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EXAMINING THE IRS RESPONSE TO THE TARGETING SCANDAL

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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EXAMINING THE IRS RESPONSE TO THE TARGETING SCANDAL

Wednesday, March 26, 2014,

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

The committee met, pursuant to call, at 9:30 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, Jordan, Chaffetz, Walberg, Lankford, Amash, Gosar, DesJarlais, Gowdy, Farenthold, Lummis, Woodall, Massie, Collins, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Clay, Lynch, Connolly, Speier, Davis, Lujan Grisham, and Kelly.

Staff Present: Molly Boyl, Majority Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; David Brewer, Majority Senior Counsel; Sharon Casey, Majority Senior Assistant Clerk; Steve Castor, Majority General Counsel; Drew Colliatie, Majority Professional Staff Member; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Professional Staff Member; Frederick Hill, Majority Deputy Staff Director for Communications and Strategy; Christopher Hixon, Majority Chief Counsel for Oversight; Caroline Ingram, Majority Professional Staff Member; Michael R. Kiko, Majority Legislative Assistant; Jim Lewis, Majority Senior Policy Advisor; Mark D. Marin, Majority Deputy Staff Director for Oversight; Ashok M. Pinto, Majority Chief Counsel, Investigations; Katy Rother, Majority Counsel; Laura L. Rush, Majority Deputy Chief Clerk; Jessica Seale, Majority Digital Director; Sarah Vance, Majority Assistant Clerk; Jeff Wease, Majority Chief Information Officer; Meghan, Berroya, Minority Counsel; Aryele Bradford, Minority Press Secretary; Susanne Sachsman Grooms, Minority Deputy Staff Director/Chief Counsel; Jennifer Hoffman, Minority Communications Director; Adam Koshkin, Minority Research Assistant; Julia Krieger, Minority New Media Press Secretary; Elisa LaNier, Minority Director of Operations; Juan McCullum, Minority Clerk; Brian Quinn, Minority Counsel; Dave Rapallo, Minority Staff Director; and Donald Sherman, Minority Counsel.

Chairman ISSA. The Oversight Committee exists to secure two fundamental principles: first, Americans have a right to know the money Washington takes from them is well spent and, second, American deserves an efficient, effective Government that works

for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to be accountable to taxpayers, because taxpayers have a right to know what they get from their Government. It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

It is now my privilege to recognize the ranking member for the opening statement.

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

Commissioner Koskinen, I want to thank you for being here this morning, and I want to thank you, Mr. Chairman, for calling this hearing. I think it is very important that we look at what the inspector general for the Treasury recommended and take a look back at the research that he did.

Nearly one year ago, the Treasury Inspector General for Tax Administration, Russell George, issued a report concluding that IRS employees used "inappropriate criteria" to identify tax-exempt applications for review. I want to revisit the findings of his report.

The IG found that there was "ineffective management" at the IRS. The first line of the results section of the report said, this began with employees in the Determinations Unit of the IRS Office in Cincinnati. I didn't say that, the IG said that. The IG also went on to say that these employees "developed and used inappropriate criteria to identify applications from organizations with the words tea party in their names." The IG also said these employees "developed and implemented inappropriate criteria in part due to insufficient oversight provided by management."

The IG report that former IRS official Lois Lerner did not disclose the use of these inappropriate criteria until 2011, a year after it began. Again, I didn't say that, the IG said that. Although "she immediately" ordered the practice to stop, the IG stated that employees began again using different inappropriate criteria "without management knowledge."

In contrast, the inspector general never found any evidence to support the central Republican accusations in this investigation that this was a political collusion directed by or on behalf of the White House.

Before our committee received a single document or interviewed one witness, Chairman Issa went on national television and said, "This was the targeting of the President's political enemies, effectively it lies about it during the election."

Similarly, Representative Al Rogers, the chairman of the Committee on Appropriations, stated on national television, "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."

Representative Dave Camp, chairman of the Ways and Means Committee, said, "This appears to be just the latest example of a culture of coverups and political intimidation in this Administration."

The inspector general identified no evidence to support these wild political accusations. The IG reported that, according to the

interviews they conducted, the inappropriate criteria "were not influenced by any individual organization outside the IRS." The IG testified before this committee that his own chief investigator reviewed more than 5,500 emails and found no evidence of any political motivation in the actions of the IRS employees.

Rather than continuing this partisan search for non-existent connections to the White House, I believe the committee should focus squarely on the recommendations made by the inspector general. The IG made nine recommendations in his report last May. As of February of this year, the IRS now reports that it has completed all nine.

For example, the IG recommended that the IRS change its screening and approval process for tax-exempt applications. In response, the IRS ended the end of so-called be on the lookout lists and developed new guidance and training.

The IG also recommended that the IRS ensure that applicants are "approved or denied expeditiously." In response, the IRS made significant progress on its backlog over the past year, closing 87 percent of these cases.

As I close, I want to thank the commissioner and his predecessor, Danny Werfel, for their extraordinary cooperation with Congress. I completely disagree with the chairman's letter yesterday complaining about the agency's so-called failure to produce documents and its noncompliance with committee requests. Nothing could be further from the truth. More than 250 IRS employees have spent nearly 100,000 hours responding to congressional requests. They have delivered more than 420,000 pages of documents to this committee and they have spent at least $14 million in doing so.

The chairman's statements simply disregard these facts. They are also at odds with Chairman Camp of the Ways and Means Committee, who issued a press release just this month praising IRS for its cooperation with document requests as a "significant step forward."

Commissioner, I wanted to thank you for your efforts during this investigation and for your exceptional cooperation, and I want to thank all of those IRS employees who are working so hard and tirelessly to do their jobs.

With that, Mr. Chairman, I thank you and I yield back.

Chairman ISSA. I thank the gentleman.

I am pleased to welcome our witness, Commissioner John Koskinen. He was appointed by the President to restore trust and accountability to the IRS. Commissioner, you have a difficult task ahead of you. The American people do not have, and my opening statement says any faith, but they certainly don't have the faith they once had in the IRS to be truly a nonpartisan, nonpolitical tax collector, and rightfully so.

Does nonpartisan, nonpolitical agency target certain groups based on their names or political ideology? The IRS did. Does a nonpartisan or nonpolitical agency conspire to leak the findings of an independent inspector general report? The IRS did. Does a nonpartisan, nonpolitical agency withhold documents requested during a congressional investigation subject to a lawful subpoena? The IRS does, did, and continues to. Does a nonpartisan, nonpolitical agency reinterpret laws protecting taxpayer information when it appears

their employees violated the law? The IRS does. Does a nonpartisan, nonpolitical agency blatantly ignore a congressional subpoena? Again, the IRS continues to.

The American people believe the IRS is now a politicized agency because the IRS is a politicized agency. Our constituents deserve better than this, Commissioner. You are the President's man at the IRS. You are one of only two political appointees. But it is clear that individuals acted on their politics, and we now have some, but only some, of the emails to prove it.

You were brought in to do a very hard job, and no doubt you ask yourself every day why did I get and ask for and accept one of the hardest jobs anyone could ever have in Washington? And I appreciate that you are there and that you want to do that job.

One of the ways you could do it is by ordering your people to simply comply with outstanding subpoenas. The simple fact is your response to the IRS targeting scandal has been bold by the ranking member's standard and dismal by my standard.

This committee doesn't count how many documents are produced, but we do count when documents clearly responsive to a subpoena are clearly not delivered. The committee has made document requests almost 11 months ago that are still unfulfilled. I issued two subpoenas, the second to you personally, and they are still outstanding, and this is unacceptable.

Unfortunately, you have been more concerned with managing the political fallout than cooperating with Congress, or at least this committee. I requested that you produce all of Lois Lerner's emails to this committee. She won't talk to us, so these emails are the next best substitute, and we need these emails. And you know we are not only entitled to them, but, by all that is holy, we deserve, and the American people deserve, access to know why somebody who cites Citizens United; who cites political gains, including the outcome of Senate majorities; who cites in a public speech statements about we need to fix it because the FEC can't do it; who cites they want us to do it and then takes the Fifth when we ask who they are. Those emails in their entirety are clearly responsive.

These are easy requests, and ones that were made back in May but have not been honored, and that request is one that you said you would work to fully comply. I understand you reached an agreement with the Ways and Means Committee to produce a limited subset of Ms. Lerner's emails. Let me make it very clear. Your agreement with Ways and Means, without a subpoena, does not satisfy your obligation under a subpoena to produce all of her emails to this committee.

Commissioner, your objection or your refusal to cooperate with the committee delays bringing the truth, costs the American people the confidence they hope to rebuild, and clearly is running up the cost to the American taxpayer. I know you want to bring this investigation to a close as soon as possible, and I do too. But the only way you can do that is to fully comply with our requests, and I hope you will take that to heart today.

I yield back.

Chairman ISSA. I now recognize the gentleman from Ohio for his opening statement.

Mr. JORDAN. Thank you, Mr. Chairman. I would like to provide a little context for today's hearing. Let's go back to January 2010. The President of the United States, in his State of the Union address, called out the Supreme Court regarding the Citizens United decision. That same year, 2010, the President, numerous times, talked about Tea Party groups as shadowy groups who would hurt our democracy. That same year Senator Schumer says, we are going to get to the bottom of this, let's encourage the IRS to investigate. Senator Baucus, that same year, asked the IRS to investigate (c)(4) applications and (c)(4) groups. Senator Durbin asked the IRS to investigate Crossroads GPS.

And then, in that same year, 2010, two weeks before the election, October 19th, at Duke University, Lois Lerner gives a speech and she says this: The Supreme Court dealt a huge blow in the Citizens United decision and everyone is up in arms because they don't like it; they want the IRS to fix the problem. The IRS law is not set up to fix the problem; (c)(4)s can do straight political activity. So everybody is screaming at us right now.

Who is everybody? Everybody is not everybody. Everybody is the President and Democrat senators who asked her to do something. Fix it now, before the election. Lois Lerner says, I can't do anything right now. She couldn't fix it before the 2010 mid-term election, but what she could do is start a project to deal with it in the future, and that is exactly what she did. That same fall she sent an email, again, just weeks before the mid-term election. Lerner tells her colleagues let's do a (c)(4) project next year. But she also says we need to be cautious so it isn't a per se political project. In fact, the chairman put this email up at our last hearing. Per se political project means that is code for it is a political project, we just need to make it look like it is not a political project.

Then, in early 2011, Lois Lerner orders the multi-tiered review of (c)(4) applications. Multi-tiered review, you know what that is? That is code for we are going to delay, we are going to harass, we are never going to approve these people, we are going to make it difficult. That is part of the (c)(4) project.

And then make no mistake, she put Washington in charge. This email is also one that the chairman put up at our least meeting, where Lois Lerner said this in February of 2011: Tea Party matter very dangerous. Cinci should probably not have these cases. So this narrative about Cincinnati line agents and Cincinnati doing this is completely false. She ordered them not to have these cases. And then what happened? Lois Lerner got caught with her hand in the cookie jar. Tea Party groups came to us and said we are being harassed. We asked the inspector general to do an investigation; he did the audit and then before he can release the audit, unprecedented, before he releases the audit, Lois Lerner, in a speech in front of the Bar Association here in this town, with a planted question from a friend, reveals that, yes, targeting was taking place. And what does she do? She throws the Cincinnati people under the bus. The very people she said shouldn't have the cases, good civil servants, she throws them under the bus.

And here is the real kicker: Lois Lerner, who did this project from the pressure from the President and Democrat senators, who did this project, she won't talk to us. She won't talk to us and our

witness today won't give us her emails, even though we subpoenaed them over six months ago.

Mr. Chairman, Lois Lerner won't talk to us. She will talk to the Justice Department because she knows that investigation. She will talk to the people who can put her in jail, but she won't talk to us, and the guy who can give us the emails won't give us the emails.

And here is why today's hearing is so important: the (c)(4) rule that is being proposed, that got 149,000 comments, would codify what Lois Lerner put into practice, would in fact accomplish the goal that she set out to do in 2010. The (c)(4) rule, we had a hearing three weeks ago, Mr. Chairman. We had a hearing three weeks ago where we had the ACLU, Tea Party patriots, the Motorcyclists Association of America, and the Home School Legal Defense. All four of those groups came to that hearing and you know what they all said? This rule stinks and should be thrown out. Think about that. From the ACLU to the Tea Party, from home schoolers to Harley riders, everyone knows this rule stinks. Everyone knows except the IRS. And now, today, we get a chance finally to question the guy in charge of this rule, running this agency.

Here is the final thing, Mr. Chairman, and I will yield back. The same people who pressured Lois Lerner to fix the problem are the same people who picked John Koskinen to finish the job. That is where we are at. And all we are asking is give us the emails. Throw this rule in the trash, because everyone knows—the only people who want this rule are this Administration and the IRS. Everyone else knows this thing stinks. Everyone else knows it. And that is why today's hearing is so important, Mr. Chairman

With that, I yield back.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Virginia for an opening statement on behalf of Mr. Cartwright.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Koskinen, welcome back. I remember working with you on Y2K. You did a great job then and I am certainly hopeful you will do a great job now. I certainly think you are a great choice to be the new commissioner of the IRS.

In listening to statements from the other side of the aisle, one might think that the IRS has just stonewalled the Congress and has been completely uncooperative. And yet, since the release of the audit report, the IRS has produced 420,000 pages of documents to this committee, facilitated 32 interviews of current and former IRS employees, and testified at six separate hearings. That is not non-cooperation.

In addition, on March 7, 2014, Congressman Dave Camp, the chairman of the Ways and Means Committee, issued a press release commending the IRS on its cooperation with the committee and in particular its production of documents. He stated, "This is a significant step forward and will help us complete the investigation." That cooperation included an agreement with the Ways and Means Committee in terms of which emails in fact would be provided.

The chairman says he shares your goal, your desire to want to end this investigation, but he needs more cooperation, and I certainly take the chairman at his word. But one has the suspicion

that some of our friends on the other side of the aisle, the last thing in the world they would do is end this ongoing, if you can call it that, investigation, because it serves their political aims. Mr. Jordan just cited a panel we had. I was at that hearing, and one had the impression that this is all feeding the base, it is designed to get certain groups all riled up in time for a mid-term election.

Mr. JORDAN. Would the gentleman yield for a question?

Mr. CONNOLLY. I am going to finish my statement, Mr. Jordan, as you were allowed to finish yours.

And that the serious purpose of investigation seems to be lost in the mire and the muck.

