specialist in Washington D.C. initially assigned to review and develop the two original Tea Party applications sent from Cincinnati told Committee staff that his personal political views as a Democrat had no bearing on his handling of Tea Party cases and that he had no knowledge of any White House involvement or political motivation:

Q: The question for you is: Based on your experience working at the IRS, did you see any evidence that the decision to have EO Technical involved in the development and determination of Tea Party cases was based on an attempt to target President Obama's political enemies?
A: No.[45]

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Q: Do you know whether or not the White House directed the screening, consolidation, or coordinated review of Tea Party cases?
A: No.
Q: Did you ever have contact with anyone in the White House about these Tea Party cases?
A: No.
Q: Did anyone ever tell you that they had contact with anyone from the White House about these Tea Party cases?
A: No.
Q: Do you have any reason to believe the handling of the Tea Party cases by the IRS was influenced at all by the fact that an election would take place in November 2012?
A: No.[46]

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Q: Sir, when you were involved between March of 2010 to August of 2011 with the handling of cases involving organizations related to the Tea Party movement,

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[44] *Id.* at 58.

[45] House Committee on Oversight and Government Reform, Interview of Tax Law Specialist II, Technical Unit, Internal Revenue Service, at 146 (June 14, 2013).

[46] *Id.* at 147-48.

were any of the actions that you took motivated by your political views in any way?

A: No. Sorry, no.

Q: Were any of your actions regarding cases related to organizations associated with the Tea Party movement motivated by your opinions about the political views of these groups?

A: No.

Q: Did anyone at the IRS ever tell you that their actions regarding these Tea Party cases were motivated by their political views?

A: No.

Q: Did anyone at the IRS ever tell you that their actions regarding these Tea Party cases were motivated by their opinions about the political views of these groups?

A: No.[47]

11. Tax Law Specialist III, Technical Unit, Internal Revenue Service—Washington, D.C.

A third Tax Law Specialist in Washington, D.C. who was transferred responsibility for Tea Party cases previously assigned to Tax Law Specialist II, and who drafted a guide sheet on how to handle political advocacy cases, described herself as a Republican and told Committee staff she did not know of any White House involvement or political motivation in the screening of tax-exempt applications:

Q: Based on your experience working at the IRS, did you see any evidence the decision to have EO Technical involved in the development and determination of advocacy cases was based on an attempt to, quote, "target the president's political enemies"?

A: No, not at all. That's kind of laughable that people think that. No, not at all. This is purely cases that, unfortunately, Cincinnati didn't have enough guidance on. That (c)(4) area is a very, very difficult area, and there's not much guidance. And so the lingering length of time, unfortunately, was just trying to apply the law to the specific facts of each case.

Q: Did you ever have contact with anyone in the White House about these advocacy cases?

A: No.

Q: Did anyone ever tell you that they had contact with anyone from the White House about these advocacy cases?

A: No.

Q: Do you have any reason to believe the handling of advocacy cases was influenced at all by the fact that an election would take place in November 2012?

A: No.

Q: What about November 2010?

A: No.

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[47] *Id.* at 143.

Q: Have you ever seen any evidence that an IRS employee who was involved in the review of advocacy cases used their position at the IRS to attempt to influence the outcome of the elections in November 2010?
A: No.[48]

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Q: Are you aware of whether there was any outside influence, meaning anyone outside of the IRS, in the decision to send cases to EO Technical for review and development?
A: I'm not aware of anyone.
Q: Are you aware of any outside influence, meaning anyone outside of the IRS, in EO Technical's decision to take two or three of those cases and work them?
A: No.
Q: Are you aware of any outside influence in the decision for EO Technical to provide guidance on how advocacy cases should be reviewed to EO Determinations?
A: No.[49]

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Q: [W]ere any of your actions regarding these advocacy cases motivated by your political views?
A: No, not at all.
Q: Were any of your actions regarding these advocacy cases motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their opinions about the political views of the Tea Party?
A: No, not at all.
Q: Are you aware of any political bias by employees in the Cincinnati office against conservative views?
A: No.
Q: Are you aware of any political bias by employees of the EO Technical office against conservative views?
A: No.[50]

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[48] House Committee on Oversight and Government Reform, Interview of Tax Law Specialist III, Technical Unit, Internal Revenue Service, at 125-27 (July 2, 2013).

[49] *Id.* at 127.

[50] *Id.* at 125.

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Q: How would you describe the process?
A: I would describe the process, in my experience, in my opinion, from when I started, was that Cincinnati had just a giant influx at a certain period of time of applications that were applying for (c)(4) mostly, some for (c)(3)s, and that had what they thought was kind of a political campaign advocacy component, and didn't really know how to move forward or if there was a problem, because there were so many at the same time, and with the little guidance out there, what to exactly do, because of the concerns raised by political campaign intervention activities that might occur. I mean, it's just part of a screening process that they used to get cases, I think, to people who had the expertise and the experience in issues that they saw presented so that, you know, they could be processed more quickly, but, unfortunately, that wasn't the kind of case that happened, I guess.[51]

12. <u>Tax Law Specialist IV, Technical Unit, Internal Revenue Service—Washington, D.C.</u>

A fourth tax law specialist in the Exempt Organizations Technical Unit, who has no political affiliation and was tasked with reviewing Tax Law Specialist II's work, explained to the Committee that she was unaware of any political bias against conservative organizations in the EO Technical Unit and that no one from outside the IRS or in IRS executive leadership influenced EO Technical's work on these cases:

Q: Now, were any of your actions regarding these advocacy cases motivated by your political views?
A: No.
Q: Were any of your actions regarding these advocacy cases motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: By their opinions about the political views of the Tea Party?
A: No.
Q: Are you aware of any political bias by employees in the Cincinnati office against conservative views?
A: No, I'm not aware of any of that.
Q: Are you aware of any political bias by employees of the EO Technical office against conservative views?
A: No.
Q: Now, based on your experience working at the IRS, did you see any evidence that the decision to have EO Technical or the Office of Chief Counsel involved in the

[51] *Id.* at 129-30.

development and determination of advocacy cases was based on an attempt to, quote, "target the President's political enemies"?

A: No.

Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of advocacy cases?

A: No.

Q: Did you ever have contact with anyone in the White House about these advocacy cases?

A: No.

Q: Did anyone ever tell you that they had contact with anyone from the White House about these advocacy cases?

A: No.

Q: Do you have any reason to believe that the handling of these advocacy cases was influenced at all by the fact that an election would take place in November 2010 or November 2012?

A: No.

Q: Have you seen any evidence that any other IRS employee who was involved in the review of the advocacy cases used their position at the IRS in an attempt to influence the outcome of the elections in November 2010 or November 2012?

A: No.[52]

13. Group Manager, Technical Unit, Internal Revenue Service—Washington D.C.

The Exempt Organizations Technical Unit Group Manager who supervised the first tax law specialist handling the two Tea Party cases told Committee staff that he votes in Republican primaries and had no knowledge of any White House involvement or political motivation regarding the screening of tax-exempt applications:

Q: Based on your experience working at the IRS, did you see any evidence that the decision to have EO Technical involved in the development of Tea Party cases was based on any attempt to target President Obama's political enemies?

A: No.

Q: Did you ever have any contact with anyone in the White House about Tea Party cases?

A: No.

Q: Did anyone ever tell you that they had contact with anyone from the White House about Tea Party cases?

A: No.

Q: Do you have any reason to believe that the White House directed this screening, consolidation, or coordinated review of Tea Party cases?

A: No.

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[52] House Committee on Oversight and Government Reform, Interview of Tax Law Specialist IV, Technical Unit, Internal Revenue Service, at 148-50 (July 31, 2013).

Q: Do you have any reason to believe the handling of Tea Party cases was influenced at all by the fact that an election would take place in November of 2012?
A: No.[53]

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Q: Based on your involvement and your role with what had been called the Tea Party cases—
A: Uh-huh.
Q: —did you see or hear anything to make you believe that anybody had any political bias against Tea Party organizations?
A: I had seen or heard nothing that would suggest any political bias.[54]

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Q: Were any of your actions regarding the Tea Party cases motivated by political bias?
A: Definitely not.
Q: Were any of your actions regarding the Tea Party cases motivated by any of your opinions about the political views of Tea Party groups?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding these Tea Party cases were motivated by their political views?
A: No one told me that.
Q: Are you aware of any political bias by the employees in the EO Technical Unit against conservative views?
A: I am not aware of any bias like that.
Q: Are you aware of any political bias by employees in the Exempt Organizations Division generally or the Office of Exempt Organizations, the director's office?
A: The director's office? No, I am not aware of anything like that.
Q: What about in Rulings and Agreements?
A: No, I am not aware of anything like that in Rulings and Agreements.
Q: Would you characterize the IRS Exempt Organizations office you worked at as a political place?
A: No.[55]

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[53] House Committee on Oversight and Government Reform, Interview of Exempt Organizations Technical Unit Group Manager, Technical Unit, Internal Revenue Service, at 132-33 (June 21, 2013).

[54] *Id.* at 130.

[55] *Id.* at 131-32.

14. Manager I, Technical Unit, Internal Revenue Service—Washington, DC

A group manager in the Exempt Organizations Technical Unit, who served as the acting manager of the Technical Unit in 2010 and identified himself as a Democrat, explained to Committee staff that he has no bias against Tea Party or conservative groups, is not aware of any bias in the Technical Unit, and had no knowledge of any White House involvement in the handling of these cases:

Q: So I want to ask you about your impressions of this process in your capacity as the acting director and then later as—acting manager, excuse me, and then later when you returned to your original post. Were any of your actions regarding these Tea Party cases motivated by your personal political views?
A: No, they were not.
Q: Were any of your actions regarding these cases motivated by your opinions about the political views of the Tea Party?
A: No, they were not.
Q: Did anyone else within the IRS ever tell you that their actions regarding the Tea Party cases were motivated by their personal political views?
A: No, they were not.
Q: Or their views of the Tea Party?
A: No.[56]

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Q: Are you aware of any political bias by employees in the EO Technical office against conservative views?
A: No, I am not.
Q: Now, based on your experience, both as the acting manager of the EO Technical unit and subsequent, did you see any evidence that the decision to have EO Technical involved in the development and determination of the Tea Party cases was based on an attempt to target President Obama's political enemies?
A: No, I did not see any evidence of that.[57]

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Q: Do you have any reason to believe that the White House directed the screening, consolidation or coordinated review of advocacy cases?
A: I have no reason to believe the White House did that.
Q: Did you ever have contact with anyone in the White House about these Tea Party cases?
A: I did not have contact with anyone in the White House.

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[56] House Committee on Oversight and Government Reform, Interview of Manager I, Technical Unit, Internal Revenue Service, at 65-66 (July 16, 2013).

[57] *Id.* at 66.

Q: Did anyone ever tell you that they had contact with anyone from the White House about these Tea Party cases?
A: No one ever told me they had contact with the White House.
Q: Do you have any reason to believe that the handling of Tea Party cases was influenced by a desire to shape the results of the November 2010 election?
A: I have no reason to believe that.
Q: Or the November 2012 election?
A: I have no reason to believe that.[58]

15. Manager II, Technical Unit, Internal Revenue Service—Washington, D.C.

The Manager of the Exempt Organizations Technical Unit from January 2011 to the present, a self-identified Democrat, explained at his interview that he transferred the two Tea Party cases from one Tax Law specialist to another in order to process the cases more quickly, and that he had no knowledge of any White House involvement or political bias in the screening of tax-exempt applications:

Q: Based on your experience working at the IRS, did you see any evidence of a decision to have EO Technical involved in [the] development and determination of Tea Party cases was based on attempt to target the President's political enemies?
A: No.
Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordination, and coordinated review, excuse me, of Tea Party cases?
A: No.
Q: Did you ever have contact with anyone in the White House about these Tea Party cases?
A: No.
Q: Did anyone ever tell you that they had contact with anyone from the White House about these Tea Party cases?
A: No.
Q: Do you have any reason to believe the handling of Tea Party cases was influenced at all by the fact that an election would take place in November of 2012?
A: No.
Q: Have you seen any evidence that any IRS employee who was involved in the review of Tea Party cases used their position at the IRS to attempt to influence the outcome of the elections in November 2012?
A: No.
Q: Are you aware of whether there was any outside influence, meaning anyone outside of the IRS, in the decision to send cases to EO Technical for review and development?
A: No.

[58] *Id.* at 67.

Q: Are you aware of any outside influence, meaning anyone outside the IRS, in EO [Technical's] decision to take two or three of those cases and work them?
A: No.
Q: Are you aware of any outside influence in the decision for EO Technical to provide guidance on how Tea Party cases should be reviewed to EO Determinations?
A: No.[59]

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Q: Did anyone outside the IRS instruct you to not provide guidance or to delay the provision of guidance to EO Determinations in order to further delay application determinations?
A: No.
Q: Did any personal political bias play any part in the fact that EO Technical did not provide EO Determinations with guidance for such a long period of time?
A: No.
Q: Were you aware of anyone who was intentionally delaying the processing of the advocacy cases because of political bias or to further a political agenda?
A: Not aware of any.[60]

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Q: [H]ave any of your actions regarding the Tea Party cases that we've discussed been motivated by your political views?
A: No.
Q: Were any of your actions regarding the Tea Party cases motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the Tea Party cases were motivated by their political views?
A: No.
Q: Has anyone at the IRS ever told you that their actions regarding the Tea Party cases were motivated by their opinions about the political views of the Tea Party?
A: No.
Q: Are you aware of any political bias by employees in the Cincinnati office against conservative views?
A: No, I'm not aware.
Q: Are you aware of any political bias by employees at the EO Technical office against conservative views?
A: No.[61]

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[59] House Committee on Oversight and Government Reform, Interview of Manager II, Technical Unit, Internal Revenue Service, at 158-59 (July 11, 2013).

[60] *Id.* at 152-53.

16. Director of Rulings and Agreements, and Director of Employee Plans Division, Internal Revenue Service—Washington, D.C.

The Director of the Employee Plans Division, who formerly served as the Director of Rulings and Agreements in the Exempt Organization's Division from 2007 to 2010, told Committee staff that he was registered to vote as a Democrat, but that his actions were not motivated by his political views, and that he had no knowledge of any political bias in the Exempt Organizations Division or White House involvement in these cases:

Q: Were any of your actions regarding these cases motivated by your political views?
A: No.
Q: Were any of your actions regarding these cases motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Did anyone at the IRS ever tell that you their actions regarding these cases were motivated by their political views?
A: No.
Q: By their opinions about the political views of the Tea Party?
A: No.
Q: Are you aware of any political bias by employees in the Determinations Unit in Cincinnati against conservative views?
A: No.
Q: Are you aware of any political bias by employees of the EO Technical Unit in Washington against conservative views?
A: I am not.
Q: Are you aware of any political bias by employees within the IRS Office of Chief Counsel against Tea Party groups?
A: No.
Q: Are you aware of any political bias by Lois Lerner against conservative views?
A: No.
Q: Any bias by Ms. Lerner against the political views of the Tea Party?
A: No.
Q: Are you aware of any political bias by any of the IRS employees under your supervision as Director of Rulings and Agreements against the Tea Party?
A: No.
Q: How about Lois Lerner's advisors? Are you aware of any bias by Ms. Lerner's technical advisors, her staff, against the Tea Party or conservative groups?
A: No.[62]

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[61] *Id.* at 157-58.

[62] House Committee on Oversight and Government Reform, Interview of Director of Employee Plans Division and Employee Plans Division, Internal Revenue Service, at 109-10 (Aug. 21, 2013).

Q: Based on your experience as the Director of Rulings and Agreements, did you see any evidence that the decision to have EO Technical involved in the development and determination of Tea Party cases was based on an attempt to target the President's political enemies?
A: No.
Q: Do you have any reason to believe that the White House directed the screening consolidation or coordinated review of these cases?
A: No.
Q: Did you ever have any contact with anyone in the White House about these cases?
A: No.
Q: Did anyone ever tell you that they had contact with the White House about these cases?
A: No.[63]

17. <u>Director of Rulings and Agreements, and Exempt Organizations Technical Unit Manager—Washington D.C.</u>

The Manager of the Exempt Organizations Technical Unit, who later became the Director of Rulings and Agreements in Washington, D.C. and described herself as a Democrat, explained that she was unaware of the screening criteria until the summer of 2011, more than a year after they were developed. She then worked with the management of Exempt Organizations and the Cincinnati office to change the criteria. She told the Committee that she had no knowledge of any White House involvement or political motivation in the handling of Tea Party cases:

Q: In terms of the creation of the criteria that was used to screen political advocacy cases, you testified that only first-line management were involved in that creation of that criteria?
A: To my knowledge, that is what it appears from what I saw during the IG investigation.
Q: And to your knowledge, was anybody in Washington aware of that criteria until you discovered it in June 2011?
A: No, not to my knowledge.
Q: And, to your knowledge, when those front-line screeners created the criteria used to identify political advocacy cases, did you discover any evidence of anyone from outside the EO Determinations influencing the development of that criteria?
A: No. And the TIGTA report notes that they did not find any evidence of outside influence; that folks were asked and indicated no.
Q: So, first I'm asking about outside of the EO Determinations. So no one in the Washington process.
A: Until the June 2011—July—beginning of July 2011 when we changed the criteria. Yes. I did not find anything that anyone outside of EO Determinations in EO more generally influenced the criteria.
Q: No one outside of the IRS?

[63] *Id.* at 111.

A: Correct. There was no indication I saw that anyone outside the IRS influenced the criteria.
Q: Anyone from Congress?
A: There was no indication that Congress influenced the criteria.
Q: Anyone from the White House?
A: There was no evidence that anyone from the White House influenced the criteria.[64]

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Q: Was there any bias—I just want to make sure we're really clear on this. Was there any bias as you knew it within the organization that you were in which at that time was the technical—
A: EO Technical.
Q: EO Technical. Were you aware of any bias between conservative groups or liberal groups?
A: No, I was not aware of any bias.
Q: And at that time, were you aware of any bias in the Determinations unit?
A: No I was not.[65]

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Q: Is the IRS a place where you've observed an atmosphere where politics—and by that I'm discussing, you know, campaign politics, advocacy on behalf of a particular party or candidate—is something that is discussed on a regular basis?
A: No.
Q: So would you describe the IRS, in your experience at least, as being a sort of apolitical or nonpartisan place?
A: Yes, in my experience, it was nonpartisan.
Q: Do you have any information that would lead you to believe that the Cincinnati Determinations Unit, office, is different than has been your experience?
A: No. They expressed—
Employee Counsel: With respect to political bias.
A: They expressed through these investigations that they were not even very aware of, you know, politics. Being outside of Washington, it was not something that they followed or had interest in.[66]

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[64] House Committee on Oversight and Government Reform, Interview of Director, Rulings and Agreements, and Exempt Organizations Technical Unit Manager, at 138-39 (May 21, 2013).

[65] *Id.* at 67.

[66] *Id.* at 144-45.

Employee Counsel: What were these employees' explanations for using the term "Tea Party"?

A: That it was really just an efficient way to refer to this issue; that they all understood that the real issue was campaign intervention.

Employee Counsel: It was a shortcut or abbreviation?

A: Yes. Just sort of a shorthand reference. You know, I think they may have referenced, you know, it's like calling soda "Coke" or, you know, tissue "Kleenex." They knew what they meant, and the issue was campaign intervention.

Q: Is it your understanding that despite use of the this [sic] term "Tea Party," they were still reviewing the cases for political advocacy in general, regardless of political leaning?

A: That's my understanding.

Q: I think people have a hard time understanding how they didn't notice that that would be a problem. Do you have any sense of—I know that's sort of asking you to think about—but you've obviously had a lot of interaction with them, and we haven't spoken to them at all. Do you have any sense of how it is that they could have not noticed that there was a problem with using "Tea Party" to refer to political advocacy cases?

A: My impression, based on, you know, this instance and other instances in the office is that because they are so apolitical, they are not as sensitive as we would like them to be as to how things might appear. You know, for many years Exempt Organizations was an area that did not get a great deal of attention, you know, outside the IRS. And it's only been in recent years that it's something that has gotten, you know, more media attention and congressional attention. And I think they—you know, many of these employees have been with the IRS for decades and were used to a world where how they talked about things internally was not something that would be public or that anyone would be interested in. So I don't think they thought much about how it would appear to others. They knew what they meant, and that was sort of good enough for them.[67]

18. Technical Advisor to the Division Commissioner, Tax Exempt and Government Entities, Internal Revenue Service—Washington, D.C.

The Technical Advisor to the Division Commissioner of Tax Exempt and Government Entities, who explained that he was a registered Democrat at the time of his interview, told the Committee that his actions were not motivated by political bias, that he was unaware of any political bias in his organization, and that he had no contact with the White House.

Q: Throughout your involvement with the review and development of political advocacy cases and assistance provided to EO Determinations, were any of your actions regarding these cases motivated by political views?

A: No.

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[67] *Id.* at 146-47.

Q: Were any of your actions regarding these advocacy cases motivated by your opinions about the political views of Tea Party organizations?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: Did anyone at the IRS ever tell you their actions regarding the advocacy cases were motivated by their opinions about the political views of the Tea Party movement?
A: No.
Q: Are you aware of any political bias by employees in any of the offices in Washington, D.C., within Exempt Organizations against conservative views?
A: No, to my organization there is—to my knowledge there is none.
Q: And what about in the Cincinnati office?
A: No, not that I'm aware of.
Q: Based on your experience working at the IRS since 2007, did you see any evidence that the decision to have EO Technical and later Rulings and Agreements and the Office of Chief Counsel involved in the review and development of advocacy cases was based on an attempt to, quote, "target President Obama's political enemies"?
A: No.
Q: Do you have any reason to believe that the White House directed that Tea Party cases be screened, consolidated or coordinated for review with EO Technical?
A: No.
Q: Did you ever have any contact with anyone in the White House about these advocacy cases?
A: No.[68]

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Q: Did you ever have any contact with anyone in the Treasury Department regarding the handling of these advocacy cases?
A: No.
Q: Did anyone ever tell you that they had contact with anyone from the White House or the Treasury Department about these advocacy cases?
A: No, not that I recall.[69]

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[68] House Committee on Oversight and Government Reform, Interview of Technical Advisory to the Division Commissioner, Tax Exempt and Government Entities, Internal Revenue Service, at 148-50 (July 23, 2013).

[69] *Id.* at 150.

19. Senior Technical Advisor I to the Director, Exempt Organizations, Internal Revenue Service—Washington, D.C.

The Senior Technical Advisor to Lois Lerner, who had been in her position since 2008, told the Committee that she has no political affiliation. She stated that she had no reason to believe that Ms. Lerner or any other IRS employees' actions related to these cases were motivated by political bias or that there was any White House involvement in these cases:

Q: Were any of your actions regarding the advocacy or Tea Party cases motivated by your personal political views?
A: No.
Q: Were any of your actions regarding these advocacy cases motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: By their opinions about the political views of the Tea Party?
A: No.
Q: Do you have any reason to believe that Lois Lerner's actions related to the advocacy or Tea Party cases was motivated by bias against conservative views?
A: No.[70]

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Q: Did you see any evidence that any decision related to these advocacy cases was based on an attempt to target the President's political enemies?
A: No.
Q: Do you have any reason to believe that the White House directed the screening, consolidation, and coordinated review of these cases?
A: No.
Q: Did you ever have contact with anyone in the White House about these cases?
A: No.
Q: Did anyone ever tell you that they got direction from anyone in the White House about these cases?
A: No.
Q: Did anyone in the Treasury Department ever give you any direction or instruction regarding these advocacy cases?
A: No.
Q: Did anyone ever tell you that someone in the Treasury Department had given them direction or instructions regarding these advocacy cases?

[70] House Committee on Oversight and Government Reform, Interview of Senior Technical Advisor to the Director, Exempt Organizations, Internal Revenue Service, at 46-47 (Oct. 29, 2013).

A: No.[71]

20. Senior Technical Advisor II to the Director of Exempt Organizations, Internal Revenue Service—Washington, D.C.

A self-described Democrat who served as a senior technical advisor to Ms. Lerner beginning in 2011 told the Committee that she was unaware of any bias in the Exempt Organizations Division against conservative organizations, that Ms. Lerner was not biased towards conservative groups, and that the White House did not direct or coordinate the IRS's treatment of advocacy cases:

Q: Did you ever have contact with anyone in the White House about these advocacy cases?
A: I did not.
Q: Did anyone ever tell you that they had contact with anyone from the White House about these advocacy cases?
A: They did not.[72]

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Q: Do you have any reason to believe that the White House directed the screening, consolidation or coordinated review of advocacy cases?
A: I do not.
Q: Did you ever have contact with anyone in the White House about these advocacy cases?
A: I did not.
Q: Did anyone ever tell you that they had contact with anyone from the White House about these advocacy cases?
A: They did not.[73]

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Q: [W]ere any of your actions regarding the advocacy cases motivated by your political views?
A: No.
Q: Were any of your actions regarding the advocacy cases motivated by your opinions about the political views of the Tea Party?
A: No.

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[71] *Id.* at 47-48.

[72] House Committee on Oversight and Government Reform, Interview of Senior Technical Advisor II to the Director of Exempt Organizations, Internal Revenue Service, at 156 (Sept. 5, 2013).

[73] *Id.* at 156.

Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their opinions about the political views of the Tea Party?
A: No.
Q: Are you aware of any political bias by Exempt Organization employees against conservative views?
A: I am not.
Q: Are you aware of any political bias by anyone in the Office of IRS Chief Counsel against conservative views?
A: I am not.
Q: Based on your experience working at the IRS, did you see any evidence that the decision to have Exempt Organizations involved in the development and determination of advocacy cases was based on an attempt to "target the President's political enemies?"
A: I did not.[74]

***

Q: Did Lois Lerner ever say anything to you that would cause you to believe that she was politically biased against conservative views?
A: No.
Q: Did Ms. Lerner ever say anything to you that would cause you to believe that she was politically biased against the views of the Tea Party?
A: No.
Q: Based on your experience at working with the IRS, did you see any evidence that Lois Lerner permitted her personal political views to impact her work?
A: No.
Q: Did Ms. Lerner discuss her personal political views with you at work?
A: I don't remember a conversation about them.
Q: Did you hear Ms. Lerner discussing her personal political views with other IRS employees?
A: No.
Q: Would it be fair to say that Ms. Lerner kept her personal political views out of the workplace as far as you could tell?
A: Yes.[75]

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[74] *Id.* at 155-56.

[75] *Id.* at 161-62.

21. Former Senior Technical Advisor to the Division Commissioner, Tax Exempt and Government Entities, Internal Revenue Service—Washington, D.C.

The former Senior Technical Advisor to the Commissioner of Tax Exempt and Government Entities, who served in that position from 2011 to 2013, is a registered Independent. When IRS leadership learned about the allegations regarding the advocacy cases, they tasked the former Senior Technical Advisor with conducting an internal review. She told the Committee that she saw no evidence of White House involvement, political motivation, or "invidious intent." She described the individuals doing the internal review, their process, and their findings:

> So we were inside the IRS. We've worked there for a long time. I care deeply about the IRS mission. I believe in our responsibility to be fair and evenhanded in our treatment of taxpayers. It's my operating assumption that, of course, we would be. Some of the things that people fear would be crimes. You know, if the White House were to call somebody in the IRS and say, you know, treat this person badly or treat this person well, that's a crime. That's a Federal crime. That's got to be reported as a crime. ... We kind of had the perspective and had the whole story and did think that things had happened that shouldn't have happened, but did think that people didn't do it with invidious intent, that we genuinely had tried to turn it around and get it on the right track, that we had TIGTA coming in to do a more comprehensive look and we were planning to cooperate with that.[76]
>
> ***
>
> Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of advocacy cases?
> A: No.
> Q: Did you ever receive direction from anyone in the White House about the advocacy cases?
> A: No.
> Q: Did anyone ever tell you that they had received direction from the White House about the advocacy cases?
> A: No.[77]
>
> ***
>
> Q: [W]ere any of your actions as senior technical advisor to the Commissioner of TEGE motivated by your political views?
> A: No.

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[76] House Committee on Oversight and Government Reform, Interview of Former Senior Technical Advisor to the Division Commissioner, Tax Exempt Government Entities, Internal Revenue Service, at 192-93 (Oct. 8, 2013).

[77] *Id.* at 42.

Q: Were any of your actions regarding the advocacy cases motivated by your political views?
A: No.[78]

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Q: Are you aware of any political bias by Exempt Organization employees against conservative views?
A: No.
Q: Have you seen any evidence that Ms. Lerner used her position within the IRS to target Tea Party groups?
A: No.
Q: Have you seen any evidence that Ms. Lerner acted in a biased manner against Tea Party organizations or other conservative groups?
A: No.[79]

22. <u>Counsel I, IRS Office of Chief Counsel—Washington, D.C.</u>

An attorney in the IRS Office of Chief Counsel, who identified herself as someone who votes in Democratic primaries, performed the legal review for one applicant whose views were affiliated with the Tea Party. She told the Committee that she had no knowledge of White House involvement or political motivation. She also described another instance when she performed a similar legal review on an applicant for 501(c)(4) status that trained women to become Democratic candidates for election, and in that instance she recommended denial of that applicant:

Q: Based on your experience working at the IRS, did you see any evidence the decision to have the Office of Chief Counsel involved in the development and determination of advocacy cases was based on an attempt to target the President's political enemies?
A: No.
Q: Do you have any reason to believe that the White House was involved at all in the review of advocacy cases?
A: No.
Q: Did you have any contact with anyone in the White House concerning these advocacy cases?
A: No.
Q: Did anyone ever tell you that they had contact with anyone from the White House about advocacy cases?
A: No.

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[78] *Id.* at 40.

[79] *Id.* at 41.

Q: Do you have any reason to believe that the handling of the advocacy case you reviewed in June 2011 was influenced at all by the fact that an election would take place in November of 2012?
A: No.
Q: Have you seen any evidence that any IRS employee who was involved in the review of any advocacy cases used their position at the IRS to attempt to influence the outcome of the elections in November 2012?
A: No.
Q: Are you aware of whether there was any outside influence, meaning anyone outside of the IRS, in the decision to send cases to the Office of Chief Counsel for review and development?
A: No.[80]

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Q: [Y]ou had reviewed a 501(c)(4) application of a progressive organization; is that correct?
A: Yes, I mentioned that I had reviewed a 501(c)(4) application that had to do with political advocacy but not political campaign intervention specifically.
Q: Can you describe what that review entailed?
A: Yes. It was a review of an application from a (c)(4) that was going to be training women to become candidates in a particular political party.
Q: What political party?
A: The Democratic party.[81]

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Q: [D]id you state that the ultimate outcome was a recommendation for denial?
A: Yes, that was our recommendation.[82]

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Q: Chief Counsel's Office in this progressive group case in 2010 took approximately maybe a little over 7 months to conduct its review; is that about right?
A: That's about right.
Q: And about how long did you take, or Chief Counsel's office take to conduct its review in 2011 of the conservative (c)(4) case?
A: Just from June to August.
Q: So less time?

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[80] House Committee on Oversight and Government Reform, Interview of Counsel I, IRS Office of Chief Counsel, at 127-28 (Aug. 9, 2013).

[81] *Id.* at 60-61.

[82] *Id.* at 66.

A: Much less time.
Q: Did you use the same level of scrutiny when reviewing the progressive group case in May 2010 that you used when reviewing the 501(c)(4) application in 2011?
A: Yes.[83]

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Q: So, in your review of the progressive group case in May 2010, you used a private benefit analysis, correct?
A: Correct.
Q: Did you utilize a private benefit analysis in your review of the 501(c)(4) application in June 2011?
A: No.
Q: Why did you decide not to use a private benefit analysis in the June 2011 review of the 501(c)(4) application?
A: It was sort of the other way around. In the progressive case in 2010, we first considered political campaign intervention because there's more—there are revenue rulings on point, and we decided it did not apply because there was no specific election in which the organization was intervening. It was just training candidates for some future election yet to be named. So, it was more the other way around. But what they were doing seemed political, and it seemed to be giving a sort of benefit to a political party, so we went to the private benefit analysis.[84]

23. Counsel II, IRS Office of Chief Counsel—Washington, D.C.

Another attorney in the IRS Office of Chief Counsel, who identified himself as a Democrat, performed the legal review on a second Tea Party-affiliated application and provided some legal advice regarding the IRS's proposed guidesheet on the topic of 501(c)(4) applications. He told the Committee he was aware of no White House involvement or political motivation. He explained that he previously reviewed a 501(c)(4) application for a progressive entity and recommended that it be denied due to its political activity:

Q: Were any of your actions regarding the Tea Party or advocacy case that you reviewed or your work on the guidesheet motivated by your political views?
A: Not at all.
Q: Were any of your actions regarding the Tea Party cases that you reviewed or the guidesheet motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: Not at all.

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[83] *Id.* at 68-69.

[84] *Id.* at 70-71.

Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their opinions about the political views of the Tea Party?
A: No.
Q: Are you aware of any political bias by employees in the Office of Chief Counsel against conservative views?
A: No.[85]

***

Q: Did you see any evidence that the decision for you to review the Tea Party application in 2011 was based on an attempt to target the President's political enemies?
A: No.
Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of advocacy cases?
A: I have no knowledge one way or the other.
Q: Did you ever have contact with anyone in the White House about the advocacy cases?
A: I never had any contact with anyone in the White House.[86]

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Q: Did anyone ever tell you that they had contact with anyone from the White House about these advocacy cases?
A: No.
Q: Did you have any reason to believe that the handling of advocacy cases was influenced at all by the fact that an election would take place in November 2012?
A: No.
Q: Did you have any reason to believe the handling of advocacy cases was influenced at all by the fact that an election would take place in November 2010?
A: No.
Q: Have you seen any evidence that any IRS employee who was involved in the review of advocacy cases used their position at the IRS in an attempt to influence the outcome of the elections in November 2012 or in 2010?
A: No.
Q: Are you aware of whether there was any outside influence, meaning anyone outside of the IRS, in the decision to send cases to the Office of Chief Counsel for review and development?
A: No.[87]

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[85] House Committee on Oversight and Government Reform, Interview of Counsel II, IRS Office of Chief Counsel, at 139-40 (July 26, 2013).

[86] *Id.* at 141.

[87] *Id.* at 142.

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Q: [W]as the case you received in June or July of 2011, was it any different than any other 501(c)(4) cases with political activity you have seen in the past?
A: Yes.
Q: How was it different?
A: It involved a conservative entity. I had previously, in 2010, had a (c)(4) application that very clearly was for a progressive entity.
Q: And what happened to that application, progressive application?
A: That application, we recommended that it be denied, and it was denied.[88]

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Q: And was the way that you handled that case in 2010 similar or different to the way you handled the case in—the Tea Party case in 2011?
A: I failed in 2011 to consider private benefit in the Tea Party case. I probably should have considered it.[89]

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Q: What impact would having considered private benefit have had in your review of the Tea Party case?
A: It would have delayed processing of the case because it would have required additional thinking to determine whether that case was directly benefitting one or maybe more particular candidates or particular parties as opposed to a more generic and varied agenda that was involved with political campaign activity.
Q: And this analysis would potentially have been reason for you to recommend denial, but it would not have been a reason to recommend approval. Is that accurate?
A: If the analysis were to hold up—and it is a novel analysis—it would be a ground for denial.[90]

24. <u>Senior Counsel, IRS Office of Chief Counsel—Washington D.C.</u>

The Senior Counsel in the IRS Office of Chief Counsel in Washington, D.C., who provided legal advice to the Exempt Organizations Unit on the 501(c)(4) legal standard, informed Committee staff during his interview that he had no political affiliation and that he had no knowledge of any White House involvement or political motivation in the screening of applicants for tax exempt status:

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[88] *Id.* at 41-42.

[89] *Id.* at 43.

[90] *Id.* at 51-52.

Q: Do you have any reason to believe that anyone in the IRS Chief Counsel's Office's conduct with respect to the advocacy cases was affected by their—any personal political views that they may have?
A: No, I am not.
Q: Based on your experience working with the IRS, do you see any evidence that the decision to have IRS Chief Counsel involved in providing guidance to the EO function related to the advocacy cases was based on an attempt to target the President's political enemies?
A: No, I have no knowledge of that.
Q: Did anyone ever contact you—did anyone in the White House ever contact you about these advocacy cases?
A: No. I have never been contacted by anybody in the White House.[91]

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Q: Are you aware of whether there was any outside influence—meaning outside of the IRS—in the decision to send the advocacy cases to IRS Chief Counsel for review?
A: No. I simply don't know why the cases were sent other than they were sending us two cases. So I don't know any—I have no idea. I don't know why they were sent.
Q: And you said that that was—
A: But I'm not aware of anything along—of them being selected for the reason you described. The way it was presented to us was, here are two cases among the 100 we have.
Q: And you said before that that was not an uncommon practice?
A: No.[92]

***

Q: So I want to ask, related to your work on the, you know, on these so-called advocacy cases, were any of your actions regarding these advocacy cases motivated by your political views?
A: No.
Q: Were any of your actions regarding these advocacy cases motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Did anyone at the IRS tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: By their opinions about the political views of the Tea Party?

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[91] House Committee on Oversight and Government Reform, Interview of Senior Counsel, IRS Office of Chief Counsel, at 78-79 (July 12, 2013).

[92] *Id.* at 79-80.

A: No.[93]

25. Deputy Division Counsel and Associate Chief Counsel, IRS Office of Chief Counsel—Washington, D.C.

The Deputy Division Counsel, a self-identified Republican who supervised the attorneys providing technical assistance on the advocacy cases, told the Committee that she had no knowledge of any White House involvement or political bias either by the attorneys she supervised or Ms. Lerner:

Q: Now, were any of your actions regarding these cases motivated by your political views?
A: None at all.
Q: Were any of your actions regarding these cases motivated by your opinions about the political views of the Tea Party?
A: None.
Q: Did anyone at the IRS ever tell you that their actions regarding these cases were motivated by their political views?
A: None.
Q: By their opinions about the political views of the Tea Party?
A: No.
Q: You supervise several attorneys who worked more closely with these cases. Do you have any reason to believe that their actions related to these advocacy cases were motivated by any political views or bias against the Tea Party?
A: Not at all.
Q: Are you aware of any political bias by employees of the EO Technical office against conservative views?
A: No.
Q: Are you aware of any political bias by employees within the IRS Office of Chief Counsel against Tea Party groups?
A: No.[94]

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Q: You also work very closely with Ms. Lerner on creating or editing guidance and other issues related to this investigation. Are you aware of any political bias by Ms. Lerner against Tea Party groups?
A: No.
Q: Are aware of any political bias by Ms. Lerner against conservative views?
A: No.