This committee, on a partisan vote, decided that a citizen, who happened to work for IRS, not a heroic figure in this story, but a citizen protected by constitutional rights, had in fact waived her rights, a very dubious finding in light of long case history in the courts, going back to the McCarthy era when people needed that Fifth Amendment to make sure they weren't entrapped by their own words, by star chambers, or by people willing to play fast and loose with facts and with the truth to make some political point. And the fact that you might be an unwitting victim, you are a casualty of war.

None of my colleagues on this committee, of course, would engage in that kind of thing, but to strip an American citizen, or claim to strip an American citizen, of her Fifth Amendment right, a right that was enshrined as sacred by the founders, who had been treated to the tender loving mercies of then British colonial justice. It stung so much that they wanted to protect every American citizen from that kind of treatment, even if they might be hiding something, even if they weren't heroic figures. Precisely why the Fifth Amendment was there.

So, Mr. Koskinen, there are some of us here who wish you well and will certainly cooperate with you and try to make sure yours is a successful tenure. Obviously, to the extent that you can cooperate even more fully with this committee, that would be welcome. But be aware that unfortunately this committee has a habit sometimes of cherry-picking facts and of leaking. I heard the chairman complain about the IRS actually leaking documents. My, my, that would be a terrible thing if true; certainly not something we ever do on this committee. But just in case be prepared, because that may happen to you, too. So thank you for your cooperation, but be on your guard, because there is something else at work here.

I yield back.

Chairman ISSA. Members may have seven days in which to submit opening statements for the record, including extraneous materials therein.

The chair now welcomes the Honorable John Koskinen, who is the Commissioner of the Internal Revenue Service. Welcome.

Pursuant to the rules, all witnesses will be sworn. Would you please rise, raise your right hand to take the oath?

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

[Witness responds in the affirmative.]

Chairman ISSA. Please be seated.

Let the record reflect the witness answered in the affirmative.

You are a seasoned pro at this, but I will remind everyone your entire statement is in the record and it has been distributed in the packets, and you may summarize as you see fit. You are recognized.

STATEMENT OF THE HONORABLE JOHN KOSKINEN, COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. KOSKINEN. Thank you. Good morning, Chairman Issa, Ranking Member Cummings, members of the committee. Thank you for the opportunity to appear before you today to discuss IRS activities in regard to the determinations process for tax-exempt status. I am honored to serve as the IRS commissioner and to have the opportunity to lead this agency and its dedicated employees because I believe that the success of the IRS is vital for this Country.

One of my primary responsibilities as IRS commissioner is to restore whatever public trust has been lost as a result of the management problems that came to light last year in regard to the application process for 501(c)(4) status. Taxpayers need to be confident that the IRS will treat them fairly no matter what their backgrounds, their affiliations, who they voted for in the last election. I am committed to ensuring we restore and maintain that trust.

I am pleased to report to you that the IRS has made significant progress in addressing the issues and concerns with the 501(c)(4) determinations process. First of all, we have been responding to the recommendations made by the Treasury Inspector General for Tax Administration. It was the inspector general's report in May of last year that found applications for 501(c)(4) status had been screened using inappropriate criteria.

As of late January of this year, we completed action on all nine of the inspector general's recommendations. Our actions have included reducing the inventory of 501(c)(4) applications, including the group of 145 cases in the so-called priority backlog, that is, those that were pending for more than 120 days on or before May 2013. As of this month, 126 of those cases have been closed, including 98 that were approved. Of those 98, 43 took advantage of a self-certification procedure re-offered last year.

Also in response to the inspector general, the Treasury and IRS issued proposed regulations in November that are intended to provide clarity in determining the extent to which 501(c)(4) organizations may engage in political activity without endangering their tax-exempt status. As you know, we have received over 150,000 comments on that draft. Although I do not control by myself the rulemaking process, the Treasury and IRS have a longstanding history of working cooperatively in this regard, and I will do my best to ensure that any final regulation is fair to everyone, clear, and easy to administer.

Along with the actions we have taken in response to the inspector general, we continue to make every effort to cooperate with the six ongoing investigations into the 501(c)(4) determinations process, including this committee's investigations. Over the last 18 months, the IRS has devoted significant resources to this committee's investigation and requests for information, as well as those of other congressional committees. More than 250 IRS employees have spent

nearly 100,000 hours working directly on complying with the investigations, at a direct cost of $8 million. We also had to add capacity to our computer systems to make sure we were protecting taxpayer information while processing these materials. We estimate that work cost another $6 million or more.

To date, we have produced more than 690,000 pages of unredacted documents to the House Ways and Means Committee and the Senate Finance Committees, which have Section 6103 authority, which means they can see taxpayer information. We have already produced more than 420,000 pages of redacted documents to this committee and the Senate Permanent Committee and Subcommittee on Investigations. Last week we were pleased to announce that we believe we have completed our productions to the Ways and Means and Finance Committees of all documents we have identified related to the processing and review of applications for tax-exempt status as described in the May 8, 2013 inspector general report.

We are continuing to cooperate with this committee, and I would stress that, we are continuing to cooperate with this committee and others receiving redacted documents, and we will continue redacting and providing documents until that process is complete. As part of that process, it is my understanding that we will be delivering a substantial number of documents to this committee later today as part of the ongoing process. In light of those document productions, I hope that the investigations of the (c)(4) determinations process can be concluded in the very near future.

In the event that this committee would, at some point in the future, decide to investigate other matters pertaining to the (c)(4) area, such as the rulemaking process or the examinations process, the IRS stands ready to cooperate with you.

Mr. Chairman, that concludes my statement. I would be happy to be take your questions.

[Prepared statement of Mr. Koskinen follows:]

WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
ON IRS OPERATIONS
MARCH 26, 2014

I. INTRODUCTION

Chairman Issa, Ranking Member Cummings and Members of the Committee, thank you for the opportunity to appear before you today to give you an overview of IRS operations and also discuss current practices and procedures within the exempt organizations area.

I am honored to serve as IRS Commissioner and to have the opportunity to lead this agency and its dedicated employees, because I believe that the success of the IRS is vital for this country. The agency collects about $2.9 trillion each year, which is more than 90 percent of the revenue collected by the federal government. The activities of the IRS touch virtually every American. This is a challenging time for the agency, as it must continue to fulfill its dual mission of tax compliance and taxpayer service while dealing with substantial budget reductions as well as the management problems that came to light last year.

I want to begin by outlining for you what I believe are the IRS' key challenges and what I will focus on going forward.

In discussing the state of the IRS, no challenge facing our agency is greater than the significant reduction in funding that has occurred over the last several years. I am deeply concerned about the ability of the IRS to continue to fulfill its mission if the agency lacks adequate funding. It is important to note that the IRS continues to operate at near post-sequestration levels, with FY 2014 funding less than one percentage point above FY 2013 levels. Our current level of funding is clearly less than what the agency needs, especially to provide the level of taxpayer services the public has a right to expect.

At the same time, we recognize that there has been a loss of confidence among taxpayers and particularly within Congress in regard to the way we manage operations. One of my responsibilities is to ensure that we are minimizing risks and quickly solving management and operational problems that may arise, so that Congress can be confident that, when we request additional funding, the money will be used wisely. Taxpayers provide the funds we receive and they deserve to be confident that we are careful stewards of those resources.

Despite the limits on our resources, I remain impressed with the professionalism and commitment of our workforce. Our employees have continued, throughout these challenging times, to perform critical work for the IRS and the nation – helping people understand and meet their tax responsibilities while ensuring enforcement of the tax laws.

II. OVERVIEW OF IRS OPERATIONS

The most important activity the IRS undertakes each year is delivering a smooth and successful filing season. The current filing season started strongly and continues to go well. Through March 14, 2014, the IRS has received more than 75.1 million individual income tax returns and issued more than 61.6 million refunds for approximately $179.8 billion. The average dollar refund is about $3,000, and the IRS has directly deposited more than 52.7 million refunds to taxpayers thus far, a 0.7 percent increase over the same period last year.

When all is said and done, we expect to receive a total of approximately150 million individual income tax returns this filing season, which is a stunning number when you step back and think about it, especially given that processing such a high volume of returns is an annual occurrence for this agency. It is important to remember that this doesn't happen automatically or by accident, but occurs as a result of the efforts of our highly experienced and capable workforce.

This filing season, as we do every year, the IRS provides services to taxpayers to help them fulfill their tax obligations. Notably, we have been working to meet taxpayers' increasing demand for self-service and electronic service options. We continue to improve and expand the amount of tax information and web services available to taxpayers through our website, IRS.gov. In Fiscal Year (FY) 2013, taxpayers viewed IRS.gov web pages more than 450 million times. These taxpayers used IRS.gov to get forms and publications, find answers to their tax questions, and check the status of their refunds. Taxpayers used the "Where's My Refund?" electronic tracking tool 132 million times in FY 2012 and 200.5 million times in FY 2013. We expect to see continued strong usage of "Where's My Refund?" this filing season.

For the 2014 filing season we have several new digital applications that will further improve taxpayers' interaction with the IRS. One of these is IRS Direct Pay, which provides taxpayers with a secure, free, quick and easy online option for making tax payments. Another innovation, Get Transcript, is a secure online system that allows taxpayers to view and print a record of their IRS account, also known as a transcript, in a matter of minutes. We are also in the final stages of revamping the IRS Online Payment Agreement, which allows taxpayers to apply for an installment agreement online. We have streamlined the application

process to make it quicker and easier. We expect to launch this improved product later this spring.

As a result of these and other improvements to IRS.gov, and because there were no significant tax law changes enacted in 2013, the volume of phone calls to our toll-free lines is actually down somewhat this filing season. Data available through March 14 show we initially were able to maintain a level of phone service of between 73 and 74 percent, meaning that between 73 and 74 percent of taxpayers who called this filing season got through to the IRS. That is above the average level for last year's filing season of 68.8 percent. We will continue working to maintain as high a level of phone service as possible within our resource limitations, but we remain concerned that as we go through the year, the average level of phone service may drop below 70 percent.

Another area of concern is the amount of time people are having to wait to get in-person help at our Taxpayer Assistance Centers (TACs). We have had reports from field staff of taxpayers lining up outside TACs well before the centers open in the morning to make sure they receive service the same day. We also hear of people waiting 90 minutes or more to be helped once they have arrived inside the TAC and taken a number for service. Expanding our online offerings can only go so far to ameliorate these problems.

Along with taxpayer service, another high priority for the IRS is maintaining a robust tax compliance program and building on the work that has been done to improve compliance in a number of areas. One of the most critical is refund fraud caused by identity theft. The IRS is making substantial progress in combating identity theft through a comprehensive and aggressive strategy that focuses on preventing refund fraud, investigating these crimes and assisting taxpayers victimized by identity thieves. For FY 2013, we launched over 1,400 investigations of refund fraud related to identity theft and obtained over 1,000 indictments and over 400 convictions. Whereas we once took over 300 days to resolve a taxpayer's problem as the victim of identity theft, we now resolve new cases in 120-135 days and are working to improve that performance.

Within our compliance programs, another critical area of focus involves stopping erroneous claims for refundable tax credits, particularly the Earned Income Tax Credit. We have initiated a major review of our activities in this area, including exploring potential partners and other data sources that will help us increase our ability to deter erroneous refund claims. In addition, if Congress enacts the proposal in the Administration's FY 2015 Budget to provide the IRS with greater flexibility to address "correctable errors," we will have additional tools to stop erroneous claims.

Our priorities also include fulfilling our responsibilities to implement tax-related provisions of enacted legislation, including the Foreign Account Tax Compliance Act and the Affordable Care Act (ACA).

On the management side, we are continuing our efforts to address the issues and concerns that arose last year that related to the processing of applications for tax-exempt status. I will discuss these activities in greater detail later in the testimony.

In regard to our workforce, I strongly believe that the success of the IRS depends on the experience, skills and enthusiasm of our employees, and it is important for us to make the most of this very valuable resource. The recent visits I have made to various IRS offices and the meetings I have had with employees reinforce my long-held belief that the people in an organization who know the most about what is going on are the frontline employees. I intend to listen to our employees and make sure they understand that we appreciate their dedication and look forward to benefitting from their insights and suggestions. I have told our employees that I will do everything possible to ensure that they have the leadership, systems and training to support them in their work and allow them to reach their full potential to best serve taxpayers.).

In that regard, I was pleased that we were able to reach an agreement recently with the National Treasury Employees Union involving FY 2013 performance awards for Bargaining Unit (BU) employees. As a result of sequester, the IRS initially had made the tough decision to eliminate performance awards for FY 2013. However, because of negotiations with the NTEU that were already underway when I came on board in December, the IRS eventually agreed to make performance award payouts for FY 2013 of about 1 percent of the BU employee salary base, which is less than the 1.75 percent provided to these employees in previous years. This agreement with NTEU settles a national grievance and unfair labor practice.

Based on historic experience, we expect that about two-thirds of our employees will receive an award for FY 2013, and that the average amount paid to each employee will be approximately $1,200. As a result of this agreement, BU employees will for the first time be on the same schedule as everyone else at the IRS, so that payouts will be made early in the fiscal year for work performed the previous year.

After spending time with many employees in various IRS offices over the last several weeks, I am convinced that this money is best spent on our employees.I firmly believe that this investment in our employees will directly benefit taxpayers and the tax system.

For the IRS to keep making progress in all the areas I have just mentioned, it is critical for us to receive adequate resources. As noted above, the agency continues to be in a very difficult budget environment, with our funding for FY 2014 now set at $11.29 billion. Since FY 2010, IRS appropriations have been cut by more than $850 million. This represents a 7 percent cut in our annual budget

since 2010 while the total population of individual and business filers grew by more than 4 percent over the same time period.

We recognize the need to become more efficient no matter what happens to our funding level. Labor is our largest operating expense and we have been very focused on managing personnel costs. By closely managing hiring and limiting replacement behind attrition, the IRS has reduced the total number of full-time, permanent employees by about 10,000, or more than 11 percent, since 2010.

The IRS has also implemented significant reductions in its non-labor spending. Since 2010, the IRS has reduced annual spending on professional and technical service contracts by $200 million. Additionally, the IRS generated $60 million in annual printing and postage savings by eliminating the printing and mailing of selected tax packages and publications, and by transitioning to paperless employee pay statements.

Finally, in an effort to promote more efficient use of the Federal government's real estate assets and generate savings, in 2012, the IRS announced a sweeping office space and rent reduction initiative that over two years is projected to close 43 smaller IRS offices and consolidate space in many larger facilities. These measures will reduce annual rent costs by more than $40 million and reduce total IRS office space by more than 1.3 million square feet by the end of FY 2014. Thus, overall, we are spending $300 million a year less in these areas.