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[93] *Id.* at 77.

[94] House Committee on Oversight and Government Reform, Interview of Deputy Division Counsel and Associate Chief Counsel, IRS Office of Chief Counsel, at 196-97 (Aug. 23, 2013).

Q: Based on your experience working at the IRS, did you see any evidence that the decision to have the Office of Chief Counsel involved in the review of these applications or the creation of guidance being based on an attempt to, quote, "target" the President's political enemies?
A: No.
Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of these cases?
A: No.
Q: Did you ever have contact with anyone in the White House about these cases?
A: No.
Q: About the guidance?
A: No.
Q: Did anyone ever tell you that they had contact with anyone from the White House about these cases or about the guidance?
A: No.
Q: Do you have any reason to believe that the handling of these cases was influenced by the fact that there was an election in November 2010?
A: No.
Q: November 2012?
A: No.[95]

26. <u>Division Counsel and Associate Chief Counsel, IRS Office of Chief Counsel—Washington, D.C.</u>

The Division Counsel and Associate Chief Counsel, a self-described Democrat who worked on the process of clearing out the backlog of cases, told the Committee that she is unaware of any political bias against conservative views or organizations in the IRS:

Q: Were any of your actions regarding the advocacy cases or the review of draft guidance from the EO function motivated by your political views?
A: No, they were not.
Q: Were any of your actions regarding these cases or the draft guidance motivated by your opinions about the political views of the Tea Party?
A: No, they were not.
Q: Did anyone at the IRS ever tell you that their actions regarding these advocacy cases or any draft guide sheet was motivated by their political views?
A: No, they did not.
Q: By their opinions about the political views of the Tea Party?
A: No, they did not.
Q: Are you aware of any political bias by employees in the EO function against conservative views?
A: I'm not aware of any political bias against conservative views.
Q: Any political bias against the Tea Party?

[95] *Id.* at 197-198.

A: I'm not aware of any political bias against the Tea Party.
Q: Are you aware of any political bias by employees within the IRS Office of Chief Counsel against Tea Party or conservative groups?
A: No, I'm not.[96]

***

Q: Based on your experience working at the IRS, do you see any evidence that the work of attorneys within the Office of Chief Counsel related to the advocacy cases or the guide sheet produced was based on an attempt to target the President's political enemies?
A: Certainly not.
Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of advocacy cases?
A: No, I do not.
Q: Do you have any reason to believe that the White House directed any delay in processing advocacy cases or any delay in reviewing a guide sheet related to these advocacy cases?
A: No.[97]

27. <u>Chief Counsel, IRS Office of Chief Counsel—Washington, D.C.</u>

William Wilkins was appointed by President Obama to be the Chief Counsel of the IRS in 2010, and was the only Obama Administration appointee in the IRS from 2010 to 2013. Mr. Wilkins was not involved in the legal review of the two Tea Party-affiliated applicants performed by his subordinates. He told the Committee that he never acted out of political bias towards conservative groups, and that he had no knowledge of any White House involvement or political motivation in the screening of tax-exempt applications:

Q: Have any of your actions as IRS Chief Counsel been motivated by your political views?
A: No.
Q: Have you taken any action as IRS Chief Counsel concerning the advocacy cases motivated by your political views?
A: No.[98]

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[96] House Committee on Oversight and Government Reform, Interview of Division Counsel and Associate Chief Counsel, IRS Office of Chief Counsel, at 156-57 (Aug. 29, 2013).

[97] *Id.* at 158.

[98] House Committee on Oversight and Government Reform, Interview of Chief Counsel, IRS Office of Chief Counsel, at 44 (Nov. 6 2013)

Q: Are you aware of any political bias by any IRS Office of Chief Counsel employees against conservative views?
A: No. IRS is a very apolitical workplace.
Q: Have you seen any evidence that Lois Lerner used her position within the IRS to target Tea Party groups?
A: I have not seen that.
Q: Have you seen any evidence that Lois Lerner acted in a biased manner against Tea Party organizations or other conservative groups?
A: No.[99]

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Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of advocacy cases?
A: No.
Q: Did you ever receive direction from anyone in the White House about the advocacy cases?
A: No.
Q: Did anyone ever tell you that they had received direction from the White House about the advocacy cases?
A: No.[100]

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Q: Has former Commissioner Shulman ever directed you to target Tea Party organizations or subject Tea Party organizations to a higher level of scrutiny than other applicants?
A: No.
Q: Has former Commissioner Miller ever directed you to target Tea Party organizations or subject Tea Party organizations to a higher level of scrutiny than other applicants?
A: No.
Q: Has anyone at the IRS ever directed you to target Tea Party organizations or subject Tea Party organizations to a higher level of scrutiny than other applicants?
A: No.
Q: Prior to the publication of the TIGTA report, had you ever communicated with anyone from the Treasury Department, outside of the IRS, about the advocacy cases?
A: No.
Q: Have you ever received direction from someone in the Treasury Department, outside of the IRS, about actions that should be taken concerning the advocacy cases?

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[99] *Id.* at 45.

[100] *Id.* at 46.

A: No.[101]

28. Commissioner of the Tax-Exempt and Government Entities Division, until December 2010, Internal Revenue Service—Washington, D.C.

The Commissioner of the Tax Exempt and Government Entities Division until December 2010 stated that she was not aware of the Tea Party group of applications while she was the Division Commissioner.[102] She told the Committee that she had no reason to believe that the White House was involved in the screening of tax-exempt applications or that the screening was politically motivated:

Q: In your tenure at the IRS, has anyone ever asked to you target or hinder the President's political enemies?
A: No, sir, never.
Q: In your tenure at the IRS, have you ever used your position to help the President win reelection?
A: No, sir.
Q: To target or hinder the President's political enemies?
A: No, sir.
Q: At any time in your, I think you said, 31 years of service at the IRS, have you treated organizations differently because of their political views?
A: Not to my knowledge, and I certainly hope not.
Q: Now, with respect to your time functioning as the Commissioner of TEGE, were any of your actions during that tenure between, I think you said, mid-2009 or December 2010 motivated by your political views?
A: Not at all.
Q: Were any of your actions during your tenure as the functioning Commissioner of TEGE or any of your actions regarding the so-called advocacy or Tea Party cases motivated by your political beliefs?
A: I would like to clarify that I've never acted based on any personal beliefs, political or otherwise.[103]

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Q: Did anyone in the White House ever directly or indirectly instruct you to treat Tea Party organizations differently than other tax-exempt—or other applicants with tax-exempt status?

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[101] *Id.* at 48.

[102] House Committee on Oversight and Government Reform, Interview of Commissioner of the Tax-Exempt and Government Entities Division, until December 2010, Internal Revenue Service, at 64 (Sept. 23, 2013).

[103] *Id.* at 62-63.

A: I don't recall ever having any conversation with the White House at any time about cases.
Q: Now, based on your personal knowledge, do you have any reason to believe that the White House directed the screening, consolidation or coordinated review of the group of cases that are now under inquiry by this committee?
A: I don't know of any conversation about any actual cases.
Q: Did anyone ever tell you that the White House directed their activities related to these cases?
A: Nobody told me that.[104]

***

Q: Now, did anyone at the IRS ever tell you that their actions regarding these cases that are subject to inquiry of the committee were motivated by their political views?
A: Nothing that I heard, no.
Q: By their opinions about the political views of the Tea Party?
A: No, sir.[105]

29. <u>Commissioner of the Tax Exempt and Government Entities Division, December 2010–2013, Internal Revenue Service—Washington D.C.</u>

The Commissioner of the Tax Exempt and Government Entities Division of the IRS from December of 2010 until 2013, described himself as a Democrat who had not engaged in political activity since he joined the IRS. He told the Committee that he had no knowledge of any White House involvement or political motivation regarding the screening of tax-exempt applicants:

Q: Are you aware of any political bias by Exempt Organization employees against conservative views?
A: No, I'm not.
Q: Have you seen any evidence that Lois Lerner used her position within the IRS to target Tea Party groups?
A: No.
Q: Have you seen any evidence that Lois Lerner acted in a biased manner against Tea Party organizations or other conservative groups?
A: No.
Q: Based on your experience working at the IRS, did you see any evidence of an attempt to, quote, "target the President's political enemies"?
A: No.
Q: Do you have any reason to believe that the White House directed the screening, consolidated or coordinated review of (c)(3) and (c)(4) applicants with indicators of political activity?

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[104] *Id.* at 69.

[105] *Id.* at 64-65.

A: No.[106]

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Q: Has anyone from the Treasury Department outside of IRS ever directed you to target Tea Party organizations or subject Tea Party organizations to a higher level of scrutiny than other applicants?
A: No.
Q: Have you ever directed anyone to target Tea Party organizations or subject Tea Party organizations to a higher level of scrutiny than other applicants?
A: No.[107]

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Q: Were any of your actions as Commissioner of TEGE motivated by your political views?
A: None.
Q: Were any of your actions regarding (c)(3) and (c)(4) applicants with indicators of political activity motivated by your political views?
A: No, none.[108]

30. <u>Chief of Staff to the Commissioner, 2008-2012, Internal Revenue Service—Washington, D.C.</u>

The Chief of Staff to the Commissioner of the IRS from 2008 to 2012 was a self-identified Democrat who had no role in the 501(c)(4) application review and approval process. He told the Committee that he had no knowledge of any White House involvement or political bias in the 501(c)(4) application review process:

Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of the advocacy cases?
A: No, I do not.
Q: Did you ever receive direction from anyone in the White House about the advocacy cases?
A: No, I did not.
Q: Did anyone ever tell you that they have received direction from the White House about the advocacy cases?
A: No.[109]

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[106] House Committee on Oversight and Government Reform, Interview of Commissioner of the Tax Exempt and Government Entities Division, December 2010–2013, Internal Revenue Service, at 50 (Sept. 25, 2013).

[107] *Id.* at 54.

[108] *Id.* at 49.

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Q: Did you take any action as chief of staff for the IRS Commissioner or executive director of strategy of organizational development concerning the advocacy cases that was motivated by your political views?
A: No.
Q: Did you take any action as chief of staff for the IRS Commissioner or executive director of strategy of organizational development concerning the advocacy cases motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: Did anyone at the IRS ever tell you that their actions recording the advocacy cases were motivated by their opinions about the political views of the Tea Party?
A: No.
Q: Are you aware of any IRS employee who has a political bias against conservative views that has impacted their work in any way?
A: Not that I recall.[110]

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Q: Have you seen any evidence that Ms. Lerner used her position within the IRS to target Tea Party groups?
A: Again, no, I don't recall seeing anything.
Q: Have you seen any evidence that Ms. Lerner acted in a biased manner against Tea Party organizations or other conservative groups?
A: Again, no, I don't recall seeing anything.[111]

31. <u>Chief of Staff to the Commissioner, 2012-2013, Internal Revenue Service—Washington, D.C.</u>

The Chief of Staff to the Acting Commissioner from 2012 to 2013 is a registered Independent. She told the Committee she was not aware of the issues relating to Tea Party applications until February of 2012, at which point she helped to coordinate the IRS's internal response, which included being briefed on the findings of the former Senior Technical Advisor to the Division Commissioner's internal review.[112] She told the Committee that she saw no

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[109] House Committee on Oversight and Government Reform, Interview of Former Chief of Staff, Internal Revenue Service, at 53 (Nov. 21, 2013).

[110] *Id.* at 49-51.

[111] *Id.* at 52.

[112] House Committee on Oversight and Government Reform, Interview of Chief of Staff to the Commissioner, 2012-2013, Internal Revenue Service, at 39 (Oct. 22, 2013).

evidence of White House involvement or political motivation in the screening of tax-exempt applications:

Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of these advocacy cases?
A: No.
Q: Did anyone in the White House ever give you any direction or instruction regarding the processing of these advocacy cases?
A: No.
Q: Did anyone ever tell you that someone in the White House had given them direction or instruction regarding the processing of these advocacy cases?
A: No.
Q: Did anyone in the Treasury Department, separate and apart from the IRS, ever give you any direction or instruction regarding these advocacy cases?
A: No.
Q: Did anyone ever tell you that someone in the Treasury Department had given them directions or instructions regarding the processing of these advocacy cases?
A: No.[113]

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Q: Were any of your actions related to these advocacy cases that we have been discussing motivated by your personal political views?
A: No.
Q: Were any of your actions regarding these advocacy cases motivated by your opinions about the political views of the Tea Party?
A: No.[114]

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Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: By their opinions about the political views of the Tea Party?
A: No.
Q: Do you have any reason to believe that Lois Lerner's actions related to the advocacy or Tea Party cases were motivated by bias against conservative views?
A: No.
Q: Do you have any reason to believe that Mr. Miller's actions related to the advocacy of Tea Party cases was motivated by bias against conservative views?
A: No.

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[113] *Id.* at 45-46.

[114] *Id.* at 43-44.

Q: Are you aware of any political bias by employees in the Cincinnati office against conservative views?
A: No.
Q: Are you aware of any political bias by employees of the EO Technical unit of the IRS against conservative views?
A: No.[115]

32. Commissioner, 2008-2012, Internal Revenue Service—Washington, D.C.

Douglas Shulman was appointed to be the Commissioner of the IRS by then-President George W. Bush in 2008, and he served in that position until his term expired in 2012. He told the Committee that he is registered as an Independent. Mr. Shulman had no role in the 501(c)(4) application review and approval process. Once concerns about the treatment of Tea Party applicants were brought to his attention in 2012, the Commissioner asked his Deputy Commissioner, Steven Miller, who had substantive experience as the former Commissioner of the Tax Exempt and Government Entities Division, to lead the IRS's internal efforts to address the concerns. He told the Committee that he was unaware of any attempt by the White House to use the IRS to target President Obama's political enemies:

Q: Based on your experience working at the IRS, have you seen evidence of an attempt to, quote, "target" the President's political enemies?
A: No.[116]

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Q: Did you take any action as commissioner of the IRS concerning the advocacy cases that were motivated by your political views?
A: No.
Q: Did you take any action as commissioner of the IRS concerning the advocacy cases motivated by your opinions about the political views of the Tea Party?
A: No.
Q: Do you recall anyone at the IRS telling you that their actions regarding the advocacy cases were motivated by their political views?
A: No.[117]

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Q: Are you aware of any outside influence, meaning outside of the IRS, on the IRS's treatment of the advocacy cases?

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[115] *Id.* at 44.

[116] House Committee on Oversight and Government Reform, Interview of Commissioner, 2008-2012, Internal Revenue Service, at 60 (Dec. 4, 2013).

[117] *Id.* at 57-58.

A: Not that I'm aware of.[118]

33. Deputy Commissioner for Services and Enforcement and Acting Commissioner—Washington, D.C.

In his role as the Deputy Commissioner for Services and Enforcement, Steven Miller was the career official who served as the Acting Commissioner of the IRS after Commissioner Shulman left in 2012. He oversaw the IRS's internal response to reports that inappropriate criteria were being used, which included an effort to eliminate the backlog of cases. He is a registered Democrat. He told the Committee that he saw no evidence of any White House involvement or political bias in the treatment of the Tea Party applicants:

Q: Did you, at any point in time, direct anyone in the IRS to target Tea Party or advocacy cases?
A: No.
Q: Do you have any reason to believe that the White House directed the screening consolidation or coordinated review of advocacy cases?
A: No reason to believe that.
Q: Any reason to believe that the White House directed targeting of Tea Party groups?
A: No reason to believe that.
Q: Did anyone in the White House ever give you any direction or instruction regarding the screening consolidation or coordinated review of the advocacy cases?
A: No.
Q: Did anyone ever tell you that someone in the White House had ever given them any direction with respect to the advocacy cases?
A: No.[119]

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Q: You stated earlier that you've never been a political appointee within the IRS?
A: Right.
Q: Were any of your actions regarding these advocacy cases motivated by your personal political views?
A: Absolutely not.
Q: Were any of your actions regarding these advocacy cases motivated by your opinions about the political views of the Tea Party?
A: Absolutely not.[120]

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[118] *Id.* at 61.

[119] House Committee on Oversight and Government Reform, Interview of Deputy Commissioner for Services and Enforcement and Acting Commissioner, Internal Revenue Service, at 66-67 (Nov. 13, 2013).

[120] *Id.* at 64.

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Q: Did anyone at the IRS ever tell you that their actions regarding the advocacy cases were motivated by their political views?
A: No.
Q: By their opinions about the political views of the Tea Party?
A: No.
Q: Do you have any reason to believe that Ms. Lerner's actions related to the advocacy or Tea Party cases were motivated by bias against conservative views?
A: I have no reason to believe that.
Q: Do you have any reason to believe that [the Commissioner of TEGE's] actions related to the advocacy or Tea Party cases were motivated by a bias against conservative views?
A: I have no reason to believe that.
Q: Do you have any reason to believe that Mr. Shulman's actions related to the advocacy or Tea Party cases were motivated by bias against conservative views?
A: No reason to believe that.
Q: Do you have any reason to believe that Mr. Wilkins, the chief counsel of the IRS, that his actions related to the advocacy cases or the guide sheet were motivated by bias against conservative views?
A: No reason to believe that.
Q: Are you aware of any political bias by employees in the Cincinnati office of the IRS against conservative views?
A: I am not aware of any.
Q: Are you aware of any political bias by employees of the EO Technical office against conservative views?
A: I am not aware of that, either.
Q: Are you aware of any political bias by employees in the IRS Office of Chief Counsel against conservative views?
A: I'm not aware of any.
Q: Based on your experience working at the IRS, did you see any evidence that the decisions made by IRS employees with respect to the advocacy or Tea Party cases was based on an attempt to target the President's political enemies?
A: I do not believe that was the case. And based on my knowledge of, and my years of service, that's not the way the service operated.[121]

34. Attorney Advisor, Office of Tax Policy, Department of the Treasury—Washington, D.C.

An Attorney Advisor in the Office of Tax Policy told the Committee that she was responsible for working with the IRS on regulations, guidance, and other matters of tax policy, but that she had no role in the IRS's 501(c)(4) application review process. She has served in this

[121] *Id.* at 64-66.

role since 2010 and did not report any political affiliation. She told the Committee that she saw no evidence that Treasury regulations and guidance were impacted by political bias:

Q: During your tenure in the Treasury Department, have you seen any evidence that any IRS official used the guidance process to adversely or disproportionately impact Tea Party groups?
A: From a tax policy perspective, it's important for the tax laws to be ones that are fair to all similarly-situated taxpayers, and I don't know of any situations where that would not be the goal.
Q: So you haven't seen any evidence from any Treasury Department officials—or that any Treasury Department officials used the guidance process to adversely affect Tea Party groups?
A: In my experience, no.
Q: Have you seen any evidence that anyone at the White House used the guidance process to adversely affect Tea Party groups?
A: I don't have any such evidence, no.[122]

***

Q: Have any of your actions during your tenure at the Treasury Department been motivated by bias against the Tea Party?
A: No. Not to my knowledge, no.
Q: Did anyone at the Treasury Department ever tell you that their actions were motivated by bias against the Tea Party?
A: I've never heard anyone say that, no.
Q: During your tenure at the Treasury Department, did you see any evidence of a directive for the IRS to, quote, target the president's political enemies?
A: To the best of my recollection, I've never seen any evidence of a directive to target anyone.[123]

35. Assistant Secretary for Tax Policy, Department of the Treasury—Washington, D.C.

Mark Mazur was appointed by President Obama to be the Assistant Secretary for Tax Policy at the Department of the Treasury in 2012. He told the Committee that he is a registered Independent who had no role in the IRS's 501(c)(4) application review process. He was asked by the Acting Commissioner Steven Miller to review a draft copy of the TIGTA audit report.[124] He told the Committee that he never received direction from the White House or Treasury officials to target Tea Party organizations applying for tax-exempt status:

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[122] House Committee on Oversight and Government Reform, Interview of Attorney Advisor, Office of Tax Policy, Department of the Treasury, at 53 (Feb. 3, 2014).