We will continue our efforts to find savings and efficiencies wherever we can. The IRS will continue to carry out its core responsibilities and work toward preserving the public's faith in the essential fairness and integrity of our tax system. But these budgetary constraints continue to pose very serious challenges to our efforts to enforce the tax laws and provide excellent customer service. Essentially, the federal government is losing billions in revenue collection to achieve budget savings of a few hundred million dollars, since the IRS estimates that, for every $1 invested in the IRS budget, it produces $4 in revenue.

It is vital that we find a solution to our budget problem, and I look forward to working with Congress to do just that. I hope that one of the legacies of my four years as IRS Commissioner will be that we put the agency's funding on a more solid and sustainable footing.

III. EXEMPT ORGANIZATIONS

As noted above, one of my primary goals and responsibilities as IRS Commissioner is to restore whatever public trust has been lost over the course of the last several months as a result of the management problems that came to light last year in regard to the 501(c)(4) application process. Taxpayers need to

be confident that the IRS will treat them fairly, no matter what their background or their affiliations. Public trust is the IRS' most important and valuable asset.

While this remains a major area of focus for the IRS, it is important to keep this issue in perspective in relation to all the other critical work being done by the agency for the nation's taxpayers. The IRS has approximately 800 employees in our Exempt Organizations (EO) division, and only a small subset of that group works on processing applications for tax-exempt status. Meanwhile, there are more than 89,000 IRS employees in offices all across the country performing other essential duties – assisting taxpayers, carrying out compliance activities, and providing support to the organization – all in an effort to ensure that our tax system runs smoothly.

In regard to the determinations process for 501(c)(4) organizations, let me outline for you the improvements we have made, and continue to make, in this area.

First, the IRS as of January 2014 completed action on all nine recommendations contained in the May 2013 report by the Treasury Inspector General for Tax Administration (TIGTA).

The changes we have made in response to the TIGTA recommendations include:

- Establishing a new process for documenting the reasons why applications are chosen for further review;
- Developing new training and workshops on a number of critical issues, including the difference between issue advocacy and political campaign intervention, and the proper way to identify applications that require review of political campaign intervention activities;
- Establishing guidelines for IRS EO specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention; and
- Creating a formal, documented process for EO determinations personnel to request assistance from technical experts.

We have reduced the inventory of section 501(c)(4) applications, including the group of 145 cases in the "priority backlog" – those that were pending for 120 days or more as of May 2013. As of March 13, 2014, 126 of those cases, or 87 percent, have been closed. Of the closed cases, 98 of them were approved, including 43 organizations that took advantage of a temporary self-certification procedure we offered in summer 2013. Of the remaining 28 closed cases, most were closed either because the organization withdrew the application or it failed to respond to our questions. To date, three applications have been formally denied. The 19 cases still open generally fall into one of two categories: either the taxpayer has asked for and received additional time to respond to our questions, or the case is being litigated. None of these 19 organizations opted to accept the self-certification procedure used by 43 organizations to obtain prompt approval of their applications.

In addition, proposed regulations were released in November that are intended to provide clarity in determining the extent to which section 501(c)(4) organizations may engage in political activity without endangering their tax-exempt status. This initial guidance also seeks comments on other aspects of the section 501(c)(4) qualification requirements. These aspects include what proportion of an organization's activities must promote social welfare and how it should be measured. The proposed guidance also seeks comments regarding whether standards similar to those that have been proposed should be adopted to define the political activities that do not further the tax-exempt purposes of other tax-exempt organizations, which would promote consistent definitions across the tax-exempt sector.

It is important to note that TIGTA, the National Taxpayer Advocate and members of Congress all recommended that Treasury and the IRS consider issuing new guidance in this area. Our Notice of Proposed Rulemaking is consistent with those recommendations. I believe it is extremely important to make this area of regulation as clear as possible, not only because it will help guide the IRS in proper enforcement, but because it will also give a better roadmap to applicants and help those that already have section 501(c)(4) status understand the applicable standards and properly administer their organizations.

I note that there have been numerous misleading reports and public statements regarding the proposed regulations, and I believe it is important to clarify what the draft regulation does *not* do:

- First, the draft regulation does not restrict any form of political speech. It relates only to the qualification requirements for a particular type of tax-exempt status.
- Second, the draft regulation does not favor any individual political party or group. It applies to all organizations, regardless of political affiliation.
- Third, the draft regulation does not prevent politically active organizations from qualifying for tax-exempt status. Congress provided a clear mechanism for political groups to organize as tax-exempt organizations – that is, under Internal Revenue Code Section 527. The major difference is that Congress requires section 527 groups to be transparent and to disclose their financial donors. In requiring disclosure, Congress presumably made the judgment that political organizations should be open and transparent in their fundraising.
- Fourth, the draft regulation does not seek to impose greater restrictions on section 501(c)(4) organizations than on other tax-exempt organizations. It expressly seeks comments on whether the proposed rule should apply to other types of tax-exempt organizations.

As to the timeframe for this rulemaking, several more steps must be taken in the formal, legally prescribed process before the regulations can be finalized. Now that the public comment period has ended, Treasury and the IRS can begin to review and consider the comments submitted. This will take some time, given the

extraordinary number of comments, which total more than 150,000 – a new record for an IRS proposed regulation. Given the widespread interest in this rulemaking, we will likely hold a public hearing and, in all likelihood, revise the proposed regulations based on the comments and on the testimony provided at the hearing. If enough significant changes are made to the proposed regulations, it is possible they could be re-proposed, which would further lengthen the rulemaking process.

My hope is that Treasury and the IRS can fashion final regulations that will allow for easier and more predictable tax administration in this area. If we can achieve that goal, I am confident that this will help restore the public trust in the IRS. Although I do not control the policy decisions made in regard to rulemaking, the Treasury and the IRS have a longstanding history of working cooperatively in developing regulations, and I will do my best to ensure that any final regulation is fair, clear and easy to administer.

I believe it is vital that every taxpayer feel confident they will be treated fairly when they interact with the IRS, no matter what organization they belong to, what beliefs they hold, or whom they voted for in the last election. During my term as IRS Commissioner, no responsibility that I have is more important than ensuring we treat all taxpayers fairly and impartially whenever we interact with them.

In describing our activities in regard to the determinations process for tax-exempt status, which was the focus of the Inspector General's report last year, I think it is also important to point out that the IRS has been making and continues to make every effort to be as transparent as possible and cooperate with the six ongoing investigations into the 501(c)(4) application process – four investigations being conducted by Congress, one by the Justice Department and one by the Inspector General.

Over the last eight months the IRS has devoted significant resources to this Committee's investigation and requests for information, as well as those of other Congressional committees – transmitting documents and facilitating interviews in an effort to provide complete facts about the determinations process. More than 250 IRS employees have spent nearly 100,000 hours working directly on complying with the investigations, at a cost of nearly $8 million. In order to properly protect taxpayer information while efficiently processing voluminous materials for production, we had to add capacity to our information technology systems and, therefore, spent an additional $6 million to $8 million to optimize existing systems and ensure a stable infrastructure.

To date we have produced more than 690,000 pages of unredacted documents to the tax-writing committees (which have section 6103 authority) and over 420,000 pages of redacted documents to this Committee and the Senate Permanent Subcommittee on Investigations. I understand that this Committee's staff has interviewed more than 30 current and former IRS employees, who have given more than 60 interviews to congressional staff.

In addition, we have responded to more than 50 different letters from Members of Congress about these issues, answered questions related to the subjects of these investigations at 15 hearings and engaged in hundreds of phone calls and meetings with Congressional staff regarding the production of documents and witnesses.

Last week, we informed this Committee and others that we believe we have completed our production to the Ways and Means and Finance Committees of all documents that we have identified as relating to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report. We are continuing to cooperate with this Committee and other committees receiving redacted documents, and we will continue redacting and providing documents until that process is completed.

In light of these document productions, I hope that the investigations can now be concluded in the very near future. Once we have the resulting reports from these investigations, we can then take further corrective action where necessary. The conclusions and recommendations in these reports will be a critically important step in the process of learning from, addressing and moving beyond any problems or concerns that may be identified in the reports.

In the event that this Committee would, at some point in the future, decide to undertake investigations into other matters pertaining to the 501(c)(4) area, such as the rulemaking process or the examinations process, the IRS stands ready to cooperate with you.

IV. CONCLUSION

Chairman Issa, Ranking Member Cummings and members of the Committee, thank you again for the opportunity to provide you with an overview of IRS operations. Our work in all of the areas I have discussed is critical, and we will continue building on the progress already made. Going forward, our biggest obstacle to further progress in all areas, including taxpayer service, will be our significantly reduced level of funding. As I recently told our employees, it is important for us to remember that the challenges and problems we face won't be solved overnight. But I am confident that, working together, and with the help of Congress, we can meet those challenges and ensure that our agency can continue to deliver for the American taxpayer in the years to come. This concludes my statement, and I would be happy to take your questions.

Chairman ISSA. Thank you. I will recognize myself for a round of questioning.

Did you need to upgrade your computers in order to produce all of Lois Lerner's emails?

Mr. KOSKINEN. I am sorry, could you clarify?

Chairman ISSA. Did you need to upgrade your computers to produce all of Lois Lerner's emails?

Mr. KOSKINEN. We had to upgrade our computers to produce all of the emails and documents.

Chairman ISSA. Commissioner, I appreciate that, and my time is limited. I recently pulled all of my emails off of the House computers. It took one person at House Call a part of, a very small part of a morning to gin it up and produce it. I understand it takes a while to go through them, but, if I am correct, in a matter of hours, not after we subpoenaed, but after we showed interest, your agency had taken all of Lois Lerner's, all of Holly Paz's, all of William Wilkins's, all of Jonathan Davis, former chief of staff, all of, or maybe or maybe not, all of them pertaining to the White House. But the first four take a matter of minutes to do.

So my question is our subpoena, which is not extensive, for those four particularly, asked for all the emails that somebody who has, in the emails we have seen, both Government and non-Government emails in some cases, acted overtly political in her speeches and her activities, including what Mr. Jordan quoted. We asked for all of her emails. Do you have any privilege or any reason that you can't and shouldn't have delivered that months ago?

Mr. KOSKINEN. You seem to have more information about this than I do. We have 90,000 employees and my understanding of the process is that to go through all of those emails, which are millions of emails, to make sure we have not only the outgoing emails, but the incoming emails, is not a matter of a few minutes or a few hours. But, in any event, we have provided for all of those people, or are in the process of providing, all of the information and all of the emails related to the determinations process.

Chairman ISSA. Commissioner, that is not the subpoena, and I want to be very clear. We issued you lawful subpoenas because you didn't cooperate based on letters. Our subpoena says all of Lois Lerner's emails. Is it your position today that you intend to give us those responsive to some key search word or you intend to give us all of Lois Lerner's emails, all of Holly Paz's emails, all of William Wilkins's emails, all of Jonathan Davis's emails?

Mr. KOSKINEN. We are working through the process. We have never said we would not provide those.

Chairman ISSA. Will you provide all of the emails for those four individuals?

Mr. KOSKINEN. We will provide you—we are actually trying to, in an orderly way, conclude the investigation on the determination process, which is what the IG report reported to. We have had over 250 people at various times working on this investigation. We are producing emails. You will get email copies today, redacted, and you will continue to get them. Our hope is that you could concentrate on the determination process. GAO is already, at the congressional request, doing a review, starting a review on the exam-

ination process. As I have said in my letters to you, if you would like——

Chairman ISSA. No, commissioner, you said something and I want to focus on that. You said your hope is that we would focus on the determination process.

Mr. KOSKINEN. I can't tell you what to focus on.

Chairman ISSA. Thank you.

Mr. KOSKINEN. It is up to you to focus on whatever you would like.

Chairman ISSA. We are focusing on those individuals. We have asked for all of their emails in a legal subpoena. My question to you today: Will you commit here, today, to provide all of the emails? Not all the emails you believe are responsive, not all the emails you choose to give, not all the emails that are other than embarrassing; all the emails.

Mr. KOSKINEN. Mr. Chairman, we are prepared to continue to work with your staff. As you can understand, when you say all of the emails, you are going to get hundreds of thousands of pages, irrelevant documents.

Chairman ISSA. No, no. No, I am sorry. Lois Lerner is an individual. We are asking for all of her emails. She obviously had a limited amount of emails. Quite frankly, we asked for all the emails. We believe that the emails, for example, where she talked about the outcome of the Senate races maintaining Democratic control because of Indiana and other States, the outcome of the Maryland pro-gay initiative, all of those are responsive to who she was and why she did what she did. Therefore, we have asked for, in the case of these individuals, all of their emails. Holly Paz, for example, said she didn't know what Citizens United was, while Lois Lerner made it clear that she was trying to find a way to enforce around Citizens United at the IRS. And we have already seen the documents for that.

Will you today commit to deliver all of the emails, not all that you think are responsive, all the four squares that any lawyer can read of the subpoena says we are asking for, which is all the emails for Lois Lerner, all the emails for Holly Paz, all the emails for William Wilkins, and all the emails for Jonathan Davis? Now, these are all of the ins and outs from their mailboxes. It is not difficult. You already have pulled them. There is no question at all; it is a question of will you deliver them.

Mr. KOSKINEN. Mr. Chairman, we are happy to continue to work with you and we will advise you—I am not aware that we pulled them all, but to the extent we have, they all have to be redacted, and we will work with you and advise you as to what the volume is. The reason the search terms were selected, they were selected by committee staff here and in the other investigations so that——

Chairman ISSA. No, your people—and my time has expired. You previously selected search terms, asked us to give priorities. That is all fine.

Mr. KOSKINEN. That is not true.

Chairman ISSA. The subpoena that was personally delivered to you, which we expect you to comply with or potentially be held in contempt, those emails were very specific based on individuals who have become specific focus on why they did what they did and what

they have said, whether it is true or not, is critical to this committee's discovery of intent. Will you commit to deliver all of those emails, redacted only for 6103?

Mr. KOSKINEN. Yes. As I said, we have never said we wouldn't produce those emails. The search terms, just to clear the record, were not selected by the IRS, they were in fact selected in cooperation with various congressional investigations on the House and Senate side to try to limit the volume of material you are going to get. We will be happy to provide you volumes of material.

Chairman ISSA. Okay, my time has expired, but let me make it clear in closing. It does not take any search terms to respond to all the emails of Lois Lerner.

Mr. KOSKINEN. You are going to get a lot of emails, and, as noted earlier, you may want to have this investigation go on forever. We have provided you all of the emails relevant to the IG report. We are providing you Lois Lerner's emails with regard to issues that you have raised about the examination process, about the appeals process, and about the regulatory process.

Chairman ISSA. I appreciate that.

The gentleman from Maryland.

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

I think the chairman has asked some very good questions, and I want to give you an opportunity to respond. So when you all are going through these emails, the last part of what you said is very significant. You said something about they have to be relevant. I mean, where are you getting all of that from? You remember what you just said, the last part of it? It sounded like there were certain things that were used, terms that were used to decide what you think is responsive to the subpoena. Now, can you explain that to us?

Mr. KOSKINEN. Yes.

Mr. CUMMINGS. In other words, if she had a personal email and she was talking about shopping or something, whatever, are you all separating? Is that part of the process? I don't understand.

Mr. KOSKINEN. Part of the process——

Mr. CUMMINGS. You said something about relevance. Can you explain that?

Mr. KOSKINEN. Part of the process when this started, because there are literally millions of emails, was to take a look at, in agreement with the staffs of the investigating committees, take a look at 83, ultimately it was originally a smaller number, the IRS added to the custodians as it were, that is, the people sending and receiving emails, there are 83 of those that we agreed to look at. The terms in terms of what would be relevant were determined by congressional committees, as well as the IRS, to try to limit the volume. As I say, limiting the volume, you still have 700,000 pages of relevant documents. To the extent that somebody wants to look at hundreds of thousands more pages of what the search terms defined by the Congress would be termed irrelevant, at some point we are happy to provide those. We will provide those in the orderly course.

But I will tell you that our experience is it is going to be an overwhelming volume of materials. They will take us some significant time to redact taxpayer information, a significant part of which will

have nothing to do with this investigation. But if that is the way the committee wants to go, we will go that way. But the other committees, and staff of this committee in the early determinations, decided that that would be a fruitless task of overwhelming the investigators, not us, overwhelming the investigators with thousands of pages of irrelevant documents. Therefore, they suggested with us and selected with us search terms of what would be relevant: Tea Party, examinations, whatever else they picked. There are a whole series of those terms designed to limit the volume of materials.

We still have provided a lot of duplicative and probably irrelevant materials within those search terms, but we have not determined anything within those search terms. We have said if those are the terms that will help you winnow it down, we are happy to work with you. But if the committee wants to get simply large volumes of personal emails from a lot of different people, we will go through again, making sure that we redact those appropriately. As I say, we have provided unredacted copies of all of this in terms of the relevance determined by the committees to the other committees, and we provided all of the redacted information available now and we are continue to redact it. It cannot be done overnight.

Mr. CUMMINGS. Thank you very much.

I want to go to the recommendations of the inspector general, because this is Oversight and Government Reform, and I think the committee ought to take some credit for what you have said that there were nine recommendations and apparently you all have been able to address all nine of them. We don't hear that quite often in this committee, by the way. So the inspector general's report, which was issued in May of last year, made nine recommendations. I have a chart here that lists each one of these nine recommendations from the inspector general. The title of the chart is Exempt Organizations' Recommended Actions Ending February 24, 2014.

Mr. Chairman, I ask unanimous consent that this chart from the IRS be entered into the record.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. Commissioner, in addition to listing each of the nine recommendations, this chart describes in detail the status of each recommendation. It describes the work that has taken place over the last 10 months, as well as the specific reforms that were implemented, is that correct? Are you familiar with the chart?

Mr. KOSKINEN. Yes.

Mr. CUMMINGS. If I am reading this chart correctly, it appears that all nine of the inspector general's recommendations have been fulfilled. Is that right?

Mr. KOSKINEN. That is correct.

Mr. CUMMINGS. Let's look more closely at the status of these recommendations.

The inspector general's first several recommendations begin on page 10 of his report. They propose that the IRS change its procedures for how screeners in Cincinnati classify applications. All of these recommendations are now marked as completed.

Commissioner, can you explain what new guidance the IRS has provided to screeners in Cincinnati about how they should classify and process these applications in an appropriate way?

Mr. KOSKINEN. Yes. The criteria for exemption under (c)(4) are complicated because it is a "facts and circumstance" determination. The guidance and the new training has provided more guidance to those reviewing as to what is appropriate political advocacy and what is direct political campaign intervention. It is the campaign intervention that if it becomes your primary activity, you, in fact, are not eligible to be a 501(c)(4). There obviously are complicated terms. We provided better guidance and we have also provided improved and new supervision for any determination that is going to be delayed. We also have provided clear lines of authority so if anyone needs advice or additional assistance they can get that automatically and easily.

Mr. CUMMINGS. On page 17 of the inspector general's report he lists another recommendation: "Provide oversight to ensure that potential political cases, some of which have been in process for three years, are approved or denied expeditiously." In response, the IRS chart says that this "As of February 21st, 2014, 112 cases in the original backlog, 85 percent, have been closed."

Commissioner, this is good news, and I understand from your testimony today that this number has gone even higher, to 87 percent. Can you please explain how this expedited review process worked? I think I have one minute left on my time.

Mr. KOSKINEN. The way that worked is Interim Commissioner Danny Werfel, who I think did a great job as the interim, established a process for expedited review, and any applicant who would simply certify that they were not going to spend more than 40 percent of their time on political activity could be approved immediately. And that streamlined process continues for new applicants. Forty-five or so of the existing at that time pending applicants filed that paper and were immediately reviewed and approved. Of those that are still pending, they have decided not to, in fact, sign the affidavit that they would not spend more than 40 percent of their time on political activity.

Mr. CUMMINGS. My final question, I understand that the IRS has now completed all of the inspector general's recommendations, but, going forward, what additional plans do you have to ensure that these management problems have been fully addressed?

Mr. KOSKINEN. We have agreed with the inspector general that before any election we will conduct additional training sessions and try to sensitize all of the people reviewing applications to make sure that we handle them appropriately, no matter what the political background of any of the organizations; and this would apply to people at one end of the political spectrum or the other. That will be done before every election as we go forward.

Chairman ISSA. Thank you.

Before I call another member, I want to make it clear staff has informed me, for the record, that early on with the IRS they did mutually agree to search terms. That was before the subpoenas were issued. There was never an assurance that those search terms were being used, and to this day we don't know if those search terms were actually used, so one of the challenges is that that was abandoned in favor of subpoenas because of what they believed to be noncompliance a number of months in. But there was an initial attempt to work cooperatively but, as I said, there was a question

of whether or not those search terms ever actually got used. So thank you.

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

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

We have had an opportunity to interact in the past and always appreciate your candor. At the very heart of this matter is a basic fact that IRS appears to have been used prior to the election, the presidential election, in a concerted effort to close down or keep at bay conservative organizations by targeting them. You are aware of that, sir?

Mr. KOSKINEN. I am aware, as was noted earlier, that the inspector general found inappropriate criteria were used to select organizations for further review. He did not refer to it as targeting.

Mr. MICA. But you heard one of the principal IRS officials who was involved with Lois Lerner, who came to the chair where you are sitting now and took the Fifth Amendment. She is at the heart of most of this activity. It was pointed out by Mr. Jordan that she concocted it was almost a Hollywood production before the inspector general, May 14th, came out with his report to blame the people in Cincinnati, some rogue IRS employees who gathered around the water cooler and concocted a scheme to again target. And I think she laid that out, is that not correct?

I mean, historically, you know that as a fact. She appeared before the American Bar Association before the report came out and made those statements, correct?

Mr. KOSKINEN. She did make those statements.

Mr. MICA. Okay.

Mr. KOSKINEN. I would note that because she took the Fifth, as I said in a letter to the chairman——

Mr. MICA. Again, this committee, it is nice to be here for a while because you see how people try to throw people under the bus. Whether it is the chairman, Mr. Cummings said the case is closed. We started our investigation on June 9th. In May we started. June 9th Mr. Cummings, the ranking member, said it appears the case is closed. And then June 9th—well, he said I see the case is solved. If it were me, I would wrap this case up and move on, to be frank. So he tries to throw the case under the bus. He tried to throw the chairman under the bus. He sent a letter just before that: Your actions over the past three years do not reflect a responsible bipartisan approach to investigations.

Now, he has a constitutional and a House responsibility for investigations and oversight. You have a responsibility to provide us with information. We have asked you specifically for about a half a dozen individuals' emails, including Lois Lerner, is that correct?

Mr. KOSKINEN. Yes.

Mr. MICA. Okay. And you said, you just testified to us probably most of—and you said you gave 640,000 to the Ways and Means and 420 to our committee. But you also said here, and we can play the tape back, probably most irrelevant material, right?

Mr. KOSKINEN. Most irrelevant material.

Mr. MICA. Probably mostly irrelevant material were your words.

Mr. KOSKINEN. Of the material we provided.

Mr. MICA. At great expense. IRS and most bureaucracies have no problem spending lots of money doing things we don't need. We

asked you very specifically for the emails from six individuals, a half a dozen individuals, and you have not complied, including Lois Lerner. Is that correct?

Mr. KOSKINEN. My point was what you are going to get is mostly irrelevant material.

Mr. MICA. I know. And we aren't interested in it. We are interested specifically in Lois Lerner and others to find out who did what. Are you aware of Cindy Thomas's statements? She was the chief person out in Cincinnati, and she said, May 10th, with a copy to Lois Lerner, we have a copy of that——

Chairman ISSA. To Lois Lerner with a copy to Holly Paz.

Mr. MICA. To Lois Lerner with a copy to Holly Paz. And she said Cincinnati wasn't publicly thrown under the bus; instead, it was hit by a convoy of Mack trucks. Are you aware of her statement as to what took place?

Mr. KOSKINEN. I am. I am aware of the fact that you already have a significant number of Lois Lerner emails, obviously, and, in fact, we have been trying to——

Mr. MICA. But we don't have what we want. And, again, it is a game of you providing us with probably huge amounts of irrelevant material.

Mr. KOSKINEN. That is what you are going to get.

Mr. MICA. And we aren't interested in personal. You could give us a billion documents. That is not what we asked. We asked specifically——

Mr. KOSKINEN. Right. And what you are going to get—and I would like to——

Chairman ISSA. The gentleman's time has expired, but you may answer.

Mr. KOSKINEN. Can I answer his question some time?

Chairman ISSA. Of course. That is what I said, the gentleman's time has expired, but you may answer.

Mr. KOSKINEN. Thank you. First of all, your earlier comment about your staff being concerned about whether the search terms were being followed is the first time I have heard that. We have followed those search terms. No other committee, none of the other five investigations going on have raised any question about whether we have in fact followed on those search terms. So if your staff has that concern, I would appreciate it if they would let us know, because none of the other five investigations and none of the other five staffs have raised that issue; and, as far as I know, we have abided by those search terms and provided everything that the committee has requested pursuant to those search terms and with regard to the determination process.

With regard to Lois Lerner, as I said in my letter to you, because you have not been able to cross-examine her because she is not an IRS employee, the first priority we have, we have already been providing you the emails. In fact, your staff report cited a number of them that you have had, her emails with regard to the determination process. You have been able to cross-examine over 30 witnesses about anything you wanted to talk to them about, but because you could not talk to Lois, we are providing you, and they have to be redacted, we are going to provide you Lois Lerner emails with regard to not only the ones you have about determinations,

but Lois Lerner emails with regard to the examination process, the appeals process, and, to the extent there are any, with regard to the development of the proposed regulations that were issued.

Those were the issues that have been raised, concerns about what her involvement was. We have committed that we will provide those to you. We have not said we are not going to provide you the rest of them. We have prioritized trying to complete document production so that we would be able to get you the information that we thought would be appropriate for the determination process. As I said in my letter to you, if you now want to actually run an investigation of the other areas with those employees or others, we are prepared to work with you. As I say, if you just want all the documents, once redacted, no matter what they are, we can give those to you, but I can guarantee you that you are going to go under and it is not going to further the investigative process. But if that is way you would like to do it, that will be our next priority.

Mr. MICA. Mr. Chairman, a quick unanimous request. I would like this email from Cindy Thomas to appear in the record at this point in the proceedings, and also a copy of The Washington Post June 9th, Case is Closed article to appear in the record.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. Mr. Chairman?

Chairman ISSA. Yes.

Mr. CUMMINGS. Unanimous request just for a minute.

Chairman ISSA. The gentleman is recognized.

Mr. CUMMINGS. He just said something, Mr. Chairman, and I want to make sure it is clear. It sounds like, Mr. Chairman, that he has an impression of what is being subpoenaed using certain lists and we have an opinion, and they don't coincide. Is that accurate?

Mr. KOSKINEN. No. I think what has happened is the subpoena that was delivered to me in February said it wanted all the emails for a set of people. What we have been trying to do is all of those people, you have emails from those people with regard to the determination process pursuant to the search terms that we have been working with. The subpoena now says we would like them all for anything. We have now finally completed, although we are still working on the redaction, all of the production of documents regarding the determination process, which is what the IG report focused on. We have said that that is the first priority we have had. We have never said we are not going to provide you the rest of the documents, and in fact, trying to figure out the most efficient way to do it, we have said we will provide you Lois Lerner emails on everything with regard to examinations, appeals, and the regulatory process as it goes forward.

And I have said when we are done with all of that, if you want to actually get emails, if you want them all, we will give them all to you, but if you want to actually take a more focused investigation on the regulatory process or otherwise, we are happy to work with you to figure how that goes. But in light of this chairman's view, as soon as we can finish the rest of these redactions and go forward, we will provide you volumes of emails, which many of them are going to be irrelevant, which is what I said in Congress-

man Mica's comment. Not that the materials you have are irrelevant; the ones you are likely to get in volume are irrelevant. And if you want it without any selective process, we will redact them. There are going to be thousands of pages and we are happy to provide them to you, but it is not going to expedite the conclusion of this investigation and, as I say, a significant part of it is going to be irrelevant.

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

Chairman ISSA. For the gentleman, because it is a good question, one of the reasons that we requested all is that, back when we were in the minority, we began digitally evaluating this kind of information, and when we have all, and the ones that the commissioner is talking about, if they are irrelevant, then, quite frankly, there is no redaction because if they don't have 6103, there is no redaction appropriate. If that is the case, we do search terms and we look at only what we need to look at. But we can constantly search and research to try to get to the bottom of it.