[123] *Id.* at 48.

[124] House Committee on Oversight and Government Reform, Interview of Assistant Secretary for Tax Policy, Department of the Treasury, at 81-82 (Jan. 16, 2014).

Q: Did you ever receive direction from the President to target Tea Party groups applying for tax-exempt status?
A: No.
Q: Have you ever felt that, based on any public or private statements by the President, that he wanted the Treasury Department to target Tea Party applications for tax-exempt status?
A: No.
Q: Did you ever receive direction from anyone in the White House to target Tea Party groups applying for tax-exempt status?
A: No.
Q: Have any of your actions during your tenure at the Treasury Department been motivated by bias against the Tea Party?
A: No.
Q: Did anyone at the Treasury Department ever tell you that their actions as a Treasury Department employee were motivated by bias against the Tea Party?
A: To the best of my recollection, no.[125]

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Q: Did Secretary Geithner direct you to target applications for tax-exempt status from Tea Party groups?
A: No.
Q: Did Secretary Lew direct you to target applications for tax-exempt status from Tea Party groups?
A: No.[126]

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Q: Did anyone in the White House ever give you any direction regarding the treatment of applications for tax-exempt status from organizations involved in political advocacy?
A: No.
Q: Any direction about the treatment of applications from Tea Party groups?
A: No.
Q: Did anyone in the White House ever directly or indirectly instruct you to treat Tea Party organizations differently than other applications for tax-exempt status?
A: No.
Q: Did you ever have any conversation with anyone in the White House regarding how IRS personnel should process pending applications for tax-exempt status from Tea Party groups?
A: No.[127]

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[125] *Id.* at 52-53.

[126] *Id.* at 53-54.

36. Deputy Chief of Staff, Department of the Treasury—Washington, D.C.

The Deputy Chief of Staff to the Secretary of the Treasury, who is not registered to vote and has worked in the Treasury Department since 2011, told the Committee that he had no role in the application review process. He stated that in March of 2013, the Chief of Staff to the Acting IRS Commissioner briefed him on the TIGTA audit, and that she provided him with a draft copy of the audit report before it was released.[128] He also explained that he had no knowledge of any involvement by the White House or the Secretary of the Treasury in the screening of tax-exempt applications:

Q: [T]o the best of your knowledge, did anyone from the White House direct the IRS to target Tea Party applicants?
A: To the best of my knowledge, no.[129]

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Q: Are you aware of the White House directing the IRS to target Tea Party applicants or provide a statement about its treatment of Tea Party applicants prior to the issuance of the draft report through other channels?
A: I have no personal knowledge of the White House in any way directing the IRS with regard to their treatment of Tea Party applicants or 501(c)(4) applicants in general.[130]

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Q: Have any of your actions during your tenure at the Treasury Department been motivated by bias against the Tea Party?
A: None of my actions have been motivated by bias against the Tea Party.
Q: Did anyone at the Treasury Department ever tell you that their actions have been motivated by bias against the Tea Party?
A: I don't recall anyone ever telling me that their actions were motivated by bias against the Tea Party.[131]

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Q: Did Chief of Staff [] direct you to target applications for tax-exempt status from Tea Party groups for unwarranted scrutiny?

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[127] *Id* at 55.

[128] House Committee on Oversight and Government Reform, Interview of Deputy Chief of Staff, Department of the Treasury, at 21-22 (Feb. 11, 2014).

[129] *Id.* at 40.

[130] *Id.* at 41

[131] *Id at 44.*

A: Neither Secretary Lew, Secretary Geithner, nor [Chief of Staff] ever gave me instructions to target Tea Party groups for scrutiny.[132]

37. Chief of Staff, 2009-2013, Department of the Treasury—Washington, D.C.

The former Chief of Staff to the Treasury Secretary, who served in this role from 2009 to 2013 and is a Democrat, had no role in the application review process. In 2013, he was briefed on the existence of the audit by the Inspector General, and he received a draft copy of the report before its release.[133] He explained to the Committee that he is unaware of any bias in the Treasury Department against Tea Party groups, and that he never acted out of such bias himself. He also told the Committee that he had no knowledge of any White House involvement in the IRS's treatment of applications for tax-exempt status:

Q: Have any of your actions during your tenure at the Treasury Department been motivated by bias against the Tea Party?
A: No.
Q: Did anyone at the Treasury Department ever tell you that their actions were motivated by bias against the Tea Party?
A: No.
Q: During your tenure at the Treasury Department, did you see any evidence of a directive for the IRS to, quote, "target the President's political enemies"?
A: No.
Q: Did you see any evidence that any Treasury Department official used their position to target President Obama's political enemies?
A: No.
Q: Did you direct anyone at the IRS or the Treasury Department to target applications for tax-exempt status from Tea Party groups for unwarranted scrutiny?
A: No.
Q: Did Secretary Geithner direct you to target applications for tax-exempt status from Tea Party groups for unwarranted scrutiny?
A: No.
Q: Did Secretary Lew direct you to target applications for tax-exempt status from Tea Party groups for unwarranted scrutiny?
A: No.[134]

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[132] *Id.* at 45-46.

[133] House Committee on Oversight and Government Reform, Interview of Chief of Staff, 2009-2013, Department of the Treasury, at 71 and 34 (Feb. 4, 2014).

[134] *Id.* at 63-64.

Q: Did anyone in the White House ever give you any direction regarding the treatment of applications for tax-exempt status from Tea Party organizations?
A: No.
Q: Did anyone in the White House ever directly or indirectly instruct you to treat Tea Party organizations differently than other applicants for tax-exempt status?
A: No.
Q: Did you ever have any conversations with anyone in the White House regarding how IRS personnel should process applicants for tax-exempt status from Tea Party groups?
A: No.
Q: Did you ever have any conversations with anyone in the White House regarding how Treasury Department personnel should treat Tea Party groups applying to the IRS for tax-exempt status?
A: No.
Q: Do you have any reason to believe that the White House directed the screening, consolidation, or coordinated review of applicants for tax-exempt status from Tea Party groups?
A: No.
Q: Did anyone ever tell you that the White House directed their activities related to applications for tax-exempt status from Tea Party groups?
A: No.[135]

38. Chief of Staff, 2013-Present, Department of the Treasury—Washington, D.C.

The Chief of Staff to the Secretary of the Treasury is a self-identified Democrat who has served in his current role since 2013, and he previously served as the Treasury Department's Deputy General Counsel. He told the Committee that he had no role in the application review process. He also stated that he had no knowledge of any White House involvement or political bias in the IRS's screening of applications for tax-exempt status:

Q: At any point at any time during your government service, did you ever receive direction from the President to target Tea Party groups applying for tax-exempt status?
A: I have never received such direction from the President of the United States.
Q: At any point at any time during your government service, have you ever received direction from anyone in the White House to target Tea Party groups applying for tax-exempt status?
A: I have never received any such direction.
Q: Have any of your actions during your tenure in government been motivated by bias against the Tea Party?
A: No, none of my actions in government have ever been motivated by any such bias.[136]

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[135] *Id.* at 66-67.

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Q: In your tenure at the Treasury Department, have you seen any evidence of a directive for the IRS to target the President's political enemies?
A: During my tenure at the Treasury Department, I have never seen any such evidence.
Q: In your tenure at the White House, have you seen any evidence of a directive for anyone in government service to target the President's political enemies?
A: During my time at the White House, I do not recall, I do not believe I have ever seen evidence of any such behavior.[137]

***

Q: Have you ever used the guidance process in order adversely or disproportionately impact Tea Party organizations?
A: No, I have not. I must say, I am not sure what you mean by using the guidance process, but I've never done anything, you know, to achieve the effect that you described.
Q: Okay.
A: Including anything in connection with administrative actions or guidance.
Q: During your tenure in the Treasury Department, have you seen any evidence that any government official has used the administrative or regulatory processes within the Treasury Department to adversely impact Tea Party organizations?
A: So, during my time at Treasury Department, I do not recall and I do not believe I have ever seen any such evidence.[138]

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Q: Do you recall anyone telling you at any point that the White House had provided instructions regarding how the IRS should handle the pending release of the TIGTA audit report?
A: I don't recall, and I don't believe that the White House ever provided any instructions regarding this matter.[139]

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[136] House Committee on Oversight and Government Reform, Interview of Chief of Staff, 2013-present, Department of the Treasury, at 52-53 (Mar. 27, 2014).

[137] *Id.* at 53-54.

[138] *Id.* at 58.

[139] *Id.* at 73.

39. General Counsel, Department of the Treasury—Washington, D.C.

The General Counsel of the Treasury Department, an Obama Administration appointee who is a Democrat, had no role in the application review process. He told the Committee that he had no knowledge of White House involvement or political motivation in the screening of applications for tax-exempt status:

Q: Did you ever receive direction from the President to target Tea Party groups applying for tax-exempt status?
A: Absolutely not.
Q: Did you ever receive direction from anyone in the White House to target Tea Party groups applying for tax-exempt status?
A: Absolutely not.
Q: Have any of your actions during your tenure at the Treasury Department been motivated by bias against Tea Party or other conservative groups?
A: Absolutely not.
Q: Did anyone at the Treasury Department ever tell you that their actions were motivated by bias against the Tea Party or conservative groups?
A: No.
Q: During your tenure at the Treasury Department, did you see evidence of a directive for the IRS to, quote, "target the President's political enemies"?
A: No.
Q: Did you see any evidence that any Treasury Department official used their official position to target President Obama's political enemies?
A: No.
Q: Did you direct anyone at the IRS or the Treasury Department to target applications for tax-exempt status from Tea Party groups for unwarranted scrutiny?
A: No.
Q: Did Secretary Geithner ever direct you to target applications for tax-exempt status from Tea Party groups for unwarranted scrutiny?
A: No.
Q: Did Secretary Lew ever direct you to target applications for tax-exempt status from Tea Party groups for unwarranted scrutiny?
A: No.[140]
***

Q: Have you ever used the guidance process in order to adversely or disproportionately impact Tea Party groups?
A: No.

[140] House Committee on Oversight and Government Reform, Interview of General Counsel, Department of the Treasury, at 57-58 (Feb. 26, 2014).

Q: During your tenure in the Treasury Department, have you ever seen any evidence that any IRS official used the guidance process to adversely or disproportionately affect Tea Party groups?

A: No.

Q: Have you ever seen any evidence that any Treasury Department official used the guidance process to adversely or disproportionately affect Tea Party groups?

A: No.[141]

[141] *Id.* at 61.

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman

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

Staff Report
113th Congress

June 16, 2014

Executive Summary

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

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

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

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[1] The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).
[2] *Id.*
[3] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).
[4] *See* H.R. 5175, 111th Cong. (2010); S. 3628, 111th Cong. (2010).
[5] *See, e.g.*, The White House, Remarks by the President on the DISCLOSE ACT (July 26, 2010); The White House, Weekly Address: President Obama Calls on Congress to Enact Reforms to Stop a "Corporate Takeover of Our Elections" (May 1, 2010); The White House, Remarks by the President at Finance Reception for Congressman Sestak (Sept. 20, 2010); The White House, Remarks by the President at DNC Gen44 Event (Sept. 30, 2010).
[6] *See, e.g.*, The White House, Weekly Address: President Obama Castigates GOP Leadership for Blocking Fixes for the *Citizens United* Decision (Sept. 18, 2010); The White House, Remarks by the President at a DNC Finance Event in Chicago, Illinois (Aug. 5, 2010).; The White House, Remarks by the President at an Event for Senator Boxer in Los Angeles, California (Oct. 22, 2010).

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

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

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

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

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

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

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

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

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

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

Findings

- The President's political rhetoric in opposition to the Supreme Court's *Citizens United* decision and conservative nonprofits engaged in political speech led to the Internal Revenue Service's targeting of tax-exempt applicants.

- Beginning in January 2010 and continuing through the November 2010 midterm election, President Obama orchestrated a sustained public campaign against *Citizens United* and nonprofit political speech critical of the President's policies. This rhetorical campaign reached a crescendo in October 2010 as the President made almost daily public statements denouncing *Citizens United* and conservative groups with "benign-sounding" names "posing" as nonprofits. The President even singled out one so-called "shadowy" group, Americans for Prosperity, by name.

- The White House and congressional Democrats opposed *Citizens United* in part because it allowed nonprofits to engage directly in political speech critical of the Administration's policies. The anonymity afforded to nonprofit contributors prevented the Administration and its allies from retaliating. As the President complained to a group of Democratic donors: "Nobody knows who they are. . . . [N]obody knows where the money is coming from."

- Senior White House officials, Democratic Members of Congress, and other left-wing political figures and commentators echoed the President's rhetoric. The Democrat-led Congress convened hearings to examine *Citizens United* and considered legislation to require disclosure of contributors to nonprofits engaged in political speech. The White House and left-leaning commentators supported these measures.

- Democratic Members of Congress, the Democratic Congressional Campaign Committee, and liberal advocacy organizations urged the IRS to investigate conservative nonprofits engaged in political speech.

- The IRS was acutely aware through articles in the national news media of the prevailing political rhetoric condemning *Citizens United* and the influence of nonprofits in the midterm election. One senior IRS official even cited the President's "salvo" against *Citizens United* in telling her colleagues to expect continued media attention surrounding the issue of anonymous contributors to nonprofits engaged in political speech.

- The IRS internalized the political pressure urging the tax agency to take action on nonprofit political speech. In response to a news article about the Democratic Congressional Campaign Committee's complaint against Americans for Prosperity, Lois Lerner wrote to her boss: "We won't be able to stay out of this – we need a plan!" Lerner later initiated a project to examine 501(c)(4) political speech in response to an article in a tax-law journal.

- The IRS was attuned to political pressure exerted by congressional Democrats to address the shortcomings of *Citizens United*. Lerner expressed her support for the DISCLOSE Act's donor disclosure requirements for nonprofits, writing: "Wouldn't that be great?"

- As Democratic Members of Congress urged the IRS to investigate a conservative group, Crossroads GPS, Lerner asked a subordinate to look at the group. Echoing themes from the President's rhetorical campaign and acknowledging the media attention on nonprofit political speech, Lerner wrote: "The organization at issue is Crossroads GPS, which is on the top of the list of c4 spenders in the last two elections. It is in the news regularly as an organization that is not really a c4, rather it is only doing political activity – taking in money from large contributors who wish to remain anonymous and funneling it into tight electoral races."

- During a speech on October 19, 2010 – in the midst of the President's rhetorical barrage – Lerner articulated the immense political pressure on the IRS to "fix the problem" posed by *Citizens United*. Echoing the President's State of the Union Address, Lerner said that the Supreme Court overturned a hundred-year precedent and "everyone is up in arms because they don't like it." She continued: "So everybody is screaming at us right now: 'Fix it now before the election. Can't you see how much these people are spending?'"

- Lerner's concern about the *Citizens United* decision caused her to order Tea Party applications to proceed through an unprecedented multi-tier review. As she wrote: "Tea Party Matter very dangerous. This could be the vehicle to go to court on the issue of whether Citizen's [*sic*] United overturning ban on corporate spending applies to tax exempt rule."

- The Justice Department arranged a meeting with Lerner on October 8, 2010, after Jack Smith, Chief of the Department's Public Integrity Section, read an article in the *New York Times* about the influence of nonprofits in the midterm election. The IRS sent 21 disks containing 1.1 million pages of nonprofit tax-return information – including confidential taxpayer information – to the FBI in advance of this meeting. The Justice Department and the FBI have continued a "dialogue" about potential criminal investigations of nonprofits engaged in political speech.

- The IRS enjoyed a close and mutually beneficial relationship with congressional Democrats. The IRS received tips from Democratic sources about upcoming actions concerning nonprofit political speech, and the IRS even assisted Senator Carl Levin (D-MI) in preparing letters to the agency criticizing nonprofit political speech.

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Introduction

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

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

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

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

[11] 558 U.S. 310 (2010).
[12] E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRSR 161811]
[13] Transcribed interview of Michael Seto, Internal Revenue Serv., in Wash., D.C. (July 11, 2013).
[14] *See, e.g.*, *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Rep. Elijah E. Cummings); *Fox News Sunday* (Fox News television broadcast July 28, 2013) (interview with Treasury Secretary Jacob Lew).
[15] *"Not even a smidgeon of corruption": Obama downplays IRS, other scandals*, FOX NEWS, Feb. 3, 2014.
[16] Letter from Elijah E. Cummings, H. Comm. on Oversight & Gov't Reform, to Darrell Issa, H. Comm. on Oversight & Gov't Reform (June 9, 2013).
[17] *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Rep. Elijah E. Cummings).

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

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

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

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

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

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[18] 160 Cong. Rec. H3905 (May 7, 2014) (statement of Rep. Gerry Connolly).
[19] U.S. CONST. amend. I.
[20] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).
[21] *Id.* at 339.
[22] *Id.*
[23] *Id.* (quoting Eu v. San Francisco County Democratic Central Comm., 489 U.S. 265, 272 (1971)) (internal quotation marks omitted).

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

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

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

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

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[24] *Id.* at 319-22.
[25] *Id.* at 336-37.
[26] *Id.* at 340.
[27] *Id.* at 356.
[28] *Id.* at 313 (quoting First Nat. Bank of Boston v. Belotti, 435 U.S. 765, 777 (1978)) (internal quotation marks omitted).
[29] *Id.* at 365.
[30] I.R.C. § 501(c)(4).
[31] I.R.C. § 6104.
[32] *"The Administration's Proposed Restrictions on Political Speech: Doubling Down on IRS Targeting": Hearing before the Subcomm. on Economic Growth, Job Creation & Regulatory Affairs of the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014) (opening statement of Allen Dickerson, Center for Competitive Politics).
[33] *See, e.g.*, NAACP v. Alabama, 357 U.S. 449 (1958).

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

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

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

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

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

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

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[34] *Id.* at 462.
[35] *Id.* at 460.
[36] *Id.* at 462-63.
[37] *See, e.g.*, The White House, Remarks by the President at Rally for Maryland Governor Martin O'Malley (Oct. 7, 2010).
[38] *See* Paul Blumenthal, *Organizing For Action: Obama Campaign Relaunches As Issue-Based Nonprofit*, HUFFINGTON POST, Jan. 18, 2013.

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

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

January 2010

January 21, 2010

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

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

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

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

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[39] 558 U.S. 310 (2010).
[40] The White House, Statement from the President on Today's Supreme Court Decision (Jan. 21, 2010).
[41] The White House, Briefing by White House Press Secretary Robert Gibbs and PERAB Chief Economist Austan Goolsbee (Jan. 21, 2010).
[42] *The Court's Blow to Democracy*, N.Y. TIMES, Jan. 21, 2010.

January 23, 2010

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

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

January 27, 2010

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

January 28, 2010

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

[43] The White House, Weekly Address: President Obama Vows to Continue Standing Up to the Special Interest on Behalf of the American People (Jan. 23, 2010).
[44] Ruth Marcus, *Court's campaign finance decision a case of shoddy scholarship*, WASH. POST, Jan. 23, 2010.
[45] The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).