As you can imagine, we would not have found Lois Lerner talking to her daughter about overtly partisan political activity if we had only looked for determination. It wasn't relative to determination, but it was relative to possible motivation. The IG, as you know, was not aware of the speech at Duke University in which it was clear that Lois Lerner was saying in pretty plain terms that she was going to act on what the FEC couldn't act on. So this is part of the investigation; it is the reason we have asked for all. And, quite frankly, it takes a lot less time to just go through and view these things and say, oh, that has no 6103, and you just start sending it. And that is what we had hoped for when we issued the subpoenas for all, because these are people, as you know, who have said things before our committee, or failed to say things in some cases, in which they become what law enforcement might call a person of interest; and Lois Lerner and Holly Paz and so on, and the other individuals, are people of interest because of their possible role.

Mr. CUMMINGS. So, in other words, any email with anybody, talking to their daughter, if there is any relevance whatsoever, if they say I just don't like Democrats, I mean, in any way you could connect that with an investigation, and they are talking to their daughter.

Chairman ISSA. I appreciate that, but remember——

Mr. CUMMINGS. I am just trying to make sure I understand.

Chairman ISSA. I just want to make sure of the context. These are Government emails from a Government account, back in and out. This is the use of IRS assets to communicate. We would presume that the majority of it is not shopping online. As a matter of fact, in the case of Lois Lerner, she did her shopping online in a Hotmail account, which she also did 6103 material on. So, in a normal case this would not be something you would look through. And the Department of Justice, if they are actually doing the investigation they claim to, we have an obligation to look and figure out whether we can opt out these communications, which in this case were always the product of the Government, always available and, as you know, it is a given that communication on Government computers is in fact open to Government review.

Mr. CUMMINGS. I just wanted to make sure the public understands that.

Chairman ISSA. Thank you.

Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman. I would say to the ranking member it sounds like his understanding is correct. And I would hope we would do the same with, oh, I don't know, the IG, Mr. Russell George. I would like to see all of his overt partisan political emails. I would like to see if he has emailed relatives, if he has emailed staff members of this committee. I think that would be relevant to putting in context his findings and to determining whether he, in fact, is an objective source of information and analysis. But that is a different matter.

Mr. Koskinen, as I read the Declaration of Independence, it is written largely initially, the first draft, by Thomas Jefferson, but it was subject to an editorial committee. He didn't like that; he thought his words were pretty good. Among those words were Americans were entitled to life, liberty. Now, here the editorial committee did not act. He said and the pursuit of happiness. But it sounds like some people would substitute for that an unfettered and unquestioned access to 501(c)(3) and 501(c)(4) tax exempt status. Do you read that in the Declaration of Independence, Mr. Commissioner?

Mr. KOSKINEN. I never thought of it that way, but I don't read it that way, no.

Mr. CONNOLLY. No, it doesn't read that way. So it is not really an explicit entitlement or right; it is a process you have to qualify for, is that correct?

Mr. KOSKINEN. Correct.

Mr. CONNOLLY. There are many different ways of trying to figure out how somebody qualifies and whether they qualify, is that correct?

Mr. KOSKINEN. Yes.

Mr. CONNOLLY. And, by and large, historically, IRS has had a standard operating procedure for determining that status, either 501(c)(3) or 501(c)(4) or other status, is that correct?

Mr. KOSKINEN. Correct.

Mr. CONNOLLY. In this particular case, what we are all excited about is that a filter was created in a regional office that seemed to target people for their political views, both right and left, but apparently mostly right, is that right?

Mr. KOSKINEN. As noted, the inappropriate criteria used primarily the name of the organization to select them for further review.

Mr. CONNOLLY. Now, one of the problems we have here is an adverb. The word used in the statute is exclusively; a social welfare exclusively devoted to that purpose, is that correct?

Mr. KOSKINEN. That is correct.

Mr. CONNOLLY. And yet, despite the fact that Congress wrote that adverb into the law, IRS took upon itself, long before your tenure, to actually interpret that meaning primarily, is that correct?

Mr. KOSKINEN. That is correct.

Mr. CONNOLLY. Now, if I said to my spouse, honey, we have an exclusive relationship, and I mean by that 49 percent, I would

probably have problems in my relationship. To her and to me exclusively means just you all the time, 100 percent. So how in the world did we get to a situation where the IRS, on its own, outside of statutory authority, decided to interpret this as primarily? Because, to me, that is part of the problem. Exclusively ought to mean exclusively. And if Congress wants to change that, we should change the law. But I don't remember Congress investing IRS with the authority to actually decide to interpret it radically different, not just kind of a little fudge factor here. This is radically different. And it seems to me therein is the problem, because clearly some of these organizations are not exclusively social welfare agents, I mean, clearly, they are largely designed to be political, partisanly political, that concern the chairman has, overt partisan communication, and I share that concern. And all too many of these organizations hide under the umbrella of social welfare when in fact what they really mean is partisan political activity. Can you address this dilemma for me, how the IRS could possibly take the word exclusively and reinterpret it to mean mostly, sometimes, just shy of 50 percent, primarily?

Mr. KOSKINEN. Needless to say, I wasn't around in 1959, when that regulation was given to the IRS.

Mr. CONNOLLY. Which is stipulated.

Mr. KOSKINEN. One of the reasons, in response to the inspector general's recommendation that clarification be provided, that the draft regulations were issued for comment was to in fact solicit discussions about what the definition of political activity ought to be, how much of it ought to be allowed before you jeopardize your tax exemption or are ineligible for tax exemption, and to which organizations in the 501(c) complex should that be applied. The 150,000 comments address all three of those issues. The proposed draft was designed to in fact review and revisit with the public and with comments and with Congress exactly that issue, what should exclusively really mean.

Mr. CONNOLLY. Thank you. My time is up.

Mr. Chairman, I certainly hope, after all the storm and drum of this issue, we actually might come together in a bipartisan basis.

Chairman ISSA. I certainly hope so, and I hope the gentleman remembers that 501(c)(4)s are not tax exempt to the contributor, so they really are no different than any corporation that spends all of its money doing anything. But it is an interesting question of what social welfare was in 1959 and whether promoting a reduction in smoking or something else would have been considered political prior to the creation of the Federal Election Commission.

Mr. CONNOLLY. And you know, Mr. Chairman, if I may, to your point, we may even decide, frankly, look, let's just have a new category. You want to be political and you want to hide who your donors are, hopefully you don't, there is this category, so that we are not playing, frankly, with words and, in the sense, all being complicit in this disingenuous exercise. So I take the chairman's point and would add to it. Thank you.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Ohio, Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Koskinen, what part of all don't you and the IRS understand? You have said like ten times now if you give us all Lois Lerner's emails, we are going to get irrelevant information. Frankly, with all due respect, we don't care what you think is irrelevant. The committee has asked for every single—I asked for it clear back in August from Danny Werfel and he told me the same thing you did; we are trying, we are hoping, we are going to get there someday, sometime. We want them all. Because if you limit it to what you said earlier, to determinations, appeals, exams, and rulemaking, just those categories, what if there is an email to Lois Lerner from the White House that says, Hey, Lois, keep up the great work, we appreciate what you are doing? What if there is that kind of email? That wouldn't fit under the categories and the search terms that you are talking about. When we say all, we want every single email in the time period in the subpoena that was sent to you, plain and simple.

Now, let me ask you this. You agree with the TIGTA audit report that came out, you agree there were problems and you are trying to comply with the TIGTA audit report, is that accurate, Mr. Koskinen?

Mr. KOSKINEN. That is correct.

Mr. JORDAN. All right, I would like to put up slide one.

[Slide.]

Mr. JORDAN. These are inappropriate criteria and questions that were sent out to Tea Party groups that TIGTA identified as going too far, inappropriate things asked: issues that are important to the organization, things asked that the organization indicate positions regarding such issues, type of conversations you have in your meetings. Inappropriate questions you concede that are highlighted there.

Second slide.

[Slide.]

Mr. JORDAN. This is Judith Kendall, email that she sent to Holly Paz. Judith Kendall, Senior Technical Advisor to Lois Lerner. Same list, talking about how these were inappropriate questions that were asked of Tea Party groups.

Now we move to the proposed rule that has got so much controversy. I think approximately 150,000 comments, more comments than any other rule that the IRS has ever proposed, is that accurate, Mr. Koskinen?

Mr. KOSKINEN. Actually, if you take all the comments for the last seven years and double them, and you get to that number.

Mr. JORDAN. Yes. And is it fair to say the vast majority of those comments are negative?

Mr. KOSKINEN. I have no idea; they are being analyzed right now.

Mr. JORDAN. Based on what we have heard, based on the hearing we had just a few weeks ago, where we had the ACLU and the Tea Party all saying this thing stinks and we shouldn't have it, vast majority of those, I am going to hazard a guess, are negative comments.

If we could go to the third slide now.

[Slide.]

Mr. JORDAN. Now, this is a newsletter that came out just three weeks ago. IRS Exempt Organization Newsletter, March 4, 2014. Are you familiar with this newsletter that goes out from the Exempt Organizations Division of the Internal Revenue Service?

Mr. KOSKINEN. I do not see those.

Mr. JORDAN. Okay. Well, this is put out by the Exempt Organizations Division, same division where all these problems took place over the last three years. It came out, again, just five days after the comment period on the proposed rule ended at the end of February, and I want to just highlight a few of the questions that are asked. So there is a category that says what if the IRS needs more information about your (c)(4) application? New sample questions. So if we could put them up side-by-side.

Now, the first slide are the targeted questions that TIGTA said were inappropriate and that you agree are inappropriate, Judith Kendall agreed are inappropriate. Those are those questions. And now, just five days after the proposed rule comment period ends, you issue a newsletter from the Exempt Organizations Division highlighting the new questions you are going to ask, and I just want to look how similar the two questions are.

Let's just take the second category, whether an officer or director, etcetera, has run or will run for public office. The new question says this: Do you support a candidate for public office who is one of your founders, officers, or board members? It is basically the same. This reminds me of when I was in grade school and the teachers told us you shouldn't plagiarize, so you change a few words and basically plagiarize. This is the same thing.

So here is what I don't understand. If you are trying to comply with the TIGTA report, if the new (c)(4) rule is a way to deal with what the audit said and not as what I believe is a continuation of the project Lois Lerner started, why are you asking the same darn questions?

Mr. KOSKINEN. As I noted, I haven't seen that and can't read it on the chart. I would be delighted to sit down and go over all of those questions with you and with the exempt organizations. All of the TIGTA report didn't blanket say you should never ask questions about this. Thank you for the chart.

Mr. JORDAN. Let me read from your testimony, Mr. Koskinen. Page 7 of your testimony that you submitted to the committee yesterday, talking about our notice of proposed rulemaking is consistent with the TIGTA recommendations. You said this in your testimony you gave the committee.

Mr. KOSKINEN. Well, okay, I am just——

Mr. JORDAN. And yet consistent with TIGTA recommendations. TIGTA said these kind of questions are inappropriate, and now, just three weeks ago, Exempt Organizations Division issues a newsletter where you are asking almost verbatim, a few word changes so you don't look just like you are totally plagiarizing or doing the exact same question, almost verbatim——

Mr. KOSKINEN. I don't think they are exact——

Mr. JORDAN.—the same darn questions.

Mr. KOSKINEN. I don't think they are—the first question says, Provide a list of all issues that are important to your organization

and indicate your position regarding those. The new question says, Describe how you prepare voter guides.

Mr. JORDAN. What do you think voter guides are about? They are about issues. They are about the issues important to organizations. It is the same thing.

Mr. KOSKINEN. I think——

Mr. JORDAN. Have you ever seen a voter guide? I have. I would be able to answer those questions.

Mr. KOSKINEN. I would submit and I appreciate——

Mr. JORDAN. As a candidate, I have answered those.

Mr. KOSKINEN. I would submit and I appreciate having a copy of this, that if I look at the first question and the revision, the revision is very different than the——

Mr. JORDAN. Very different.

Mr. KOSKINEN. Very different.

Mr. JORDAN. Oh, yeah, right.

Mr. KOSKINEN. Look at the third question: What type of conversations and discussions did your members and participants have during the activity? That is now, Describe how you determine what questions to ask of candidates. It doesn't say anything about what discussions or conversations your member had, including the scope of the——

Mr. JORDAN. You think they don't discuss it?

Mr. KOSKINEN. It doesn't ask for your conversation. It doesn't say what your participants are.

Mr. JORDAN. Okay, you defend that.

Mr. KOSKINEN. It specifically says——

Mr. JORDAN. You defend that and you defend the statement that you are complying with the proposed rulemaking is consistent with the TIGTA recommendations. I don't think it is.

Mr. KOSKINEN. That is fine.

Mr. JORDAN. What I know is the same day this comes out, you send me a letter, our primary goal, same day, March 4, 2014, letter to me, you responded to a letter we had sent to you; one of my primary goals and responsibilities is to restore whatever public trust has been lost over the course of the last several months, and yet you are asking almost, almost the same questions that your people said were inappropriate to ask Tea Party groups when all the targeting took place. And now, as a response to the new (c)(4) rule, oh, we have changed the questions a little bit.

Mr. KOSKINEN. I think if you ask an organization independently which are the questions, have there been changes, I think that these are new questions; they do not probe the discussions you had, the conversations you had, they didn't disclose your position on the issues. These are in fact new questions. Now, we may have a difference——

Mr. JORDAN. I think we disagree.

Mr. KOSKINEN. That is fine.

Mr. JORDAN. And I think the vast majority of people who were harassed over the last three years would agree with my position.

Mr. Chairman I yield back.

Mr. KOSKINEN. I am happy to have this in the record and let the public decide whether or not we have responded appropriately.

Mr. JORDAN. Oh, let me ask you one other question.

Chairman ISSA. The gentleman's time has expired. I apologize.

We now go to the gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Commissioner, Chairman Issa wrote a letter to you yesterday, complaining that you were guilty of a failure to comply with the committee's demands for documents. He also said, "Your continued noncompliance with these requests also contravenes your pledge to fully cooperate with congressional investigations." So even though you have already produced more than 400,000 pages to the committee, even though you have 250 employees working on producing more, he accuses you of violating your pledge and frustrating congressional oversight. I think this is shameful and it is even more so when you actually look at the unbelievably broad demands the chairman has made.

Lets look at just one of these demands. Number 8 in Mr. Issa's letter, it demands the following: "All documents referring or relating to the evaluation of tax-exempt applications or the examination of tax-exempt organizations from January 1, 2009 to August 2nd, 2013." Let me read that again: All documents from 2009 to 2013, nearly four years, referring or relating in any way to tax-exempt applications.