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

January 29, 2010

Senator Whitehouse

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

February 2010

February 1, 2010

Norm Eisen

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

[46] 156 Cong. Rec. S274-76 (Jan. 28, 2010) (statement of Senator Patrick Leahy).
[47] Press Release, Senator Sheldon Whitehouse, Whitehouse Criticizes Supreme Court Decision on Campaign Finance (Jan. 29, 2010).

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

February 2, 2010

Senator Schumer

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

February 3, 2010

Speaker Pelosi

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

Rep. Brady

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

[48] The White House, Norm Eisen, Lobbyist Rush to Hold the Floodgates Open (Feb. 1, 2010).
[49] *"Corporate America vs. The Voter: Examining the Supreme Court's Decision to Allow Unlimited Corporate Spending in Election": Hearing of the S. Comm. on Rules & Administration*, 111th Cong. (2010).
[50] *See* Ryan Grim, *Pelosi Taps Task Force to Counter Supreme Court's Citizens United Ruling*, HUFFINGTON POST, Feb. 3, 2010.

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

Rep. Nadler

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

February 9, 2010

Senator Leahy

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

[51] *"Defining the Future of Campaign Finance in an Age of Supreme Court Activism": Hearing before the H. Comm. on H. Admin.*, 111th Cong. (2010) (opening statement of Representative Robert Brady).
[52] *"First Amendment and Campaign Finance Reform after Citizens United": Hearing before the Subcomm. on the Constitution, Civil Rights & Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. (2010) (opening statement of Representative Jerrold Nadler).

examples of why every seat on the highest court affects the lives of all Americans."[53]

February 11, 2010

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

February 16, 2010

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

February 17, 2010

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

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[53] Press Release, Senator Patrick Leahy, Leahy: *Citizens United* Decision Has Invited Foreign Influence Over Our Political Process (Feb. 9, 2010).
[54] Jess Bravin & Brody Mullins, *New rules proposed on campaign donors*, WALL ST. J., Feb. 12, 2010.
[55] The White House, Briefing by White House Press Secretary Robert Gibbs (Feb. 16, 2010).
[56] *A Welcome, if Partial, Fix*, N.Y. TIMES, Feb. 17, 2010.

February 25, 2010

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

March 2010

March 10, 2010

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

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

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

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

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

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

March 11, 2010

Robert Gibbs

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

March 12, 2010

Robert Gibbs

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

March 16, 2010

Robert Gibbs

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

[60] Sheldon Whitehouse, *Corporate justice at our expense*, POLITICO, Mar. 10, 2010.
[61] The White House, Briefing by White House Press Secretary Robert Gibbs (Mar. 11, 2010).
[62] The White House, Briefing by White House Press Secretary Robert Gibbs (Mar. 12, 2010).

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

March 22, 2010

Robert Gibbs

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

April 2010

April 28, 2010

IRS Action

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

April 29, 2010

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

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[63] The White House, Briefing by White House Press Secretary Robert Gibbs (Mar. 16, 2010).
[64] The White House, Briefing by White House Press Secretary Robert Gibbs (Mar. 22, 2010).
[65] E-mail from Steven Grodnitzky, Internal Revenue Serv., to Lois Lerner & Robert Choi, Internal Revenue Serv. (Apr. 28, 2010). [IRSR 141809]
[66] Transcribed interview of Steven Grodnitzky, Internal Revenue Serv., in Wash., D.C. (July 16, 2013).
[67] S. 3295, 111th Cong. (2010); H.R. 5175, 111th Cong. (2010).

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

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

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

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

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

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

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

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

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

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

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

May 2010

May 1, 2010

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

[71] Press Release, Senator Charles E. Schumer, Senate Democrats Unveil Legislation to Limit Fallout from Supreme Court Ruling that Allows Unlimited Special-interest Spending on Elections—Announce Plan for Senate Passage by July 4 (Apr. 29, 2010).
[72] Press Release, Senator Al Franken, Sen. Franken's Floor Statement on the Introduction of the DISCLOSE Act (Apr. 29, 2010).
[73] Press Release, Senator Patty Murray, Murray: We Can't Allow Corporations and Special Interests to Drown Out the Voices of Washington State Families (Apr. 29, 2010).
[74] Press Release, Representative Peter Welch, Welch joins bipartisan response to *Citizens United* case (Apr. 29, 2010).

Better Future' is actually funded entirely by 'Corporations for Weaker Oversight.'"[75]

Rep. Van Hollen

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

May 6, 2010

Democracy 21

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

May 9, 2010

Washington Post

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

[75] The White House, Weekly Address: President Obama Calls on Congress to Enact Reforms to Stop a "Corporate Takeover of Our Elections" (May 1, 2010).
[76] Press Release, Representative Chris Van Hollen, Van Hollen Statement on the President's Weekly Address (May 1, 2010).
[77] *Hearing before the H. Comm. on H. Admin.*, 111th Cong. (2010).

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

May 10, 2010

President Obama

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

May 11, 2010

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

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[78] *Corporate Money in Politics*, WASH. POST, May 9, 2010.
[79] The White House, Remarks by the President and Solicitor General Elena Kagan at the Nomination of Solicitor General Elena Kagan to the Supreme Court (May 10, 2010).
[80] *Hearing before the H. Comm. on H. Admin.*, 111th Cong. (2010).

May 20, 2010

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

President Obama

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

Speaker Pelosi

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

Rep. Van Hollen

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

[81] *Bus. Meeting of the H. Comm. on H. Admin.*, 111th Cong. (2010).
[82] The White House, Statement by the President on the House Administration Committee's Passage of the DISCLOSE Act (May 20, 2010).
[83] Press Release, Representative Nancy Pelosi, Pelosi Statement on Passage of DISCLOSE Act by House Administration Committee (May 20, 2010).

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

June 2010

June 16, 2010

Dan Pfeiffer

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

June 21, 2010

Bill Burton

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

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[84] Press Release, Representative Chris Van Hollen, Van Hollen Applauds Committee Passage of the DISCLOSE Act (May 20, 2010).
[85] The White House, Dan Pfeiffer, More Support for Curbing Special Interest Influence in Our Elections (June 16, 2010).
[86] The White House, Press Briefing by Deputy Press Secretary Bill Burton (June 21, 2010).

June 22, 2010

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

June 24, 2010

The House of Representatives passed the DISCLOSE Act.[88]

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

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

[87] David M. Herszenhorn, *Senate Democrats Call for House Support on Disclose Bill*, N.Y. TIMES, June 22, 2010.
[88] H.R. 5175, 111th Cong. (2010).
[89] The White House, Statement by the President on Passage of the DISCLOSE Act in the House of Representatives (June 24, 2010).

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

Rep. Van Hollen

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

June 28, 2010

Senator Durbin

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

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[90] Press Release, Representative Nancy Pelosi, Pelosi: Passage of DISCLOSE Act Will Protect the Voices and Votes of the American People (June 24, 2010).
[91] Press Release, Representative Chris Van Hollen, Van Hollen Floor Statement in Support of the DISCLOSE Act (June 24, 2010).
[92] Press Release, Senator Dick Durbin, Confirmation of Elena Kagan to be a Supreme Court Justice (June 28, 2010).

July 2010

July 21, 2010

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

July 26, 2010

President Obama

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

Robert Gibbs

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

July 27, 2010

Senator Reid

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

[93] S. 3628, 111th Cong. (2010).
[94] The White House, Remarks by the President on the DISCLOSE ACT (July 26, 2010).
[95] The White House, Press Briefing by Press Secretary Robert Gibbs (July 26, 2010).

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

Senator Leahy

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

Senator Levin

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

Washington Post

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

[96] 156 Cong. Rec. S6284 (July 27, 2010) (statement of Senator Harry Reid).
[97] Press Release, Senator Patrick Leahy, Leahy Urges Bipartisan Support For Debate, Vote On DISCLOSE Act (July 27, 2010).
[98] Press Release, Senator Carl Levin, Senate Floor Statement on the DISCLOSE Act (July 27, 2010).

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

August 2010

August 5, 2010

President Obama

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

August 6, 2010

IRS Action

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

August 9, 2010

President Obama

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

[99] *It's the Senate's turn to pass the Disclose Act*, WASH. POST, July 27, 2010.
[100] The White House, Remarks by the President at a DNC Finance Event in Chicago, Illinois (Aug. 5, 2010).
[101] E-mail from Michelle Eldridge, Internal Revenue Serv., to Steven Miller et al., Internal Revenue Serv. (Aug. 6, 2010). [IRSR 452184]

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

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

August 21, 2010

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

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

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

August 27, 2010

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

August 31, 2010

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

September 2010

September 13, 2010

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

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[104] The White House, Weekly Address: President Obama Challenges Politicians Benefiting from *Citizens United* Ruling to Defend Corporate Influence in Our Elections (Aug. 21, 2010).
[105] Press Release, Dem. Cong. Campaign Comm., DCCC: IRS should investigate Americans for Prosperity Foundation (Aug. 27, 2010).
[106] E-mail from Lois Lerner, Internal Revenue Serv., to Sarah Hall Ingram, Internal Revenue Serv. (Aug. 31, 2010). [IRSR 632342]

fantasyland, thanks to the U.S. Supreme Court's hideous decision this year in the *Citizens United* case."[107]

September 15, 2010

IRS Action

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

September 16, 2010

President Obama

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

September 17, 2010

Democracy 21

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

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

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

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

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

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

September 18, 2010

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

September 20, 2010

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

[111] Fred Wertheimer, *Secret Funds Flow into Races*, POLITICO, Sept. 17, 2010.
[112] The White House, Weekly Address: President Obama Castigates GOP Leadership for Blocking Fixes for the *Citizens United* Decision (Sept. 18, 2010).

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

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

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

September 21, 2010

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

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

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[113] The White House, Remarks by the President at Finance Reception for Congressman Sestak (Sept. 20, 2010).
[114] The White House, Remarks by the President at DNC Finance Dinner (Sept. 20, 2010).
[115] E-mail from Michelle Eldridge, Internal Revenue Serv., to Doug Shulman et al., Internal Revenue Serv. (Sept. 20, 2010). [IRSR 250053]
[116] *See* Michael Luo & Stephanie Strom, *Donor Names Remain Secret as Rules Shift*, N.Y. TIMES, Sept. 21, 2010.
[117] *The Diane Rehm Show* (Nat'l Public Radio radio broadcast Sept. 21, 2010), transcript available at http://thedianerehmshow.org/shows/2010-09-21/campaign-spending/transcript.

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

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

September 22, 2010

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

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

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

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

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

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

September 23, 2010

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

[121] Transcript, Senate Democrats Hold a News Conference on the DISCLOSE Act (Sept. 22, 2010).
[122] *Id.*

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

Senator Reid

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

Senator Schumer

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

Senator Whitehouse

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

[123] The White House, Statement by the President on the DISCLOSE Act Vote in the Senate (Sept. 23, 2010).
[124] Press Release, Senator Harry Reid, Reid: Republicans Block Debate On Common-Sense Measures To Prevent Special Interests From Drowning Out The Voices Of Voters (Sept. 23, 2010).
[125] 156 Cong. Rec. S7383 (Sept. 23, 2010) (statement of Senator Charles Schumer).

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

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

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

September 24, 2010

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

September 26, 2010

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

[126] Press Release, Senator Sheldon Whitehouse, Whitehouse: DISCLOSE Act Ensures Our Military Reflects Nation's Values (Sept. 23, 2010).
[127] Press Release, Representative Chris Van Hollen, Van Hollen Statement DISCLOSE Act Vote in the Senate (Sept. 23, 2010).
[128] Mike McIntire, *Hidden Under Tax-Exempt Cloak, Political Dollars Flow*, N.Y. TIMES, Sept. 23, 2010.
[129] E-mail from Steve Pyrek, Internal Revenue Serv., to Lois Lerner et al., Internal Revenue Serv. (Sept. 24, 2010). [IRSR 230887]

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

September 28, 2010

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

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

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[130] ABC News, 'This Week' Transcript: Axelrod, McConnell, and Queen Rania (Sept. 26, 2010), available at http://abcnews.go.com/ThisWeek/week-transcript-axelrod-mcconnell-queen-rania/story?id=11729101 &singlePage=true.
[131] The White House, Remarks by the President at DNC Rally in Madison, Wisconsin (Sept. 28, 2010).
[132] Letter from Max Baucus, S. Comm. on Finance, to Douglas H. Shulman, Internal Revenue Serv. (Sept. 28, 2010).

September 29, 2010

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

September 30, 2010

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

October 2010

October 5, 2010

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

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

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

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

IRS Action

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

October 6, 2010

New York Times

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

[135] Letter from J. Gerald Hebert, Campaign Legal Center, & Fred Wertheimer, Democracy 21, to Douglas Shulman, Internal Revenue Serv. (Oct. 5, 2010).
[136] E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep't of Justice (Oct. 5, 2010). [HOGR IRS 19]
[137] E-mail from Richard Pilger, U.S. Dep't of Justice, to unnamed FBI agent, Fed. Bureau of Investigation (Oct. 5, 2010). [HOGR IRS 20]
[138] E-mail from Richard Pilger, U.S. Dep't of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010). [HOGR IRS 22]

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

October 7, 2010

President Obama

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

President Obama

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

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[139] *Clean and Open American Elections*, N.Y. Times, Oct. 6, 2010.
[140] The White House, Remarks by the President at Reception for Alexi Giannoulias (Oct. 7, 2010).

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

October 8, 2010

IRS Action

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

October 10, 2010

President Obama

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

October 11, 2010

Senator Durbin

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

[141] The White House, Remarks by the President at Rally for Maryland Governor Martin O'Malley (Oct. 7, 2010).
[142] Transcribed interview of Richard Pilger, U.S. Dep't of Justice, in Wash., D.C., at 8 (May 6, 2014).
[143] The White House, Remarks by the President and the Vice President at a DNC "Moving America Forward" Rally in Philadelphia, Pennsylvania (Oct. 10, 2010).

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

E.J. Dionne

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

October 12, 2010

President Obama

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

[144] Letter from Dick Durbin, U.S. Senate, to Douglas Shulman, Internal Revenue Serv. (Oct. 11, 2010).
[145] E.J. Dionne, Jr., *Shadowy players in a new class war*, WASH. POST, Oct. 11, 2010.

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

Washington Post

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

October 14, 2010

President Obama

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

[146] The White House, Remarks by the President at a "Moving America Forward" Town Hall (Oct. 12, 2010).
[147] *Secret Money Campaign*, WASH. POST, Oct. 12, 2010.

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

DNC

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

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

from the spending of outside groups that take unlimited funds from secret donors."[149]

October 15, 2010

President Obama

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

October 19, 2010

IRS Action

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

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[149] Memorandum from Brad Woodhouse, Democratic Nat'l Comm., to Editorial Writers and Interested Parties, "Transforming Our Democracy: Secretive Donations and Anonymous Ads (Oct. 14, 2010), available at http://www.democrats.org/news/press/re_transforming_our_democracy_secretive_donations_and_anonymous_ads

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

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

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

October 21, 2010

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

October 22, 2010

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

[152] E-mail from Joseph Urban, Internal Revenue Serv., to Nancy Marks & Janet Johnson, Internal Revenue Serv. (Oct. 19, 2010). [IRSC 38452]
[153] E-mail from Nancy Marks, Internal Revenue Serv., to Joseph Urban & Janet Johnson, Internal Revenue Serv. (Oct. 19, 2010). [IRSC 38452]
[154] The White House, Remarks by the President at a Rally for Senator Murray in Seattle, Washington (Oct. 21, 2010).

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

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

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

[155] The White House, Remarks by the President at an Event for Senator Boxer in Los Angeles, California (Oct. 22, 2010).
[156] The White House, Remarks by the President at Los Angeles "Moving America Forward" Rally (Oct. 22, 2010).

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

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

IRS Action — The IRS transmited 21 disks containing 1.1 million pages of nonprofit tax information – including confidential taxpayer information – to the FBI.[159]

October 23, 2010

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

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

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[157] The White House, Remarks by the President at Las Vegas "Moving America Forward" Rally (Oct. 22, 2010).
[158] The White House, Dan Pfeiffer, What Do They Expect in Return? (Oct. 22, 2010).
[159] E-mail from David Hamilton, Internal Revenue Serv., to Sherry Whitaker, Internal Revenue Serv. (Oct. 22, 2010). [IRSC 38436]
[160] The White House, Remarks by the President at a Rally in Minneapolis, Minnesota (Oct. 23, 2010).
[161] John McArdle, *Pelosi bemoans 'secret money from God knows where,'* ROLL CALL, Oct. 23, 2010.

October 25, 2010

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

October 26, 2010

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

[162] The White House, Remarks by the President at DCCC General Reception (Oct. 25, 2010).
[163] The White House, Remarks by the President at a DCCC Dinner (Oct. 26, 2010).

October 27, 2010

David Axelrod

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

October 31, 2010

Speaker Pelosi

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

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

democracy that we not have it be wholly owned subsidiary of these corporations."[165]

November 2010

November 2, 2010

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

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

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

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

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

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[165] *Countdown with Keith Olbermann* (MSNBC television broadcast Oct. 31, 2010) (interview with Speaker Nancy Pelosi).
[166] Laura Meckler & Jonathan Weisman, *Obama takes blame for losses, reaches out to GOP*, WALL ST. J., Nov. 3, 2010.
[167] *See* Memorandum from Majority Staff, H. Comm. on Oversight & Gov't Reform, to Members, H. Comm. on Oversight & Gov't Reform, "Interim update on the Committee's investigation of the Internal Revenue Service's inappropriate treatment of certain tax-exempt applicants" (Sept. 17, 2013)
[168] Transcribed interview of Richard Pilger, U.S. Dep't of Justice, in Wash., D.C. (May 6, 2014).

attention.[169] She wrote: "Recent media attention to this type of organization indicates to me that this is a 'high profile' case."[170]

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

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

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

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

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

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

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

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[169] E-mail from Sharon Camarillo, Internal Revenue Serv., to Cindy Thomas, Internal Revenue Serv. (Feb. 25, 2010). [IRSR 428451]
[170] *Id.*
[171] E-mail from Michelle Eldridge, Internal Revenue Serv., to Steven Miller et al., Internal Revenue Serv. (Aug. 6, 2010). [IRSR 452184]
[172] *Id.*
[173] E-mail from Lois Lerner, Internal Revenue Serv., to Sarah Hall Ingram, Internal Revenue Serv. (Aug. 31, 2010). [IRSR 632342]
[174] *Id.*

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

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

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

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

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

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

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

Lois G. Lerner
Director, Exempt Organizations

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

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

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

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

[175] E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191032]
[176] E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Laurice Ghougasian, & Judith Kindell, Internal Revenue Serv. (Sept. 16, 2010). [IRSR 191030]
[177] E-mail from Lois Lerner, Internal Revenue Serv., to Robert Stern (June 11, 2012). [IRSR 679362-64]

In late September 2010, around the same time that President Obama was criticizing *Citizens United* almost daily in stump speeches for Democratic congressional candidates, the IRS received a media inquiry from the *New York Times* about "a large upswing in the money donated to 501(c)(4)'s [and] that the IRS has too few resources to monitor and deal with compliance and enforcement issues in this area."[178] The article was published on the front page of the *Times* on September 21, 2010.[179] In an e-mail that day, TEGE Commissioner Sarah Hall Ingram told her colleagues to expect that the "'secret donor' theme will continue – see Obama salvo and today's Diane Reehm [*sic*]."[180] Entitled "Campaign Spending," that day's *Diane Rehm Show* discussed the *Citizens United* decision and nonprofit political speech, and featured an interview with Representative Chris Van Hollen (D-MD) discussing the shortcomings of the campaign finance law.[181]

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

From:	Ingram Sarah H
Sent:	Tuesday, September 21, 2010 7:52 AM
To:	Lemons Terry L; Pyrek Steve J; Lerner Lois G; Kindell Judith E; Grant Joseph H; Eldridge Michelle L
Subject:	RE: NY Times: As Rules Shift, Donor Names Stay Secret

Thanks, as always, for the excellent support from Media. I do think it came out pretty well. The "secret donor" theme will continue – see Obama salvo and today's Diane Reehm (sp). At least SS started the idea that we don't have the law to do something, although Marcus had a flavor that we just don't care because we are a tax agency. He should know better even if he is unhappy with the environment and the tax laws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[188] *Id.* at 43.
[189] Meeting among Jack Smith, Justin Shur, Nancy Simmons, Richard Pilger, & Raymond Hulser, U.S. Dep't of Justice, "Possible 501/Campaign Finance Investigation (Sept. 30, 2010). [OGR IRS 16]
[190] Transcribed interview of Richard Pilger, U.S. Dep't of Justice, in Wash., D.C., at 8 (May 6, 2014).
[191] *Id.* at 101.
[192] *Id.* at 159-60.
[193] E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Steven Miller et al., Internal Revenue Serv. (Sept. 29, 2010). [IRSC 38466]
[194] *Id.*
[195] *Id.*

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

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

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

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

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

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

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

The meeting occurred on October 8, 2010.[196] An IRS memorandum summarizing the meeting confirms that the discussion resulted from recent media attention on "the political activity of exempt organizations."[197] This document also demonstrates that the President's political rhetoric contributed to the Justice Department's examination of nonprofit political speech. Using the same words used by the President on the campaign trail, the memorandum explained: "The [Public Integrity] section's attorneys expressed **concern that certain section 501(c) organizations are actually political committees 'posing' as if they are not subject to FEC law**, and therefore may be subject to criminal liability."[198]

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

[196] Internal Revenue Serv., Untitled Meeting Memorandum (undated). [IRSC 38438]
[197] *Id.*
[198] *Id.* (emphasis added).
[199] *Id.*
[200] Transcribed interview of Richard Pilger, U.S. Dep't of Justice, in Wash., D.C., at 94-95 (May 6, 2014).