Mr. Commissioner, how broad is this request?

Mr. KOSKINEN. That request will get you not thousands, but probably millions of documents. The chairman has been focusing on emails, but you are exactly right, the full sweep of the subpoena will mean that we will be at this for months, if not years, collecting that information, redacting it, and then providing it.

Mr. CLAY. Let me ask you this. The evaluation of tax-exempt applications is the function of the Exempt Organizations Division of the IRS. It is my understanding that about 800 people work in the Division, is that correct?

Mr. KOSKINEN. That is correct.

Mr. CLAY. So the chairman has gone on national television and threatening you with contempt unless the IRS produces every document produced by 800 people over nearly a four-year time period. Mr. Commissioner, even if you wanted to comply with this demand, how long would you estimate that it would take the IRS to complete this document production?

Mr. KOSKINEN. We have already spent 10 months, $15 million, and add 100,000 hours and 250 people working to produce the documents that we in fact agreed with the committee would be relevant. This is a much broader, more sweeping request to all of those documents, and I have continued to press our people, because I am anxious to get documents to the committees and investigators as fast as possible, how long it would take even to complete the redaction, and I cannot get a clear answer because it is a very complicated, difficult process. My guess is there is no way we would get you this information totally before the end of the year.

Mr. CLAY. Wow. To me, this shows how our committee has moved from government oversight to government abuse. These ridiculous demands are not only over-broad and irrelevant, but they will force the IRS to continue wasting its precious staff and financial resources.

This is about being reasonable and demanding documents within reason, and I don't get that sense from this committee that we are going in that direction. I think we are going in the opposite direction. To me, this is a partisan witch hunt which has already cost the IRS more than $14 million, and compliance with these outrageous requests will only cause that number to continue to grow, and it certainly doesn't reflect good oversight, Mr. Chairman, and I am really appalled that this investigation has gone to this level.

Chairman ISSA. Would the gentleman yield?

Mr. CLAY. I certainly do.

Chairman ISSA. Do you feel that asking for all of Lois Lerner's emails so that we can search through to see whether or not she inappropriately was in fact actively doing more than we already know? Do you think that is inappropriate?

Mr. CLAY. I don't have a problem asking for Lois Lerner's email, but I do have an issue with asking for 800 people's emails. I mean, are all 800 connected to this investigation?

Chairman ISSA. Well, like I say, we haven't received all of Lois Lerner's emails, which is one of the things we asked for.

Mr. CLAY. Can we be more specific about what we are looking for for Lois Lerner, from her emails?

Chairman ISSA. No, we cannot. The gentleman's time has expired.

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

Mr. CHAFFETZ. I thank the chairman.

Commissioner, thank you for being here. I have a copy of the subpoena that you were issued. You did receive this subpoena, correct?

Mr. KOSKINEN. Yes.

Mr. CHAFFETZ. The date on this is February 14th.

Mr. KOSKINEN. Correct.

Mr. CHAFFETZ. You understand what it means? Is there any question on what it means?

Mr. KOSKINEN. I don't think so.

Mr. CHAFFETZ. Do you believe it was duly issued by the House of Representatives?

Mr. KOSKINEN. I am assuming that. I have no independent basis for determining that.

Mr. CHAFFETZ. The schedule, which is just eight items, all communications sent or received by Lois Lerner from January 1st, 2009 to August 2nd, 2013. Is there any ambiguity in your mind? Do you have any doubt as to what that means?

Mr. KOSKINEN. No. If you want to go through all eight, I have no doubt what any of them mean. As noted, some of them mean you are going to take months or years to get the information and it is going to be voluminous. But there is no doubt about it.

Mr. CHAFFETZ. So you have no ambiguity about what it means. You believe it has been a duly issued subpoena.

Mr. KOSKINEN. Right.

Mr. CHAFFETZ. And you have not complied with it, is that correct?

Mr. KOSKINEN. There is physically no way anyone could have complied between February 14th and now. We have never said we won't comply. We have said, in fact, we are——

Mr. CHAFFETZ. Are you going to comply or not?

Mr. KOSKINEN. We are complying. And I will tell you to comply with this——

Mr. CHAFFETZ. No, no, no.

Mr. KOSKINEN.—you will be next year, you will be next year still getting documents.

Mr. CHAFFETZ. Commissioner, what email system do you use there at the IRS?

Mr. KOSKINEN. What email system do we use?

Mr. CHAFFETZ. Yes. It is Outlook?

Mr. KOSKINEN. Yes. We have, actually, Microsoft. At least I have Microsoft Office.

Mr. CHAFFETZ. So you have Microsoft. So you go on there and you want to find all the items you sent under your name. How long with that take?

Mr. KOSKINEN. Well, it would take a while because they are not all on my computer, they are all stored somewhere.

Mr. CHAFFETZ. Okay. But your IT specialists, how long do you think it takes, of the 90-plus thousand employees there at the IRS, how long would it take to find all the emails that included her email address?

Mr. KOSKINEN. Just Lois Lerner's alone?

Mr. CHAFFETZ. Just Lois Lerner. Just Lois Lerner.

Mr. KOSKINEN. It would take a while. We would have to——

Mr. CHAFFETZ. Like how long?

Mr. KOSKINEN. Well, there are millions of emails.

Mr. CHAFFETZ. Minutes?

Mr. KOSKINEN. Minutes? I don't know, but I don't think it is minutes.

Mr. CHAFFETZ. I mean, that is one of the brilliants of the email system, is you go in and you check the Sent box and the Inbox, and you suddenly have all the emails, correct?

Mr. KOSKINEN. Right. They get taken off and stored in servers, and you have 90,000 employees and you have people——

Mr. CHAFFETZ. I know, but I am not asking you to search; I am asking you to find one. They type in her email address.

Mr. KOSKINEN. We could find and we in fact are searching. We can find Lois Lerner's emails.

Mr. CHAFFETZ. In how long? How long would that take?

Mr. KOSKINEN. I have no idea how long.

Mr. CHAFFETZ. Would it take a day?

Mr. KOSKINEN. I just said I have no idea.

Mr. CHAFFETZ. Well, I just don't understand. You have a duly issued subpoena. If you were in the private sector and somebody was issued a subpoena and you didn't comply with it, what would happen to you?

Mr. KOSKINEN. For this subpoena, the court would actually rule that it is far too broad——

Mr. CHAFFETZ. Oh, so you are going to make the determination.

Mr. KOSKINEN. You asked the question. Let me answer the question. In a court of law, if you provided that subpoena, a judge would not enforce it because it is——

Mr. CHAFFETZ. Wait, wait, wait. Now, stop, stop, stop right there. So you are going to be the judge.

Mr. KOSKINEN. I am not being the judge; I am just telling you what would happen.

Mr. CHAFFETZ. Yes, you are.

Mr. KOSKINEN. You asked me what would happen.

Mr. CHAFFETZ. You have a duly issued subpoena. Are you or are you not going to provide this committee the emails as indicated in this subpoena, yes or no?

Mr. KOSKINEN. We have never said we weren't——

Mr. CHAFFETZ. I am asking you yes or no.

Mr. KOSKINEN. We are going to respond to the subpoena——

Mr. CHAFFETZ. No, no. Sir——

Mr. KOSKINEN. Yes, we are going to respond to the subpoena. I am just telling you to respond fully to the subpoena, we are going to be at this for years, not months. That is the only thing I would like to——

Mr. CHAFFETZ. And I don't understand that. Just specific to item one, Lois Lerner——

Mr. KOSKINEN. Lois Lerner's emails——

Mr. CHAFFETZ. Sir, are you or are you not going to provide this committee all of Lois Lerner's emails?

Mr. KOSKINEN. We are already starting——

Mr. CHAFFETZ. Yes or——

Mr. KOSKINEN. Yes, we will do that.

Mr. CHAFFETZ. Yes. And then by when? When could we have that?

Mr. KOSKINEN. I can only tell you it is going to take me, my group, I asked this question the other day, just to get you the Lois Lerner emails, redacted, because you have to get them redacted, for examinations, appeals, and——

Mr. CHAFFETZ. No, no, no, no.

Mr. KOSKINEN. You asked the question.

Mr. CHAFFETZ. Is that what the subpoena says?

Mr. KOSKINEN. Would you like to hear the answer to the question?

Mr. CHAFFETZ. No. I would like to know if you are going to fully comply with the subpoena; not your version of the subpoena, the actual subpoena.

Mr. KOSKINEN. You asked me how long it would take to respond to the Lois Lerner emails. I am explaining to you why it is going to take time just to respond to the categorization——

Mr. CHAFFETZ. I don't want you to redact it. I don't want you to take the certain categories that you want. That is not what this duly issued subpoena says.

Mr. KOSKINEN. I am telling you just to supply the Lois Lerner emails, which we are going to supply for examinations——

Mr. CHAFFETZ. No, no, no, no, no.

Mr. KOSKINEN. Can I answer the question?

Mr. CHAFFETZ. That is not—no, sir. When it says all emails, why are you qualifying them? Under what authority do you change this subpoena?

Mr. KOSKINEN. I was not qualifying. You were asking how long it was going to take and I was giving you an example of why it is going to take a long time, because we have to redact out of those emails all of the 6103 information. We are working very hard to

get you the Lois Lerner emails. It is going to take you several weeks to get you the Lois Lerner emails for examinations, appeals——

Mr. CHAFFETZ. Wait, wait, wait. Why are you getting us just for—it would be easier to just give them to us all, right?

Mr. KOSKINEN. No, it would just take a lot longer because we have to redact the rest of them. We actually selected those because in a letter from the Ways and Means Committee also saying they need help, they focused on what they are looking for is those categories, so prioritizing we said we would provide both committees with those categories.

Chairman ISSA. The gentleman's time has expired.

Mr. KOSKINEN. We are happy to provide you the rest of them——

Mr. CHAFFETZ. I am yielding back, but this commissioner has no intention of fully complying with this duly issued subpoena. That is the case. That is where both of us, on both sides of the aisle, need to stand up for the integrity of the House of Representatives.

Mr. CUMMINGS. Mr. Chairman?

Mr. CHAFFETZ. When you have a duly issued subpoena, you comply with it. It is not optional.

Mr. CUMMINGS. Mr. Chairman?

Mr. KOSKINEN. May I——

Chairman ISSA. The gentleman's time has expired.

The gentleman from Maryland.

Mr. CUMMINGS. I ask unanimous consent just for a minute.

Chairman ISSA. The gentleman's unanimous consent for one minute.

Mr. CUMMINGS. Mr. Chairman, I never heard the commissioner say that he was not going to obey the subpoena. As a matter of fact, that is all he has been saying.

Chairman ISSA. Actually, if the gentleman would yield, he has, on every single question, failed to say, yes, I will give you all the emails. He has gone into the ones that he is prepared to give, the ones that he could give to Ways and Means in an hour, because once you do the search you just dump it to them. And even then he said that those would take—the ones that he says he is going to give us he said it would take a couple weeks and, of course, the subpoena is many months old.

Mr. CUMMINGS. Well, reclaiming just for a second. I just want us to be clear. I mean, time is precious, money is precious. Just tell us. I mean, you talk about relevance. You said if a lawyer were to see this subpoena, they would have some concerns. I just want to be clear. I mean, it sounds like, again, I am saying what I said before, you seem to have an understanding and we seem to have an understanding, and they don't seem to be the same. So are you going to provide the documents for Lois Lerner?

Mr. KOSKINEN. Yes.

Mr. CUMMINGS. That were subpoenaed.

Mr. KOSKINEN. Yes.

Mr. CUMMINGS. And how long will that take?

Mr. KOSKINEN. I do not know. It know it is going to take us several weeks, I asked that question yesterday, simply for the categories we are already working on, and I was told that to redact those will take us several weeks longer. It will take us much longer

than that, but we will provide them. And I have said with regard, notwithstanding the congressman who has now departed view that we are not going to comply, we are going to comply. We never said we wouldn't comply. We are simply trying to help refine the search so that, in fact, we could get this done sometime in the near future, that is, this year. But at the rate we are going, as noted by an earlier question, if you want all the categories of all the applications of everybody who has been through the (c)(4) process for the last four years, we can do that, and we will do that, but it is going to take years.

Mr. CUMMINGS. Very well. Thank you.

Chairman ISSA. I thank the gentleman. I thank you for your questions, but hopefully we all understand that asking for all the emails, the ones that you seem to be least willing to put first are the ones that probably have no 6103. They are very quick to go through and somebody simply looks and says, oh, she is talking to an outside entity; by definition, there can't be any 6103 there, right?

Mr. KOSKINEN. Correct. All the ones that are easy are easy; the ones that are difficult are difficult. And there are more of the difficult ones than we would all like.

Chairman ISSA. Of course, the ones that the gentleman was asking for before he had to leave were the ones that were not being given, which, by definition, very often are easy.

Mr. KOSKINEN. Right. And I would just note for the record that all of the Lois emails we are talking redacting have been provided already to the House Ways and Means Committee and the Senate and Finance Committee, because they don't have to be redacted. So there has been no question there about, in fact, the fulsome response.

Chairman ISSA. Thank you.

The gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

Commissioner, just to take this from the top, the probative depth of our inquiry usually depends on the importance of the information that we seek and also the danger that we are trying to expunge, and I have to admit there is a deficit of trust here between the Congress, many of its members, and the IRS on this issue, and that is because, on its face, there has been an admission here that the IRS, a very, very powerful Government agency, has inappropriately targeted United States citizens for enhanced scrutiny, some would say harassment and denial of statutory and constitutional rights based on their own political views. That is why my colleagues are after this information. That is why many of us on this side are after this information, so it is incredibly important. So when we say we need all of the emails, in a normal circumstance, in a normal case you might have a judge say that is overly broad, but in this case, in this case, whether the taxpayer was a Tea Party or was occupy whatever, a progressive group, the fact that the IRS, a very powerful agency with a lot of information on a lot of individuals here, is now targeting or has been targeting U.S. citizens, that is serious stuff, and I think that justifies the scope of this committee's inquiry and the urgency that we get to the bottom of this.

Now, that is not just good for Republicans, that is not just good for Democrats; that is good for our democracy here. So this is a very, very serious issue. You know, in his seminal work, Congressional Government, President Woodrow Wilson described the oversight function of Congress as follows. He said, Quite as important as legislation is vigilant oversight of the administration. It is the proper duty of a representative body to look diligently into every affair of Government and talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituency.

In fulfillment of this solemn duty to inform the American people, it is imperative that we as legislators and members of this committee conduct robust oversight when we receive reports that a powerful Government agency has subjected American citizens to excessive scrutiny based on unwarranted and unjust criteria. Certainly no American citizen should have their constitutional and statutory rights withheld by the Government on the basis of their political affiliation, or simply because they criticized the way that the Government is being run, and any reports to that effect clearly warrant meaningful congressional oversight.

And that is why I have, in the past and today again, supported the extensive investigation conducted by this committee and to the targeting of certain applicants for tax-exempt status.

Now, regrettably, this investigation has thus far been guided primarily by politics and partisanship, rather than a genuine commitment to fully inform the American people as to how these troubling events at the IRS unfolded. In particular, the chairman has routinely released to the American public only partial excerpts of the transcripts from transcribed interviews conducted by both of our staffs with the relevant IRS officials, and most recently the chairman again released a staff report on the committee's investigation without first soliciting input from our side of the aisle, after denying a request by our ranking member to share the report with Democratic members and minority staff prior to its release.

So I understand the importance of this inquiry, I really do. I think it is incredibly important. But I also think that we have missed the opportunity here because of the chairman's very partisan and one-sided approach to this hearing, and I think it has hurt the American people because I think it is incredibly important that we get to the bottom of this, but because it is being fumbled, this opportunity is being fumbled, we are not getting the answers that we need. But I do support the idea that our inquiries necessarily have to be very broad and deep because of the danger we are trying to excise here. We want to send a message to the IRS that you don't do this to our people. You do not do this to American citizens. You do not target people because of their political views or because they complain about the Government. I complain about the Government and I am part of the Government. So that is a precious freedom that we need to protect, and the IRS, in its recent approach, is threatening that very freedom and that is a danger that we have to be together in opposing on both sides of the aisle.

I yield back the balance of my time.

Chairman ISSA. I thank the gentleman.

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

Mr. WALBERG. I thank the chairman.

Mr. Koskinen, are you aware that your predecessor, Doug Shulman, in a testimony to Congress in March of 2012, gave very strong assurances that the IRS was not targeting conservative tax-exempt applicants?

Mr. KOSKINEN. I am aware of that.

Mr. WALBERG. Just for the record, his statement where he testified, "First, let me start by saying yes, I can give you assurances. As you know, we pride ourselves on being a nonpolitical, nonpartisan organization, and so there is absolutely no targeting. This is the kind of back and forth that happens when people apply for 501(c)(3)(4) status."

That was what he said. Do you think that Mr. Shulman's testimony was accurate?

Mr. KOSKINEN. I don't know what Mr. Shulman knew, what his relationship to the Exempt Organization Department is, so——

Mr. WALBERG. But was his statement accurate?

Mr. KOSKINEN. The statement may have been very accurate from the standpoint of what he knew. From the standpoint of the improper use of improper criteria, obviously, as the inspector general noted, in the determination process inappropriate criteria were used.

Mr. WALBERG. Was it complete and forthcoming as it should have been?

Mr. KOSKINEN. Again, I don't know what Mr. Shulman knew. What I have done is I——

Mr. WALBERG. From your perspective right now.

Mr. KOSKINEN. From my perspective, I have no way of knowing what he knew or didn't know.

Mr. WALBERG. From your perspective, was the information accurate? Not what he thought, but what you know right now.

Mr. KOSKINEN. From what I know right now, as a result of the IG report, I know that inappropriate criteria were used to select organizations for review in the determination process.

Mr. WALBERG. Can you give assurances—and I refer back to my colleague, Mr. Jordan from Ohio, when he listed a number of agencies and entities that have great concern about what has gone on with IRS that we know now took place, such as home school—I am a home schooler, my family; I am a life member of the American Motorcyclists Association; I am a member of HOG, Harley Owners Group; I am an NRA charter member, Tea Party caucus member here in Congress, member of Right to Life. And I could go on with organizations, but my question is can you give us assurances here and now that the IRS is no longer targeting conservatives or treating conservative groups differently than any other applicants?

Mr. KOSKINEN. I can give you assurances that I am committed and I am confident the agency is committed to not discriminating against any organization or any individual no matter what their organizational capacity, what their political beliefs are, who they voted for in the last election. If you deal with the IRS, you have a right, and I agree with the earlier comments, you have a right to assume and you need to be protected to assume that you are going to be treated the same way everyone else is treated——

Mr. WALBERG. Absolutely. And our concern is that Mr. Shulman gave us that same certainty in his testimony in front of us.

Mr. KOSKINEN. I don't know how he ran the organization. I have just been to 16 of the largest 25 IRS offices. I have listened personally to over 7,000 employees, and my message to them has been that, going forward, we need to have information flow from the bottom of the organization to the top, and if there is a problem I need to know about it because we will fix it.

Mr. WALBERG. Great. Let's go with that. Let's go with that, that testimony that you took.

Mr. KOSKINEN. Let me just tell you, just to make you comfortable, if there is a problem, I don't know about it, then that is my fault, because that means I haven't created a culture where problems and issues get raised from front-line workers and go easily and freely——

Mr. WALBERG. What is the morale of the front-line workers now, Cincinnati and other places?

Mr. KOSKINEN. Morale actually is surprisingly better than I would have expected in light of what has happened to Federal employees for four years and the IRS for the last year. I have found professional, dedicated, energetic employees focused on the mission of the agency. Their overriding concern is we don't have enough people to allow them to provide the services to taxpayers that they feel taxpayers prefer.

Mr. WALBERG. Well, they ought to feel that way, because they were asked and they were put in situations that didn't allow them to do the job that they are expected to do but, rather, to target conservative groups. I would be a low morale, and I am glad to hear you say that it is coming up, but we have spoken with several IRS employees during the course of this investigation. They have told us that Lois Lerner's announcement that low level people in Cincinnati were responsible for the conduct was a nuclear strike to them, and I would assume that you would agree, from what you have heard.

Mr. KOSKINEN. It clearly is. As I told you, my view of running an organization, if there is a problem, it is my problem, it is not somebody else's problem; we will work on it together. And my sense would never be that it is not my responsibility. Everything that happens in that organization is my responsibility.

Mr. WALBERG. I am glad to hear that. Then I just again question, with the difficulty in getting information, what are we hiding at the IRS.

Mr. Chairman, I yield back.

Chairman ISSA. I thank you.

You answered the question partially, but the gentleman asked you essentially was it Cincinnati or was it Lois Lerner in Washington. Did you reach a conclusion on whether this was in fact low level people in Cincinnati or, in fact, Lois Lerner and possibly others in Washington that were responsible for what effectively became targeting?

Mr. KOSKINEN. I haven't done an independent investigation; I have reached no conclusion about that. I am looking forward to the reports from the various investigations——

Chairman ISSA. But you agree with the IG's report which found that essentially it wasn't low level people in Cincinnati?

Mr. KOSKINEN. I agree with the IG report in terms of the recommendations. In fact, in response to the earlier ones, I would stress to this committee that we have, in fact, adopted all of the IG recommendations. My commitment to people applying for applications now, whether it is a (c)(4), (c)(3), (5), (6), or (7), is that they will be treated fairly no matter who they are. It goes back to the earlier question. Whatever your political beliefs, whatever the name of your organization, you deserve to be treated fairly and on the same basis of everyone else.

Chairman ISSA. If only that were true.

Mr. Davis is recognized for five minutes.

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

And thank you, Commissioner. I know that we have hashed and rehashed and gone over and under the whole issue of the document requests, but I want to make sure that I understand as well as I can what the issues are here. The chairman says that he wants all of Lois Lerner's emails, not just the ones related to (c)(4)s, not just the ones related to tax-exempt applications, but all of her emails. Obviously, this would include emails that have absolutely nothing to do with our investigation. In other words, the committee is going to what I would call the mat, and even threatening contempt for what everyone agrees are irrelevant emails.

I don't think this makes any sense, and this is not what the Ways and Means Committee did. The Ways and Means Committee worked with you to identify the emails that are relevant to our investigation, is that correct?

Mr. KOSKINEN. That is correct.

Mr. DAVIS. And if you are required to produce all her emails, you have to examine each and every email for private taxpayer information covered by 6103.

Mr. KOSKINEN. That is correct. That is why we were able to provide the Finance Committee and Ways and Means Committee with all those emails last week, and why it is going to take us several weeks to be able to provide the committee with her emails going forward.

Mr. DAVIS. And, of course, you cannot provide this committee with that information, and you would have to redact it.

Mr. KOSKINEN. That is correct.

Mr. DAVIS. If I understand this, by definition, the Internal Revenue Service would be wasting time and money producing documents that will not fulfill any investigative purpose. Would you say that is correct?

Mr. KOSKINEN. That is what we have been concerned about.

Mr. DAVIS. You know, I kind of grew up with the idea that you don't ride or you don't get much from riding a dead horse to death; that if he has already died, if everything that you can get out of him has been gotten, then you are wasting time to continue. I think that we should reconsider this misguided approach. We should go back to standard investigative procedures and develop search terms that are relevant, instead of this other method, which appears to be nothing more than a fishing expedition trying to con-

nect some decisions to the White House or to some place that did not exist.

I was very pleased to hear you indicate that the morale among IRS employees is at a level beyond which one might have expected. What would be the best utilization of your time to make sure that it stays where it is and goes up, rather than being bowed down with an irrelevant investigation?

Mr. KOSKINEN. Well, I think one of the most important challenges we have, and we have been trying to do it with the six investigations going on, is to try to produce information as quickly as we can in an order that will allow the committees and the investigators to conclude their investigation, because I think one of the important things for not only restoring public confidence in the IRS, but employee morale, would be to come to closure on these issues.

Whatever I have said from the start, whatever the facts are that each of the investigators find, we will review, we will respond appropriately to and move forward. No one has more interest in concluding these investigations promptly and in an orderly way than I do and than the employees of the IRS, which is why we will continue. We have tried to provide information and work with the staffs of each of the investigators to provide the information they need in the most appropriate order, but ultimately, as I have said, whatever information the committee wants, they have a right to get. The question is how long is that going to take and can we get you the most relevant information at the front end so you can in fact do your work.

Mr. DAVIS. Thank you very much, and I yield back, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

Recognize the gentleman from Tennessee.

Could I have just 10 seconds of your time?

Mr. DESJARLAIS. Yes, Chairman.

Chairman ISSA. I might note for the record that, in the case of Lois Lerner, we delayed bringing her back in hopes that we would get all the emails, and obviously we didn't have them. She took the Fifth ten more times and we were very disappointed. We made that very clear, that when you have somebody who has taken the Fifth, I can't imagine a law enforcement agency or a judge saying that a subpoena relative to that person's government communication would be irrelevant.

I thank the gentleman.

Mr. DESJARLAIS. Thank you.

Commissioner, thank you for being here today. We have had several commissioners in our presence since this story has broke. Commissioner Shulman, Commissioner Miller were two that would not acknowledge that wrongdoing had taken place and they would not apologize to the American people for what had happened. Danny Werfel did say that something wrong has gone on here and apologized to the American people. So I was encouraged to hear you say that what you know now, that you do believe that inappropriate criteria were used to target specific organizations. So at least we are to the point that we do acknowledge that something did go wrong, correct?

Mr. KOSKINEN. Yes. Inappropriate criteria were used. I don't think I used the word target, but I do acknowledge that applications were delayed unnecessarily and for too long.

Mr. DESJARLAIS. Okay. Just a housekeeping item. I was back home in the district last week and Rachel Killibrew, who is a treasurer of the McMinnville Breakfast Rotary Club, is sending a letter to the IRS to ask for a 501(c)(3) organization, which will, among other things, help alleviate childhood hunger. I can tell her with confidence that you don't think their group will be targeted or delayed?

Mr. KOSKINEN. I can guarantee them they won't be—inappropriate criteria won't be used in any way. Delays are a different issue. One of our big challenges is, as a result of a lot of other things going on, we built a backlog in the (c)(3) area that we are aggressively dealing with. Our goal ultimately, especially for smaller, local organizations, is to have a streamlined process that will be up and running by June. So I can guarantee she will get appropriate consideration. I wish I could promise her right now it would be very quick.

Mr. DESJARLAIS. All right.

Mr. KOSKINEN. By the end of this year we are going to be in much better shape in processing (c)(3)s.

Mr. DESJARLAIS. I will pass that along. I am sure they will be happy to hear that.

Our colleague, Mr. Clay, earlier called this a political witch hunt. Do you agree with that?

Mr. KOSKINEN. I have made no judgments about any of the six investigations going on. I think it is important for the public to feel satisfied that there have been thorough investigations.

Mr. DESJARLAIS. Okay.

Mr. KOSKINEN. I would like to see them concluded earlier, rather than later——

Mr. DESJARLAIS. Sure.

Mr. KOSKINEN.—but we will play the hand we are dealt.

Mr. DESJARLAIS. Okay, what do you think, does it kind of handicap this process when officials from the Justice Department announce that there would not be any criminal charges in this investigation, and this, of course, was before any of the witnesses had been questioned, or that the President goes on TV on Super Bowl Sunday and announces that there is not a smidgeon of corruption within the IRS? Can you agree with either of those things, knowing what you know now and depending, I guess, how you define inappropriate tactics being used?

Mr. KOSKINEN. As I have noted in the past, I haven't done any independent investigation of what went on. There have been people across the political spectrum, in Congress, outside of the Congress, in this committee and other committees, making conjectures and judgments about what happened. My view is I am waiting for the investigations to be completed; we will respond to the facts and we will proceed.

Mr. DESJARLAIS. You heard my colleague, Mr. Jordan, in his opening statement, he played out a pretty good timetable I think for anyone listening about how this has gone down. Do you under-

stand the timetable that he gave and does that give you a lot of concern?

Mr. KOSKINEN. I understand the timetable he gave. There is other information. You have volumes of documents. What the purpose of a final report is is that you would have a committee report, you would come up with facts as you found them. There may or may not be a bipartisan report, there might be dissenting reports; we will have several investigator reports. When they are done we will know what the consensus is is what happened. More importantly, as I have said, it is important for the public to know we have adopted all of the IG recommendations, so whatever the management failings were that existed have been resolved.

Mr. DESJARLAIS. I think we are getting a little gun-shy on this committee because this scandal, the Benghazi scandal have been referred to as phony scandals. We know inappropriate targeting went on. I am afraid if Hillary Clinton were sitting out there, she would probably look us in the eye and say the President has always been re-elected; at this point, what difference does it make. You are not going to be that way, are you?