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

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

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

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

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

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

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

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

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

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

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

Categories: NUUU

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

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

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

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

[201] E-mail from Joseph Urban, Internal Revenue Serv., to Nancy Marks & Janet Johnson, Internal Revenue Serv. (Oct. 19, 2010). [IRSC 38452]
[202] E-mail from Nancy Marks, Internal Revenue Serv., to Joseph Urban & Janet Johnson, Internal Revenue Serv. (Oct. 19, 2010). [IRSC 38452]
[203] E-mail from Richard Pilger, U.S. Dep't of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010) [HOGR IRS 22]; E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep't of Justice (Oct. 5, 2010). [HOGR IRS 19]

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

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

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

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

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

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

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

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

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

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

Lois G. Lerner
Director, Exempt Organizations

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[204] E-mail from Cheryl Chasin, Internal Revenue Serv., to Lois Lerner & Judith Kindell, Internal Revenue Serv. (Oct. 5, 2010) (emphasis added). [IRSC 38408]
[205] E-mail from Judith Kindell, Internal Revenue Serv., to Cheryl Chasin & Lois Lerner, Internal Revenue Serv. (Oct. 5, 2010). [IRSC38408]
[206] E-mail from Lois Lerner, Internal Revenue Serv., to Sherry Whitaker et al., Internal Revenue Serv. (Oct. 5, 2010) (emphasis added). [IRSC 38415]

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

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

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

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

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

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

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

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

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[207] E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep't of Justice (Oct. 5, 2010). [HOGR IRS 19]
[208] E-mail from Richard Pilger, U.S. Dep't of Justice, to unnamed FBI agent, Fed. Bureau of Investigation (Oct. 5, 2010). [HOGR IRS 20]
[209] E-mail from Richard Pilger, U.S. Dep't of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010). [HOGR IRS 22]
[210] E-mail from David Hamilton, Internal Revenue Serv., to Sherry Whitaker, Internal Revenue Serv. (Oct. 22, 2010). [IRSC 38436]

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

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

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

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

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

Lois Lerner articulates the prevailing political pressure on the IRS

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

[211] Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (May 29, 2014).
[212] *Id.*
[213] Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (June 4, 2014).
[214] Transcribed interview of Jack Smith, U.S. Dep't of Justice, in Wash., D.C., at 99-105 (May 29, 2014).

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

> What happened last year was the Supreme Court – the law kept getting chipped away, chipped away in the federal election arena. The Supreme Court dealt a huge blow, overturning a 100-year old precedent that basically corporations couldn't give directly to political campaigns. And everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it.
>
> They want the IRS to fix the problem. The IRS laws are not set up to fix the problem: (c)(4)s can do straight political activity. They can go out and pay for an ad that says, "Vote for Joe Blow." That's something they can do as long as their primary activity is their (c)(4) activity, which is social welfare.
>
> So everybody is screaming at us right now: "Fix it now before the election. Can't you see how much these people are spending?" I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can't do anything right now.[216]

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

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

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[215] John Sexton, *Lois Lerner Discusses Political Pressure on the IRS in 2010*, BREITBART.COM, Aug. 6, 2013.
[216] *See* "Lois Lerner Discusses Political Pressure on IRS in 2010," www.youtube.com (last visited May 13, 2014) (transcription by Committee).
[217] E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRSR 161810]
[218] Transcribed interview of Michael Seto, Internal Revenue Serv., in Wash., D.C. (July 11, 2013); Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).
[219] The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).

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

The IRS's receptiveness to political pressure from Congress

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

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

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

From:	McConnell, Brad (Durbin) [redacted]
Sent:	Tuesday, October 12, 2010 1:26 PM
To:	Davis Jonathan M (Wash DC)
Subject:	Crossroads
Attachments:	RJD Letter to IRS re Crossroads.pdf

Jonathan, I hope you are well. FYI, Senator Durbin sent the attached to the Commissioner today regarding the political work of c(4)s. We're not the first to ask, of course…

All the best,

Brad McConnell
Office of Senator Durbin
[redacted]

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

[220] E-mail from Joseph Urban, Internal Revenue Serv., to Joseph Urban, Internal Revenue Serv. (Oct. 20, 2010). [IRS 1810]
[221] E-mail from Brad McConnell, U.S. Senate, to Jonathan Davis, Internal Revenue Serv. (Oct. 12, 2010). [IRSR 459311]
[222] *See* Letter from Peter Welch et al., U.S. House of Rep., to Douglas Shulman, Internal Revenue Serv. (Mar. 28, 2012).

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

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

> I reviewed the information last night and thought the allegations in the documents were really damning, so wondered why we hadn't done something with the org. **The first complaint came in 2010 and there were additional ones in 2011 and 2012**. . . . I don't know where we go with this – as I've told you before – I don't think your guys get it and the way they look at these cases is going to bite us some day. **The organization at issue is Crossroads GPS, which is on the top of the list of c4 spenders in the last two elections. It is in the news regularly as an organization that is not really a c4, rather it is only doing political activity – taking in money from large contributors who wish to remain anonymous and funneling it into tight electoral races**. . . . I know the org is now in the ROO [Review of Operations] – based on allegations sent in this year, but this is an org that was a prime candidate for exam when the referrals and 990s first came in.
>
> ***
>
> You should know that we are working on a denial of the application, which may solve the problem because we probably will say it isn't exempt.[224]

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

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[223] Press Release, Representative Peter Welch, Welch leads 32 Democrats in effort to crack down on wild west campaign atmosphere in post-*Citizens United* world (Mar. 28, 2012).
[224] E-mails from Lois Lerner, Internal Revenue Serv., to Nanette Downing, Internal Revenue Serv. (Jan. 4, 2013). [IRS 122549-50]
[225] E-mail from Lois Lerner, Internal Revenue Serv., to Joseph Urban et al., Internal Revenue Serv. (Feb. 13, 2012). [IRSR 694708]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

From: Meier, Kaye (Levin)[redacted]
Sent: Wednesday, September 26, 2012 8:37 AM
To: Barre Catherine M
Subject: Working on next letter.....
Importance: High

I'm hoping to clear some things up before we send the next letter to the IRS....so I thought we could attempt this at the staff level ☺

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

[228] Press Release, Senator Carl Levin, Sen. Levin Floor Statement on DISCLOSE Act (July 16, 2010).
[229] E-mail from Kaye Meier, U.S. Senate, to Catherine Barre, Internal Revenue Serv. (Sept. 26, 2012). [IRSR 182403-04]
[230] E-mail from Catherine Barre, Internal Revenue Serv., to Nikole Flax & Lois Lerner, Internal Revenue Serv. (Sept. 26, 2012). [IRSR 182403]
[231] Transcribed interview of Steven Miller, in Wash., D.C., at 117 (Nov. 13, 2013).

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

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

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

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

They do not have a waiver.

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

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

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

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

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

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[232] E-mail from Catherine Barre, Internal Revenue Serv., to Lois Lerner et al., Internal Revenue Serv. (Jan. 25, 2013). [IRSR 180906]
[233] E-mail from Lois Lerner, Internal Revenue Serv., to Holly Paz, Internal Revenue Serv. (Jan. 28, 2013). [IRSR 557133]
[234] E-mail from Lois Lerner, Internal Revenue Serv., to Holly Paz, Internal Revenue Serv. (Jan. 28, 2013). [IRSR 557133]
[235] E-mail from Holly Paz, Internal Revenue Serv., to Catherine Barre, Internal Revenue Serv. (Jan. 31, 2013). [IRSR 557181]

Q Were you aware of any inquiries from Members of Congress about the potential illegality or inappropriateness of (c)(4) status for certain groups engaged in political activity?

A I'm aware of inquiries from Members of Congress where they asked about the status of particular organizations. I don't know if that is answering your question.

Q About particular organizations –

A Yes.

Q By name?

A Yes.

Q Were you ever aware of any public discourse or debate about the appropriateness of 501(c)(4) status for certain conservative oriented groups?

A I mean, I have seen, you know, public articles where folks have talked about that, but just like stuff in the press.

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

A There were Congressional requests that asked what we were doing in the area, that kind of thing.[236]

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

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

***

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

[236] Transcribed interview of Nikole Flax, Internal Revenue Serv., in Wash., D.C. (Oct. 22, 2013).
[237] Transcribed interview of Joseph Grant, in Wash., D.C. (Sept. 25, 2013).

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

> Q Ms. Kindell, were you ever aware of any public discourse or debate about the appropriateness of 501(c)(4) status for certain groups involved in political activity?
>
> A Yes.
>
> Q Were you ever aware of requests for the IRS to crack down on 501(c)(4)s engaged in political activity?
>
> A Yes.
>
> Q Were you ever aware of any public comments from politicians of the potential illegality of secret money in politics?
>
> A Yes.[238]

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

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

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

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[238] Transcribed interview of Judith Kindell, Internal Revenue Serv., in Wash., D.C. (Oct. 29, 2013).
[239] Transcribed interview of Steven Miller, in Wash., D.C., at 117 (Nov. 13, 2013).

Conclusion

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

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

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

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

Appendix: A timeline of the genesis of the IRS targeting

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

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

June 3, 2011

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20004

Dear Commissioner Shulman:

On May 13, 2011, the IRS confirmed that it began examinations of five taxpayers that donated money to IRC §501(c)(4) organizations to determine whether "the donations were taxable gifts and if a gift tax return should have been filed." The applicability of the gift tax to §501(c)(4) donations is an unsettled area of tax law and it appears that it has been applied only a handful of times. Both taxpayers and tax practitioners were stunned at the IRS interest in this issue after decades of silence.

As Chairman of the Committee on Ways and Means, I find the lack of IRS transparency deeply troubling. Taxpayers already struggle to comply with a Tax Code that is too complex. Now, with no warning, the IRS appears to have selectively targeted certain taxpayers who are engaged in political speech. Not only does this threaten political speech, it casts doubt on the IRS' credibility as an impartial enforcer of the nation's tax law. The IRS's ability to effectively enforce tax law and work with taxpayers to ensure compliance is not served by auditing unsuspecting taxpayers for violating tax laws the IRS has not acknowledged for decades.

There are approximately 120,000 §501(c)(4) organizations operating across the United States. For decades, donors to these organizations and the donee organizations have relied on the IRS for certainty in this area of tax law. Now, they can no longer do so. All IRC §501(c)(4) organizations must now advise donors that their contributions may result in a targeted audit, despite uncertainty in this area of tax law. Donors, in turn, must then determine whether a donation to a §501(c)(4) organization will trigger an IRS audit based on the political activities of the organization.

This sudden, unexplained enforcement of the gift tax in these circumstances raises a number of questions regarding IRS actions. The Committee has an obligation to conduct oversight of the IRS and its enforcement of our country's tax laws. Because of the serious nature of the IRS's audit activities in this area of gift tax, I request that the IRS answer

the following questions in an effort to promote transparency and reassure taxpayers that fair and consistent enforcement of the country's tax laws is the norm. Please respond no later than June 17, 2011.

1. The names, titles, and divisions and/or offices of any and all individuals who were involved or contributed to the decision to investigate whether taxpayer contributions to §501(c)(4) organizations should be subject to the gift tax rules.

2. All IRS rulings and internal memoranda relating to the applicability of the gift tax to §501(c)(4) organizations. Please provide copies of all records, internal working documents, and correspondence relating to the same.

3. Provide a detailed explanation and relevant documents related to the following issues:

    a. How are the employees that work on estate and gift taxes organized within the Small Business/Self-Employed Division?

    b. Where are employees that work on estate and gift tax issues physically located?

    c. How many employees in the IRS work on estate and gift tax issues? Provide an organizational chart that identifies each employee within the organizational structure.

    d. Does the estate and gift tax office prepare an annual work plan similar to the annual work plan released by the Tax Exempt/Government Entities Division? If so, provide a copy of the last five years' annual reports. If not, how does the IRS oversee the office's workload and allocate resources to this office?

    e. How many estate and gift tax audits were conducted in 2006, 2008, and 2010, related to gifts made to 501(c)(4) organizations?

    f. How do employees that work on estate and gift tax issues within the Small Business/Self-Employed Division gain access to the Form 990s for 501(c)(4) organizations?

    g. How did employees in the Exempt Organizations Division assist in the sharing of the Form 990 information with other IRS employees? Is this a common practice? If so, how many examinations have originated from shared Form 990s to other IRS divisions?

    h. Provide the name(s) of the individual(s) who decided, after 35 years, to treat contributions to a 501(c)(4) organization as subject to the gift tax?

    i. Criteria that are used to select taxpayers for gift tax examination.

j. Provide all information that analyzed the legal or political consequences of auditing gift tax returns for contributions to 501(c)(4) organizations

4. How are tax-exempt organizations generally selected for audit?

5. How many §501(c)(4) audits are usually conducted every tax year? Provide a breakdown of the total number of §501(c)(4) examinations conducted annually over the last five years and identify the tax issues involved.

6. What percentage of gift and estate tax office examinations typically originate from an internal referral? Please describe IRS protocol for making internal referrals and how referrals are processed.

7. Provide any correspondence and records shared with the Department of the Treasury regarding the application of gift tax to §501(c)(4) organizations. Detail all communications (written or verbal) between the IRS and the Department of the Treasury on this topic since 2004.

Please note that, for purposes of responding to this request, the terms "records," "communication," "relating," should be interpreted consistent with the attached *Definitions of Terms*.

Thank you for your prompt attention to this matter.

Sincerely,

DAVE CAMP
Chairman

Attachment

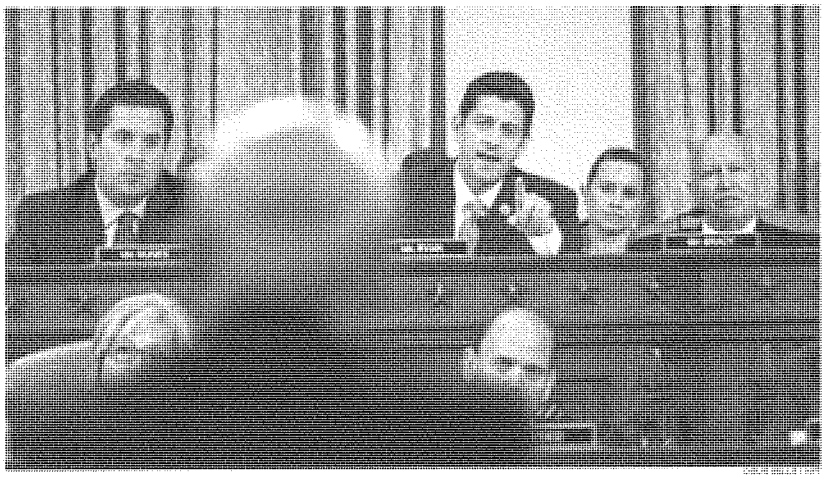
June 2008 GAO Report to Congressional Requesters
Federal Records
National Archives and Selected Agencies Need to Strengthen E-Mail Management

http://www.gao.gov/new.items/d08742.pdf

79°

More smoke at the IRS — and not only from the hard drives

Email Facebook 588 Twitter 455 g+1 3



[illegible] speaks to Jim Kennedy [illegible] of the Internal Revenue Service, during his trip, [illegible] before the House [illegible] Miami Gardens, Fla., [illegible] 2014. Kennedy was grilled on Friday over thousands of IRS emails [illegible] disappeared, and why that [illegible] the agency's [illegible] by the agency into targeted [illegible] of conservative political groups.

[illegible] April 11, 2014)

"It's inexcusable, and Americans are right to be angry about it, and I am angry about it. I will not tolerate this kind of behavior in any agency, but especially in the IRS, given the power that it has and the reach that it has into all of our lives. ... I'll do everything in my power to make sure nothing like this happens again by holding the responsible parties accountable. ..."

-- President Barack Obama condemning "misconduct" at the Internal Revenue Service, May 15, 2013.

With each plot twist in "The Internal Revenue Service and its Keen Attention to Conservative Groups," political partisans scurry to their bunkers. Flying spittle! Battle stations! Raise the long guns!

Not us. We calmly re-read President Obama's reassurance of 13 months ago, especially that phrase about holding the responsible parties accountable. Because consequences can't occur until all of us learn the who, what, when, where and why. It was around the same time, Carl M. Cannon of RealClearPolitics reported Friday, that the president told reporters aboard Air Force One that the IRS misconduct was the work of rogue agents in Ohio — "two Dilberts in Cincinnati."

But, like the rest of us, the president has since read news accounts establishing that IRS officials in Washington were communicating extensively about the agency's scrutiny of conservative groups. We also now know that several Democratic senators, including Dick Durbin of Illinois, had urged the IRS to look into some of these groups. And we know that, in 2012, top IRS officials repeatedly misled Congress by not disclosing — in response to highly specific questions — that the agency was giving extraordinary attention to conservative groups.

Are those data points connected? Or are they mere coincidences? None of us yet knows the origins, motivations and scope of the agency's actions. In May 2013 we wrote that with their stonewalling, claimed ignorance and convenient amnesia, IRS officials were making it difficult for Americans to evaluate the depth, but also the official awareness, of the agency's evident assault on free speech.

At the time we didn't know that the agency would resist congressional demands for full disclosures. Nor did we know that seven IRS workers — including Lois Lerner, former director of the agency's tax-exempt organizations division — would report losing emails that congressional investigators wanted to examine.

On a matter this serious, the administration can't adequately investigate itself. Given the amount of smoke now rising from the IRS, many Americans won't be much interested in what one arm of the administration concludes about other arms, including the IRS, the Treasury Department of which it's part, and possibly the White House.

That's why we've urged Attorney General Eric Holder to appoint a special prosecutor — a phrase that, like "customer support" or "designated hitter," provokes Pavlovian suspicions. We've been skeptical of some special prosecutors and their tendency toward mission creep. But we've also seen situations where only a special prosecutor has the independence and credibility to resolve a case that drips with politics, as when then-U.S. Attorney Patrick Fitzgerald of Chicago investigated (and convicted of perjury and other offenses) I. Lewis "Scooter" Libby, who had been Vice President Dick Cheney's chief of staff.

Why Holder won't act is a mystery he's inviting Americans to resolve, uncharitably, in their own minds.

Whatever any one of us thinks about this scandal — from "Republican grandstanding" to "another Watergate" — all of us can agree that it's slathered in hot politics. Remember the context:

In the 2010 congressional election, well-funded conservative groups led a sea-to-sea GOP victory march. At both ends of Pennsylvania Avenue, Democrats forcefully complained that some of the groups were engaged in political activity that their tax-exempt status didn't allow.

Democrats worried that the 2012 presidential election would be a repeat. In June 2012, five months before that election, an inspector general told top Treasury officials that he was investigating IRS targeting of tax-exempt groups. So:

Did that juicy news, with its potential to capsize a presidential campaign, travel beyond Treasury? Beats us. But anyone who isn't curious about the answer to that question probably bivouacs in one of those bunkers discussed at the top of this editorial.

President Obama was right. Given the reach that it has into all of our lives, none of us can ignore the IRS and questions about its conduct.

And now there's one more question ascendant: This 13-month refusal to name a special prosecutor has become its own curiosity.

Join in the discussion on the Chicago Tribune Editorial Board's Facebook page or on Twitter by following @Trib_Ed_Board.

Hosford 6/23/14

THE WHITE HOUSE

WASHINGTON

June 18, 2014

The Honorable Dave Camp
Chairman
Committee on Ways and Means
United State House of Representatives
Washington, D.C. 20515

The Honorable Ron Wyden
Chairman
Committee on Finance
United State Senate
Washington, D.C. 20515

Dear Chairmen Camp and Wyden:

I write in response to your letters to the President dated June 16, 2014 and June 17, 2014, respectively, regarding the Committees' investigations related to the Internal Revenue Service (IRS) and the Treasury Inspector General for Tax Administration's May 14, 2013 audit report. Your letters requests all communications between Lois Lerner and any persons within the Executive Office of the President (EOP) for the period between January 1, 2009 and May 1, 2011.

We conducted a search for responsive documents and were unable to identify any communications between Lois Lerner and persons within the EOP during the requested period. We identified three communications where a third party emailed both Lois Lerner and persons within the EOP. One communication is a spam email from October 2009. Two communications are emails from February 2009 where a person sought tax assistance and, according to one of the emails, included a number of officials in Congress and at Federal agencies as recipients. These documents are enclosed. As the two documents from February 2009 include personally identifiable taxpayer information, we trust you will treat the information with appropriate care.

Chairman Camp's letter also asked when the EOP was informed, and by whom, that some of Lois Lerner's emails could not be located. In April of this year, Treasury's Office of General Counsel informed the White House Counsel's Office that it appeared Ms. Lerner's custodial email account contained very few emails prior to April 2011 and that the IRS was investigating the issue and, if necessary, would explore alternate means to locate additional emails.

Sincerely,

W. Neil Eggleston
Counsel to the President

Enclosures

The Washington Post
Federal Eye

IRS reinstates employee bonuses, ending sequester-related hold on awards
February 4, 2014
by Josh Hicks

The Internal Revenue Service has reinstated its employee bonuses for fiscal 2013, avoiding litigation with an employees' union but drawing criticism from at least one prominent Republican lawmaker.

The payouts are expected to reach $62.5 million, compared to $89.1 million for fiscal 2012, according to the agency.

The IRS put a hold on its financial awards in July because of the government-wide budget cuts known as the sequester, saying the move would help avoid two additional days of furloughs. Agency spokeswoman Michelle Eldridge said the decision proved to be unpopular, adding that it "significantly affected employee morale."

The deal, announced Monday, limits IRS payouts to 1 percent of salaries instead of the 1.75 percent allowed under the agency's collective-bargaining agreement. The National Treasury Employees Union, which represents most of the affected employees, said it reluctantly agreed to the reduction to prevent a protracted fight.

"Payment of these earned awards to employees is an important step in recognizing their valuable contributions to the IRS and the nation," said NTEU president Colleen M. Kelley. "The awards are a relatively small amount of money, but they go a long way toward acknowledging the hard work of employees who exceed their performance expectations for the year."

IRS Commissioner John Koskinen, whom the Senate confirmed in December, said in an announcement to employees on Monday that neither side received everything they wanted in the agreement, adding that it represents "an appropriate compromise in the circumstances in which we find ourselves."

Sen. Orrin Hatch (R-Utah), ranking member of the Senate Finance Committee, criticized the deal on Monday, questioning why the IRS would reinstate performance awards for an agency that last year acknowledged inappropriate behavior toward advocacy groups seeking tax-exempt status.

"It's hard to think of a group of people less deserving of bonuses than IRS employees," Hatch said in a statement. "Frankly, this is outrageous. I understand that not every IRS worker was responsible, but this just is the wrong signal to send the American people who were rightly outraged by how this agency treated people for their political views."

An inspector general's audit released last year found that the IRS had targeted certain advocacy groups for additional scrutiny based on their policy positions and names. The actions largely affected conservative and tea party groups, the report said.

Koskinen answered critics of the bonus agreement in his statement on Monday, saying the decision became clear to him after visiting with employees during his first weeks on the job. "This is money best spent on our existing employees," he said. "I firmly believe that this investment in our employees will directly benefit taxpayers and the tax system."

The deal came as agencies are finalizing their new budgets under the $1.1 trillion appropriations bill Congress and President Obama approved last month. The legislation provides some departments with limited relief from the sequester.

At least one other agency, the Labor Department, announced on Monday that it would reinstate performance awards for fiscal 2013. Labor Secretary Thomas Perez sent a message to employees saying the agency would maximize the awards "within the current restraints."

"While we all must continue to be careful stewards of the taxpayer's funds, we are in a much better place financially as a department than we were a year ago," Perez said.

IRS

Part 1. Organization, Finance, and Management

Chapter 15. Records and Information Management

Section 6. Managing Electronic Records

1.15.6 Managing Electronic Records

- 1.15.6.1 Overview
- 1.15.6.2 Basic Electronic Records Management Definitions
- 1.15.6.3 Responsibility for Issuance of Guidance
- 1.15.6.4 Creation, Use, and Maintenance of Structured Electronic Data
- 1.15.6.5 Creation, Use, and Maintenance of Unstructured Electronic Data
- 1.15.6.6 Standards for Managing Electronic Mail Records
- 1.15.6.7 Judicial Use of Electronic Records
- 1.15.6.8 Security of Electronic Records
- 1.15.6.9 Retention and Disposition of Electronic Records
- 1.15.6.10 Transfer Media and Formats for Permanent Records
- 1.15.6.11 Transfer of Documentation to Support Permanent Records
- 1.15.6.12 Transfer Forms
- 1.15.6.13 Managing Records Stored on Electronic Media
- 1.15.6.14 Use of Social Media and Collaboration Tools (New Media)
- Exhibit 1.15.6-1 Common Questions about E-Mail

Manual Transmittal

March 27, 2014

Purpose

(1) This transmits revised IRM 1.15.6, Records and Information Management, *Managing Electronic Records*.

Background

This IRM covers the creation, maintenance, use, and disposition of federal records created using IRS electronic information systems and personal computers, including electronic mail and other electronic applications.

Material Changes

(1) This IRM has been updated to include new references to the Internal Revenue Service (IRS) Records Control Schedules and the General Records Schedules previously published in the Internal Revenue Manual.

(2) This IRM has also been updated to reflect current guidance, references and citations.

Effect on Other Documents

This IRM replaces 1.15.6, *Managing Electronic Records* published June 1, 2010.

Audience

All divisions and functions.

Effective Date

(03-27-2014)

Kevin Q. McIver
Director, Real Estate and Facilities Management (REFM)
Agency Wide Shared Services (AWSS)

1.15.6.1 (03-27-2014)
Overview

1. This section provides the basic requirements for electronic records, including electronic mail (e-mail). It also addresses the creation, maintenance, retention, and disposition of these records.

1.15.6.2 (06-01-2010)
Basic Electronic Records Management Definitions

1. An electronic record contains information recorded in a form that is machine-readable (e.g., information that only a computer can process, and which, without a computer, would not be understandable to people). Recorded electronic information becomes a federal record when it satisfies the statutory definition of a "record," see IRM 1.15.2, which is the same definition applied to information recorded on paper. Basic definitions pertaining to electronic records management are:

   A. **Collaboration Tools** - used to allow multiple users access to the same document for purposes of sharing information.

B. **Data Base** - (in electronic records) - a set of data, consisting of at least one file or a group of integrated files, usually stored in one location and made available to several users at the same time for various applications.

C. **Data Base Management System** - a software system used to access and retrieve data stored in a database.

D. **Data File** - numeric, textual, or graphic information that is organized in a strictly-prescribed form and format.

E. **Documentation** - records required to plan, develop, operate, maintain, and use electronic records. Included are system specifications, file specifications, codebooks, record layouts, user guides, and output specifications.

F. **Electronic Information System** - a system that provides access to computerized federal records and other information.

G. **Electronic Mail System (E-Mail)** - a computer application used to create, receive, and transmit messages and other documents. **Exception:** Excluded from this definition are: file transfer utilities (software that transmits files between users but does not retain any transmission data); data systems used to collect and process data that have been organized into data files or data bases on either personal computers or mainframe computers; and word processing documents not transmitted on an e-mail system.

H. **Electronic Mail Message** - a record created or received on an electronic mail system including briefing notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message.

I. **Electronic Receipt**--information in e-mail systems regarding date and time of receipt of a message, and/or acknowledgment of receipt or access by addressee(s).

J. **Electronic Recordkeeping System** - a system whereby records are collected, organized, and categorized to facilitate their preservation, retrieval, use and disposition.

K. **Electronic Transmission Data** - information in e-mail systems regarding the identities of sender end addressee(s), and the date and time messages were sent (sometimes referred to as metadata).

L. **Records Management Application (RMA)** - software used to capture, categorize, locate, and identify records due for disposition, as well as store, retrieve, and document the disposition of records stored within its repository.

M. **Social Media (New Media)**- internet or web-based technologies designed to disseminate information through social interaction. Examples include Facebook, Twitter, Flickr, YouTube, MySpace and other such technologies.

N. **Structured Electronic Data** - data that resides in fixed fields within a record or file such as relational databases or Excel spreadsheets.

O. **Unstructured Electronic Data** - data that does not reside in fixed fields, but is free-form text such as word processing documents.

1.15.6.3 (03-27-2014)
Responsibility for Issuance of Guidance

1. The National Archives and Records Administration (NARA) is responsible for issuing standards for management of federal records created or received on electronic systems. These standards apply to all Federal agency offices using office automation or information systems and will be followed by the IRS. The complete version of 36 Code of Federal Regulations (CFR) Part 1236 – Electronic Records Management, is available at http://www.ecfr/gov.

1.15.6.4 (03-27-2014)
Creation, Use, and Maintenance of Structured Electronic Data

1. For electronic information systems that produce, use, or store data files, disposition instructions for the data will be incorporated into the systems' design.

2. IRS offices will maintain adequate and up-to-date technical documentation for each electronic system that produces, uses, or stores data files. The minimum documentation required is as follows:

   A. Narrative description of the system, physical and technical characteristics of the records, including a records layout that describes each field (name, size, starting or relative position);

   B. A description of the form of the data (alphabetic, zoned decimal, packed decimal, or numeric);

   C. A data dictionary, or the equivalent information associated with a data base management system, i.e. a description of the relationship between data elements in databases, and any other technical information needed to read or process the records;

   D. A copy of the user's manual or handbook on how to operate and use the system or database;

   E. Completion of IRS Form 12240 *Information Systems Description* , IRS Form 14510 *New Records Series Data Collection*, or other documentation verifying records scheduling authorization; and

   F. A sample of the data, reports, or other documents the system or data base may produce and to whom they are provided.

   Note:

   These elements and items will be submitted to the ARM for processing and submission to the Records and Information Managament (RIM) Program Office.

3. Capital Planning and Investment Controls. In accordance with OMB Circular A-130, IRS must incorporate records management functions into the design, development and implementation of information systems. In addition to ensuring the accessibility and proper accountability for their information systems, IRS must ensure that all electronic systems are evaluated through the Capital Planning and Investment Controls (CPIC) process. The current CPIC questionnaire includes a section on Records Management. It is important for these questions to be addressed at the beginning of the system development process to ensure that records management functionality is part of the system design phase.

4. Electronic System Shutdown (related to projects that follow the Enterprise Life Cycle [ELC] process). Electronic system owners must follow appropriate shutdown procedures when a system is scheduled for cancellation. The process is defined through a systematic series of actions to ensure orderly and efficient performance of essential shutdown activities. The following records management actions must be taken when migrating, retiring, or shutting down an electronic system:

   A. If information is to be migrated to another system you must:
      1) Notify the RIM Program Office of changes to system (i.e. name change, or changes in functionality, etc.);
      2) Determine if any changes should be made to the disposition of the new system based on changes in functionality; and
      3) Manage the new system in accordance with an approved disposition authority.

B. If the information is not being migrated to a new system you must:
1) Notify the RIM Program Office that this information will no longer be collected; and
2) Establish a plan to manage any legacy record data that has not yet met its approved disposition.

1.15.6.5 (03-27-2014)
Creation, Use, and Maintenance of Unstructured Electronic Data

1. At a minimum, electronic recordkeeping systems that maintain the official copy of unstructured data such as text documents, email, presentations, audio video files, image files, and PDF files electronically will provide:

   A. A method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system;

   B. An appropriate level of security to ensure integrity of the documents;

   C. An appropriate audit trail or tracking system for data manipulation and version identification;

   D. A standard interchange format when necessary to permit the exchange of documents on electronic media between IRS computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another; and

   E. The disposition of the documents including, when necessary, the requirements for transferring permanent records to NARA (see IRM 1.15.6.9).

2. IRS may also choose to use a DoD 5015.2-STD compliant Records Management Application to assist in the management of unstructured electronic records. Currently, IRS has 60,000 licenses of EMC Documentum that will allow for Enterprise level management of unstructured electronic record data. For more information about this product, please contact the IRS RIM Program Office.

1.15.6.6 (03-27-2014)
Standards for Managing Electronic Mail Records

1. IRS instructions on identifying and preserving electronic mail messages will address the following unique aspects of electronic mail:

   A. Some transmission data (names of sender and addressee(s) and date the message was sent) must be preserved for each electronic mail record in order for the context of the message to be understood.

   B. Offices using an electronic mail system that identifies users by codes or nicknames or identifies addressees only by the name of a distribution list shall instruct staff on how to retain names on directories or distribution lists to ensure identification of the sender and addressee(s) of messages that are records.

   C. Offices using an electronic mail system that allows users to request acknowledgments or receipts showing that a message reached the mailbox or in box of each addressee, or that an addressee opened the message, shall issue instructions to e-mail users specifying when to request such receipts or acknowledgments for recordkeeping purposes and how to preserve them.

   D. Offices with access to external electronic mail systems shall ensure that federal records sent or received on these systems are preserved in the appropriate recordkeeping system, which may be paper, and that steps are taken to capture available transmission and receipt data needed by the agency for recordkeeping purposes.

   E. Some e-mail systems provide calendars and task lists for users and, therefore, those utilities may meet the definition of a federal record. Calendars that meet the definition of federal records are to be managed in accordance with the provisinns of General Records Schedule 23, Records Common to Most Offices, Item 5 Schedule of Daily Activities published in IRS *Document 12829*.

   F. Draft documents that are circulated on electronic mail systems may be records if they meet the definition of a federal record. If a draft document meets the criteria, including any comments or changes made, must be captured "as is" and retained as a record for the IRS. (36 CFR 1222.12).

2. IRS offices will consider the following criteria when developing procedures for the maintenance of electronic mail records in appropriate recordkeeping systems, regardless of format. The recordkeeping systems that include electronic mail messages must:

   A. Provide for the grouping of releted records or topics into classifications according to the nature of the business purposes the records serve;

   B. Permit easy and timely retrieval of both individual records and files or other groupings of related records;

   C. Retain the records in a usable format for their required retention period as specified by a NARA-approved records schedule;

   D. Be accessible by individuals who have a business need for information in tha system or for recordkeeping purposes;

   E. Preserve the transmission and receipt data as required by agency instructions; and

   F. Permit either retirement or separation of temporary records from permanent, as well as the transfer of permanent records to NARA. See 36 CFR Parts 1235 and 1236 for additional information.

3. IRS offices **will not** store the official recordkeeping copy of e-mail messages that are federal records **ONLY** on the electronic mail system, unless the system has all of the features of an electronic recordkeeping system, some of which are specified in paragraph 2 above. If the electronic mail system is not designed to be a recordkeeping system, ask an E-Mail/System Administrator to instruct you on how to copy the information from the electronic mail system to a recordkeeping system or produce a hard copy for recordkeeping purposes.

4. IRS offices thet maintain their e-mail records electronically will move or copy them to a separate electronic recordkeeping system unless their system has the features specified in IRM 1.15.6.6.2 above. Backup tapes are not to be used for recordkeeping purposes.

5. Offices may retain records from electronic mail systems in an off-line electronic storage format (such as optical disk or magnetic tape) that meets the requirements of 36 CFR 1236.28. Offices that create or have permanent e-mail records scheduled for transfer to NARA will store them in a format or on a medium that conforms to the requirements for transfer (see 36 CFR 1235) or will maintain the ability to convert the records to the required format and medium at the time of transfer.

6. Offices that maintain paper files as their recordkeeping systems will print their e-mail records and the related transmission and receipt data.

7. When email inboxes become too full, or hard drives need to be "cleaned up" , the following steps must be taken:

   A. Inventory email to identify personal messages, work-related non-record messages, and those email messages that meet the definition of a federal record.

   B. Personal messages must be deleted when no longer needed. These include such material as emails sent to and received from friends, family members, and list serves; messages about lunch dates; video and audio clips; and other messages received on non-work time.

   C. Work-related non-record messages must be deleted when no longer needed. These include information/reference email and word processing files received "for your information" or as a carbon (CC) or blind copy (BC), but which you were not expected to and did not take action on. Further examples may include copies of directives and interim guidance, notices, images, CAD drawings, and copies of reports.

D. E-mail messages identified as federal records must be handled in accordance with their NARA-approved disposition schedule and kept in an approved recordkeeping system as discussed above. To identify the appropriate disposition, consult the Records Control Schedules Documents 12829 and 12990 or your ARM. A full listing of ARMs is located on the RIM website. IRS employees are instructed to retain all electronic copies and paper records until disposition instructions have been approved and distributed by the IRS RIM Program Office. Unlawfully destroying federal records is a violation of the Federal Records Act and carries stiff penalties.

8. See Exhibit 1.15.6-1 for Common Questions About E-mail. The RIM Program Office currently has the following information available through its website:

   A. Managing E-mail training course;

   B. Document 12073, *Managing Electronic Mail*; and

   C. IRS Guidance for Sorting out E-files on Network Servers and Hard Drives

1.15.6.7 (06-01-2010)
Judicial Use of Electronic Records

1. Electronic records may be admitted in evidence to federal courts for use in court proceedings if trustworthiness is established by thoroughly documenting the recordkeeping system's operation and the controls imposed upon it (Federal Rules of Evidence 803(8)). IRS offices should implement the following procedures to enhance the legal admissibility of electronic records:

   A. Document that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach;

   B. Verify that security and audit procedures prevent unauthorized addition, modification, or deletion of a record and ensure system protection against such problems as power interruptions;

   C. Identify the electronic media on which records are stored throughout their life cycle, the maximum time span that records remain on each storage medium, and the NARA-approved disposition of all records; and

   D. Coordinate all of the above with Counsel, the IRS Records Officer and senior IRM and records management staff.

1.15.6.8 (06-01-2010)
Security of Electronic Records

1. IRS offices will implement and maintain an effective records security program that incorporates the following:

   A. Ensures that only authorized personnel have access to electronic records.

   B. Provides for backup and recovery of records to protect against information loss or corruption.

   C. Ensures that appropriate agency personnel are trained to safeguard sensitive or classified electronic records.

   D. Minimizes the risk of unauthorized alteration or erasure of electronic records.

   E. Ensures that electronic records security is included in computer systems security plans prepared pursuant to the Computer Security Act of 1987.

1.15.6.9 (03-27-2014)
Retention and Disposition of Electronic Records

1. The IRS Records Officer is the liaison with NARA and customer organizations for ensuring that electronic records and the related documentation are retained for as long as needed by the IRS. These disposition and retention procedures shall include provisions for:

   A. Scheduling all electronic records, as well as related documentation and indexes, by submitting an SF-115, *Request for Records Disposition Authority* to NARA or, in some instances by applying NARAs General Records Schedules. The information in electronic information systems, including those operated for the IRS by a contractor, will be scheduled as soon as possible, but no later that one year after implementation of the system.

   B. Transferring a copy of the electronic records and releted documentation and indexes to NARA at the time specified in the records control schedule for permanent records.

   Note:

   SF-115 is completed by the IRS Records Management staff only.

2. Records created within e-mail systems, which meet the criteria of a federal record, are subject to the same retention periods as the paper or hard-copy versions. Therefore, these records must be retained electronically according to the NARA-approved disposition authority or printed and associated with the appropriate recordkeeping system. Temporary e-mail records can be deleted only when they are eligible for destruction or when they have been printed and associated with the appropriate recordkeeping system. See additional information on the retention and transfer of permanent electronic records in subsection IRM 1.15.6.11.

3. At the direction of a management official as to what is considered a record, the E-mail/Systems Administrators will establish procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records throughout their authorized life cycle.

4. The responsibility for instructing users on how to copy and archive electronic mail records rests with the E-Mail/Systems Administrators at the user levels. With the proper direction from a management official, the user and/or end recipient should possess the expertise to identify and determine which records are worthy of preservation and/or archiving.

5. The disposition of electronic mail records that have been relocated to an appropriate recordkeeping system is governed by schedules that control the records in that system. If the records in the system are not scheduled, contact the Area Records Manager or the RIM Program Office to get them scheduled and approved by NARA.

   Note:

   Approved disposition authorities for electronic records created as part of tax processing systems are included in separate Records Control Schedules 8 through 37 based on their use and/or associated activity (published in Document 12990). Many other administrative systems are included in the General Records Schedules 38 through 64 (published in Document 12829). Questions concerning the scheduling of an electronic system should be directed to the IRS RIM Program Office.

1.15.6.10 (03-27-2014)
Transfer Media and Formats for Permanent Records

1. The legal requirements for the transfer of permanent records to NARA are documented in 36 CFR 1235 and set forth in general form in the paragraphs below. Consult the IRS RIM Program Office for more detailed instructions and guidance on the transfer for permanent IRS records.

1.15.6.10.1 (06-01-2010)
Magnetic Tape

1. IRS offices may transfer electronic records to NARA on magnetic tape using either open-reel magnetic tape or tape cartridges. Open-reel tape should be on $^1/_2$ inch 9-track tape reels recorded at 1600 or 6250 bytes per inch and blocked no higher than 32,760 bytes per block. Tape cartridges should be 18-track 3480-class cartridges recorded at 37,871 bpi and blocked at no more than 32,760 bytes per block.

1.15.6.10.2 (03-27-2014)
Compact Disk, Read Only Memory (CD-ROM) and Digital Video Disk (DVD)

1. CD-ROMs may be used as transfer media for fielded data files or text files if they conform to the International Standards Organization (ISO) 9660 Standard and to the American Code for Information Interchange (ASCII); are not compressed unless NARA has approved the transfer of the compressed form in advance; and are individually addressable. The CD-ROMs may contain software files and temporary records, but permanent records must be in files that contain only permanent records.

2. DVDs may be used to transfer certain types of permanent files. It is recommended to look for gold or silver colored DVDs for the best quality. If transferring records that have been copied to a DVD from another media, agencies must transfer the premaster videotape and two copies of the discs. All permanent files must be on one DVD and not mixed with temporary files.

1.15.6.10.3 (03-27-2014)
Formats

1. Records will be in a format that is not dependent on specific hardware or software, written in ASCII or EBCDIC with all extraneous characters removed (except records length indicators for variable length records, marks delimiting a data element, field, record or file, or Standard Generalized Markup Language (SGML) tags). Records should not be compressed unless NARA has approved the transfer in the compressed form in advance. If the records are in ASCII, the electronic files should have standard ANSI labels as specified in Federal Information Processing Standard (FIPS) Publication 79 and/or ISO Standard 9600. If the records are in EBCDIC, the electronic files should have standard IBM OS or DOS labels.

2. Data files and databases shall be transferred as flat files or as rectangular tables, that is, as two-dimensional arrays, lists, or tables. All records in a database or elements in a relational database should have the same logical format. Each data element within a record should contain only one data value. A record should not contain nested repeating groups of data items.

3. Textual Documents in electronic form should be transferred as plain ASCII files; such files may contain SGML or XML tags.

4. Electronic mail, scanned images of textual records, portable document format (PDF) records, digital photographic records, web content records, and digital spatial data files should be transferred to NARA in accordance with requirements available at http:// www.archives.gov/records-mgmt/initiatives/transfer-to-nara.html.

1.15.6.11 (06-01-2010)
Transfer of Documentation to Support Permanent Records

1. IRS offices must provide adequate technical documentation for each permanent electronic file identified for transfer to NARA. Adequate documentation contains enough information to allow the records to be interpreted and understood in context. The extent, format, and content of the documentation varies for different types of electronic records. The documentation for a text file differs from the documentation for survey data or statistical files and from that for indices or tracking files. Within the types of records, documentation can vary as well. One survey might have very different documentation than another survey. This subsection provides some guidance to IRS offices regarding the content and potential sources of adequate documentation for permanent electronic records.

1.15.6.11.1 (06-01-2010)
Sources of Documentation

1. Information about documentation might be in publications, administrative reports, annual reports, memoranda, user notes, system guides, inventories or control systems for electronic records, file descriptions, Privacy Act notices, or manual or automated data dictionaries. The information about documentation is more important than the format.

1.15.6.11.2 (06-01-2010)
Format of Documentation

1. Some of the documentation for electronic records may only exist in paper form. When the documentation is in electronic format, identify and transfer the documentation data as separate files along with the files containing the electronic records. The transfer format standards for electronic records also apply to documentation files. Microform copies of documentation, when available, are also useful.

1.15.6.11.3 (03-27-2014)
Scope of the Documentation

1. Three main types of information make up documentation: technical specifications, information about file content and structure, and context. Provided below is more information on each type:

   A. IRS Form 12240, and/or required technical specifications adequate for servicing and interpreting each file.

   B. Each file requires a specific definition of its structure and content. This includes a record layout and a codebook for each field containing coded information. Documentation may be in data dictionaries, file, user, codebooks, file or system manuals.

   C. Contextual information explains how the electronic records fit into the IRS programs or mission. This information answers the questions: "Who created the Records?" and "Why?" and "For What Purpose?"

   D. If several data files containing related information are transferred, the documentation should include a description or diagram of how the files relate to each other. At a minimum, the documentation should specify the key fields, including primary keys, used to uniquely identify each record in a file, and the foreign keys, which relate records in one file to records in another file.

1.15.6.12 (03-27-2014)
Transfer Forms

1. The forms required to transfer permanent records to NARA are set forth below:

   A. The Standard Form 258, *Agreement to Transfer Records to the National Archives of the United States*, (completed by the IRS Records Staff only – see Exhibit 1.15.5–1 for a sample).

   B. NA Form 14097, *Technical Description for Transfer of Electronic Records to the National Archives*, or its equivalent, IRS Form 12240, must be completed and provided by the program office for attachment to the SF-258.

2. Contact your ARM or the RIM Program Office for instructions and assistance in completing the systems form and identification of other documents necessary for transfer of the electronic records.

3. Submit the NA Form 14097, or its equivalent, IRS Form 12240, along with the identified documentation through your ARM to the IRS RIM Program Office for completion, approval and submission to NARA.

1.15.6.13 (03-27-2014)
Managing Records Stored on Electronic Media

1. IRS offices must plan for the proper management of records stored on such media as CDs, DVDs, removable hard drives, audio/video tapes, and USB drives. These media types are considered fragile and susceptible to record modification, erasure, and damage. IRS must prepare for technical obsolescence when using such media.
2. Storage of record material must be done in accordance with approved records dispositions. All functionally similar records should be stored together and standard naming conventions should be utilized to ensure faster retrieval.
3. An inventory of all removal media must be maintained.
4. All removable media must be properly labeled.
5. All removable media must be stored under proper environmental conditions and all security precautions must be taken to protect information throughout the life cycle of the records.
6. Information stored on removable media must be periodically reviewed for deterioration to ensure availability of record information.
7. A migration plan must be established to ensure access to record information due to technological obsolescence.
8. For more detailed guidance, see the RIM Program website.

1.15.6.14 (03-27-2014)
Use of Social Media and Collaboration Tools (New Media)

1. IRS must plan for the proper management of record material produced using Social Media such as Facebook, YouTube, Flickr, MySpace, and other similar technologies.
2. IRS must plan for the proper management of record material produced using Collaboration Tools such as Microsoft SharePoint, Microsoft Office Communicator, and any other instant messaging or collaboration environments (i.e. wikis, blogs, web portals, etc.). Collaboration may happen in multiple contexts such as Office to Office, Agency to Agency, Multiple Agency, or public to Agency (i.e. via interactive websites.)
3. The following records management considerations must be addressed with the use of these new technologies:
   A. Information that meets the statutory definition of a federal record (44 USC 3301) must be captured and managed in accordance with an approved Records Control Schedule.
   B. Records must be captured in an accessible, usable format.
      1) Most collaboration software and instant messaging clients reside on the Agency server and can be captured at the server level in either plain text or through the use of a DoD 5015.2 certified application, such as EMC Documentum.
      2) If the collaboration environment is not located on the Agency's server, procedures for the capture of record material must be discussed with the vendor/owner of the software or tool.
   C. A responsible office/Agency must be designated for the management of record material. In some cases, more than one entity may have a responsibility for the same records, depending on their use.
   D. Records must be managed in accordance with the content and not the format.
   E. Records determined to have Permanent value must be transferred to NARA in an approved format. Records may have to be migrated from original format to one accepted by NARA at the time of transfer.
4. For additional information and guidance, please contact the IRS RIM Program Office

Exhibit 1.15.6-1
Common Questions about E-Mail

When are e-mail messages records?

An e-mail message is a record if:

a. it documents the IRS mission or provides evidence of an IRS business transaction,

b. it can be retrieved if you, or anyone else, need to find out what had been done, or

c. it can be used in other official actions.

Treat e-mail messages the same way you would treat paper correspondence.

Do I have to manage incoming and outgoing e-mail as records?

Yes, you should apply the standard described above to both incoming and outgoing e-mail. The reason is that both the sender and recipient of e-mail messages have the responsibility to document their activities and those of their organizations. Both the sender and the recipient have to determine whether a particular e-mail message is a necessary part of that documentation or if it fills in gaps in other records series.

How can e-mail be an official record if it is not signed?

A signature does not make something a record. Many types of records, such as incoming letters, formal and informal manuals, published reports, photographs, voice recordings and maps, do not contain signatures, but they can be records.

If an e-mail record is sent to several recipients, which copy is the official record?

It depends. Different copies of the same message may ALL be records. If you take any official action related to a message, and if the message is needed for adequate and complete documentation of the action, the message would be a record in your office, regardless of whether copies are retained elsewhere. If the message is a record in your office's official files, then the copy you print or maintain on your PC is not a record and you may delete or destroy it. If you receive a message for information purposes only and do not take any action related to it, your copy is not a record.

Do these guidelines apply to IRS contractors?

Yes, these guidelines apply to IRS contractors and agents who act on behalf of the IRS, as well as all IRS employees. Contract terms should ensure that contractor systems satisfy the legal requirements for creating and maintaining adequate and complete records of IRS transactions when those transactions are carried out by contractors.

Are there special requirements for retaining e-mail messages as records?

The basic requirements applicable to all records apply to e-mail records as well. If they are not in an approved electronic recordkeeping system, then the e-mail messages identified as records must be printed out and placed in the appropriate record system. However, there are some specific elements for records sent or received through e-mail which also must be captured in addition to the message to satisfy recordkeeping requirements. You should ensure that:

A. the e-mail record includes transmission data that identifies the sender and the recipient(s) and the date and time the message was sent and/or received;

B. when e-mail is sent to a distribution list, information identifying all parties on the list the list must be retained for as long as the message is retained; and

C. if the e-mail system using codes, or aliases to identify senders or recipients, a record of their real name(s) is kept for as long as any record containing only the codes or aliases.

Example:

If you are communicating with someone via the Internet and their e-mail address does not indicate who they are (e.g. the address is JerryR@ ...) then a record must be made and kept with the message of who they are. If the message is to be kept electronically, this can be done by including their full name, title, and organization in the body of the message. If the message is printed out, then make a similar notation on the bottom of the message.

Why is it necessary to keep the transmission data about the sender, receiver, date, and time of the e-mail?

This information is essential, the same as the names of the sender and addressee, the date, or a time stamp from a letter, memorandum or envelope on paper. You would not delete this information from those documents.

What if the message does not qualify as a record?

Delete e-mail that is not a record when no longer of use.

Example:

An e-mail message advising section employees of a staff meeting or a training opportunity can be destroyed after it has been read, or the meeting/training period has passed.

More Internal Revenue Manual

JUN 1 7 2014

Mr. Daniel W. Bennett
Chief, Office of Records and Information Management
Internal Revenue Service
1111 Constitution Avenue, NW
Park 4 - Suite 400 (OS:A:RE:MA)
Washington, DC 20224-0001

Dear Mr. Bennett:

Late last week the National Archives and Records Administration (NARA) learned of an alleged unauthorized disposal of Federal records by the Internal Revenue Service (IRS).

In a June 13, 2014, letter from the IRS to Senator Ron Wyden and Senator Orrin Hatch of the Senate Committee on Finance, the IRS reported the loss of emails. According to the correspondence, the emails of Lois Lerner, the former head of the IRS' Exempt Organization Division, dated between 2009 and 2011, were lost due to a hard-drive failure.[1]

In accordance with 44 USC 2905(a), NARA requests that the IRS investigate the alleged disposal of the items in question and whether the alleged disposal was broader than what was reported in the June 13, 2014, letter.

A report of the investigation into this matter is required within 30 days of the date of this letter as stated in 36 CFR 1230.16(b). If an investigation determines that an unauthorized disposal did occur, as required by 36 CFR 1230.14, a final report must include the following:

(1) A complete description of the records with volume and dates if known;
(2) The office maintaining the records;
(3) A statement of the exact circumstances surrounding the removal, defacing, alteration, or destruction of records;
(4) A statement of the safeguards established to prevent further loss of documentation; and
(5) When appropriate, details of the actions taken to salvage, retrieve, or reconstruct the records.

Please mail the report to National Archives and Records Administration, Office of the Chief Records Officer (AC), 8601 Adelphi Road, College Park, MD 20740.

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[1] The correspondence is available online from the website of the U.S. House of Representatives, Committee on Ways and Means, at http://waysandmeans.house.gov/UploadedFiles/6_13_14_IRS_Letter.pdf

If you have any questions, please contact Jametta Davis at 301-837-0409 or jametta.davis@nara.gov .

Sincerely,

PAUL M. WESTER, JR.
Chief Records Officer
for the U.S. Government

The Honorable the Senate and House of Representatives in Congress Assembled.

The remonstrance of Andrew Jackson, of the State of Tennessee, Shew, that on the first day of December, seventeen hundred and Ninety nine, your remonstrant, obtained licence, to work two Stills, for the space of One year from the said first day of December, One Still Capacity One Hundred & Twenty seven Gallons, the other Twenty Gallons, that on the Night of the first Monday of June Eighteen Hundred, the Still House of your remonstrant, was Consumed with fire, with upwards of three Hundred Gallons of whiskey, and the said Stills rendered entirely unfit for use, and of no value, and were never made use of after in the distillery of your remonstrant, your remonstrant paid up the Tax due to the first monday in June, which was about six Months, and was of Opinion (and that from Sound reason and Justice) that the duties would cease to exist, at the period of time, the Stills were rendered unfit for Service, that I then Corresponded with Thos. Overton Esqr. Supervisor for the District of Tennessee, thro whom your remonstrant applied for relief, furnishing him with the proof of the distillery being burnt, and the Stills rendered unfit for service, (which proof is herein annexed, and transmitted,) having no doubt but the Secretary of Treasury, would direct the Account to be

Andrew Jackson's Petition for Relief of the Whiskey Tax, February 12, 1803 (page 1)

Records of the U.S. House of Representatives
National Archives

Credited, to the Tax becoming due, after the last first monday of June, as the Supervisor had examined the proof, and allowed a proportionate, deduction, which will appear by the Supervisors endorsement, on the back of the (Duplicate) Affidavit, your remonstrant had no doubt, but a power to grant relief, in such Cases, was lodged in the hands of the Secretary of the Treasury, or in some other department of the Government, he could not believe that the united States, would draw Money, from the Misfortunes, of her Citizens, and Neglected to lodge that Necessary power in the hands of some officer, of Government, to grant relief, when Justice required it, with these impressions, your remonstrant, rested satisfied, that the Secretary of Treasury, upon a view of the proof, would exercise the power, which Justice so imperiously required, and have directed, a credit as before Stated, But now sad it is, that the Collector has called for the Tax accrued, after the first monday of June as aforesaid, out of the Treasury of district, — your remonstrant compelled to pay the Sum demanded, which is inconsistant with strict honesty and Justice, and Now prays that a General law, may be passed, granting relief to all persons situated as your remonstrant, by compelling the Collector to refund, who they have collected the duties accruing, on Stills after they have been rendered unfit for use by fire, in manner aforesaid, and your remonstrant as in duty bound, shall &c. &c.

Andrew Jackson

Andrew Jackson's Petition for Relief of the Whiskey Tax, February 12, 1803 (page 2)

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National Archives