Mr. KOSKINEN. I have never said it doesn't make any difference. My position is that this was a serious issue, it deserved to be treated seriously; the IRS has done that, I think, as a general matter, the investigators are doing that. As I say, again, my hope is that, as soon as possible, we can come to closure on it; agree on what the facts were. If there are additional things that need to be done, we will do them.

Mr. DESJARLAIS. All right. Well, please get us the subpoenaed information and we can probably wrap this up much more quickly, and I thank you for your time.

Mr. JORDAN. [Presiding.] The gentlelady from California is recognized.

Ms. SPEIER. Mr. Chairman, thank you.

Commissioner, thank you. You give me great confidence in the work that will be transpiring relative to this evaluation. I must say, though, that when I think that $10 million has already been spent responding to inquiries by this committee, I am curious at how much fraud could be unearthed within the persons within this Country that don't play by the rules. No one likes the IRS. No one likes paying their taxes, but we do it. Most people follow the rules, but some people don't, and that is why you have an enforcement unit that for every dollar you spend there you return $9.00 to the taxpayers of this Country. Just speculating that if you had taken the 100,000 hours and 250 personnel that have devoted all their time to complying with the endless requests by this committee, we might actually be doing some good in terms of the coffers that we are all so concerned about.

But let me move on to the inspector general's report. We have studied you to death over the last year. The inspector general made a number of recommendations. My understanding is that you have complied with all of them. You have said that in this hearing a number of times. One of the concerns the inspector general did have was that IRS employees did not have enough training and guidance to properly handle politically sensitive applications for tax exemption, and I am curious, from your standpoint, what kind of

training has now been provided to all of these personnel to make sure that they are properly trained?

Mr. KOSKINEN. Well, we have provided training trying to give them better understanding about what is advocacy, which is allowed for social welfare organizations, and what is political intervention, which is only allowed to a minor amount so you don't jeopardize being primarily a social welfare organization. So there have been more cases developed, more examples developed so that people could understand better what is the dividing line between advocacy and political activity.

I would note there are thousands of 501(c)(4) organizations that aren't advocacy or political organizations, they are garden clubs and civic associations and a lot of other types. So the vast majority of (c)(4)s, in fact, aren't involved in this discussion. But the question has been for the training, especially for new employees or relatively young employees, to try to give them a better roadmap as to what fits into which categories and how they should be approaching any application, no matter what the political level of activity is.

Ms. SPEIER. So is this training also going to be provided to the screening agents?

Mr. KOSKINEN. Yes. It is actually provided across the board and, as the IG recommended, we will renew that training before every election so that, again, as political activity gins up before a campaign and election, people will have as clear a roadmap under a very foggy area as possible as to what is social welfare allowable activity and what is political activity, which, if you engage in too much of it jeopardizes your tax exemption.

Ms. SPEIER. So this training has already taken place?

Mr. KOSKINEN. The preliminary training has already taken place, but the bulk of it will take place as we get closer again. So you will get training if you are a new employee now or an existing employee that training has taken place, but as we get closer to the election, we will do it again.

Ms. SPEIER. Mr. Chairman, I just want to reiterate what I believe is the real problem here. The law that passed said that if you wanted to be a 501(c)(4), you had to exclusively be associated with a social welfare activity. The word was exclusively. Then the IRS, back in the 1950s, if I am not mistaken, came up with a regulation that said that if you wanted to be a 501(c)(4), you have to be primarily focused on social welfare. Now, that violated, in my view, the statute. It violated what Congress passed. How can you go from being exclusively to primarily? So now we have expended millions upon millions of dollars trying to figure out whether or not something is primarily or exclusive. If we said the 501(c)(4)s should be exclusively for social welfare purposes, we wouldn't be having these hearings, because none of the political activity, whether it was advocacy or political, would be relevant because it wasn't exclusively for social welfare; and that is what 501(c)(4) should be about. And I think that if we went back to redraw this, we would say the regulation did not meet the standard of the statute and we wouldn't be having these hearings.

Mr. ISSA. Would the gentlelady yield?

Ms. SPEIER. I certainly would. My time has expired, though.

Mr. ISSA. I want to ask you just a quick question, because I agree with the gentlelady that we should try to clarify it. One of the challenges that I face looking at it, and it is not our committee's primary jurisdiction, it belongs to Ways and Means, but one of the things that I think we have to ask ourselves, for example, is if a 501(c)(3) like the American Lung Association, if they endorse a California initiative related to smoking and so on, which they did, is that at least a nuance of political, even though it is not partisan? And, of course, the answer is no; they are promoting social welfare.

One of the challenges with 501(c)(4)s and Tea Party specifically is these folks are walking around handing out constitutions and wanting to promote the Constitution. Many would say that is political, but, if we go to evaluate it, is it political to say that this what the First Amendment says and means? Is it political to say this is what the Second Amendment says and means? Or in the case of the NSA's activities, the Fourth Amendment. That is the challenge that hopefully the gentlelady and I can work on.

Of course, the question of whether 501(c)(4)s were targeted because of their political views is in fact a different question, and that is what is before us today with the commissioner.

I thank the gentlelady for yielding.

Mr. JORDAN. The gentleman from South Carolina is recognized.

Mr. GOWDY. Thank you, Mr. Chairman.

Commissioner, Lois Lerner sat where you are sitting right now and said, I have broken no laws, I have done nothing wrong, and I have violated no IRS rules or regulations. Now, as a very highly accomplished attorney like yourself, you would have to concede that is pretty broad testimony, wouldn't you?

Mr. KOSKINEN. That is a statement. Whether it is broad testimony and what its relationship is to the——

Mr. GOWDY. No, it is broad. Your scope of cross examination, if we had been in trial, would have been unlimited. You mentioned a judge earlier, what a judge would do with this subpoena. Let me tell you what a judge would do with that testimony. You could ask just about whatever you wanted to ask. When a witness says I have done nothing wrong, that is tantamount to saying I have done everything right. I can't think of any testimony broader than that. So, necessarily, our line of inquiry would also want to be broad, wouldn't you agree?

Mr. KOSKINEN. I think your line of inquiry ought to be what it is no matter what people——

Mr. GOWDY. Well, no. You said a judge would throw our subpoena out, and I can't help but note you haven't moved to quash our subpoena, but you think a judge would throw our subpoena out as being overly broad.

Mr. KOSKINEN. If we were in the private sector, which we are not, the judge——

Mr. GOWDY. Well, I want to make it easier for you. How long will it take you to produce Lois Lerner's emails that don't involve 6103 material from January of 2010? Could we have that by Friday?

Mr. KOSKINEN. Absolutely not.

Mr. GOWDY. Why?

Mr. KOSKINEN. Because there is no way physically we can get it by Friday.

Mr. GOWDY. January of 2010. That is one month, no 6103 material, just one month.

Mr. KOSKINEN. Just one month?

Mr. GOWDY. Just one month. When can we get that?

Mr. KOSKINEN. Well, we have to go through each of those emails to make sure it has no 6103 material.

Mr. GOWDY. Well, how long is that going to take? Can we have it by Friday?

Mr. KOSKINEN. I have no idea.

Mr. GOWDY. Just one month, commissioner. Just January of 2010, no 6103. And let me tell you why I am interested in it.

Mr. KOSKINEN. Well, I will tell you today is Wednesday. I would be happy to ask the people who do the work and get back to you as to whether we could do it by Friday.

Mr. GOWDY. All right, let's do January of 2010 and then let's get ambitious and do February of 2010. And then let's go March 2010. And I think you know why I am doing 2010, commissioner. When the President likes 5–4 Supreme Court decisions, he calls that subtled law, like the ACA. When he doesn't like 5–4 Supreme Court decisions like Citizens United, he attacks it, which is what he did in January of 2010. And that is why the time line is so important, commissioner. The jury is never entitled to know the motive, but they always want to know the motive. You don't ever have to prove why somebody did something, but the jury always wants to know why did this happen. And if you start in January 2010 with the President's State of the Union Address and then you move through Lois Lerner's emails that have nothing to do with 6103 material, you begin to see a motive develop.

Mr. KOSKINEN. Great. You are going to get 20,000 pages of documents this afternoon. Some of them may well be January 2010. But I will check with our people, because if you would like us to stop that production of Lois Lerner emails and go January 2010, I will go and find out exactly how long it will take to get it for you.

Mr. GOWDY. What I want is this: I want the subpoena complied with. I want it complied with in a timely fashion. And you and I both know that if there is no 6103 material, whether or not you think we need something or we ought to have it, or that we are on a wild goose chase, frankly, I could care less what you think about that. Our subpoena is our subpoena. If you don't like it, move to quash it. Otherwise, comply with it. Because you noted that our search was overly broad. I want you to tell me what search you would use to find an email when IRS employee responded Yoohoo when she was told that a Democrat won a special election. What search terms would you recommend that we use to find that email?

Mr. KOSKINEN. We have worked from the start of this investigation——

Mr. GOWDY. What search terms would you use to find an email where the response was Yoohoo when a Democrat won a special election.

Mr. KOSKINEN. We might actually work together to see if there are search terms that would involve political campaigns, elections, political party.

Mr. GOWDY. What search term would you use when Lois Lerner responded that a GOP Senate would be worse than a GOP President?

Mr. KOSKINEN. I would actually, if you wanted to, we would go through and say look at political parties, look at references to elections, GOP and Democrat——

Mr. GOWDY. Or we can do this: just give us all of the emails she sent or received in January of 2010 that don't involve 6103 material and we will decide what we think is relevant and not, because she said I have done nothing wrong, I have broken no IRS rules or regulations, and I have broken no laws. That is pretty broad, Mr. Commissioner.

Mr. KOSKINEN. Now, if I could just have a moment. This is exactly the discussion we have been having for the last year and we would be delighted to have, which is out of the universe, what is it that you think would be most important? We will give you the universe but, as I say, that will take you more than this year. If we could figure out——

Mr. GOWDY. I just told you it is January of 2010, because that is when the Supreme Court issued its opinion in Citizens United; that is when the President of the United States famously, to their faces in the State of the Union, criticized that; and that is when Lois Lerner began to say IRS can't fix it, we need a plan, we need to be cautious, we need to make sure it is not per se political. Let's start with January 2010. Can we have that by Friday?

Mr. KOSKINEN. And as I would say, I am delighted, and it is this kind of discussion, for instance, where——

Mr. JORDAN. Mr. Koskinen——

Mr. KOSKINEN. Could I just respond? With a four years worth of applications of (c)(4)s, we might be able to say, well, which ones would you like so that we don't spend three years at it. January 2010 is a perfectly understandable definition, and we will actually respond to you as quickly as we can.

Mr. GOWDY. Commissioner, you need to understand our perspective, though.

Mr. CUMMINGS. Mr. Chairman?

Mr. GOWDY. Maybe this started off as an investigation into the targeting of (c)(4)s, but when you have people who are supposed to be apolitical responding the way that she has responded, Tea Party dangerous, maybe the FEC will save the day, we have to make sure it is not per se political, when you have people in positions of authority and responsibility that are expressing overtly political commentary on Government email, I think we ought to be entitled to all of them, and that is why we asked for them.

Mr. CUMMINGS. Mr. Chairman?

Mr. KOSKINEN. I would just simply note that, for the record, that you already have all those emails, which is why you have all of that information.

Mr. GOWDY. If we don't know what we don't know, Mr. Commissioner——

Mr. JORDAN. Mr. Koskinen——

Mr. GOWDY. We know the ones we have.

Mr. CUMMINGS. Mr. Chairman, I asked for——

Mr. JORDAN. I got it, I got it.

Mr. KOSKINEN. We will go to January 2010.

Mr. JORDAN. Mr. Koskinen, here is the point. There are 2,400 employees in the chief counsel's office of the IRS. A bunch of those people are lawyers. Mr. Lynch said this, not Republicans. Mr. Lynch said this is about First Amendment free speech rights, political speech rights. This is so important. What Mr. Gowdy is saying, what we all have been saying is take some of those lawyers, of that 2,400, a bunch of them are lawyers, take some of those lawyers, get every single email that Lois Lerner sent. Start with January 2010, go through those as quickly as possible and get them to this committee.

And it is not just Republicans who want that; Mr. Lynch has said he wants that, Mr. Cummings, the ranking member, said he wants that. Make it a priority. We asked a year ago; we asked in May of 2013 get us Lois Lerner's emails. Then we subpoenaed them and you are still telling us it is going to take forever, we can't do it. We don't want the excuses anymore. Prioritize it. Put more lawyers on the job. There are 2,400 in the chief counsel's office. Assign someone to do exactly what Mr. Gowdy has asked for.

Mr. KOSKINEN. This has been a priority; that is how we have selected and produced 690,000——

Mr. JORDAN. But we are talking about the First Amendment. You are not working fast enough, it is that simple. You are not working. This is fundamental. Mr. Lynch said it. Mr. Cummings has said it. We have all said it. Get on the job. Put some more lawyers on this.

Mr. CUMMINGS. Mr. Chairman?

Mr. KOSKINEN. We are on our job. We have 89,000 employees having nothing to do with this doing very important work for the Government. We have 10,000 fewer employees than we had four years ago. So it is not a question of just pushing——

Mr. JORDAN. We have to move on.

Mr. CUMMINGS. Mr. Chairman, I just need one minute.

Mr. JORDAN. The gentleman is recognized for one minute.

Mr. CUMMINGS. Please. I just need a minute.

Mr. JORDAN. You got it.

Mr. CUMMINGS. Okay. You know, the gentleman, the commissioner has said he is willing to produce the documents. We have almost every member now asking for documents. One of the things that I am saying is that we need to be very clear, at the end of this hearing, that we do what you apparently have done with Mr. Camp, Chairman Camp and others, to make sure that we are all clear on what we want, because different people are saying different things. No, no, listen to me. Or we will end up right back where we are right now. So we need clarity. The chairman wants certain things, Gowdy wants certain things, I want certain things.

So some kind of way we need to come so that we have a meeting of minds of exactly what we are trying to get. That is all I am saying, Mr. Chairman. I mean, that is reasonable. And I think one of the mistakes that we are making, we are beating up on him and he is clearly trying to cooperate and trying to give us what we want, but, again, he has his own restrictions. So I want to make sure that he is saying to you he is willing to give us what we want. We now have to be clear on what we want. That is all.

Mr. JORDAN. I would just say to the ranking member I think we have been.

Mr. CUMMINGS. Well, apparently we haven't been.

Mr. JORDAN. No, no, no, no. All means all. All means all. Because if we let any type of restriction happen, any type of parameters be set, then they are determining what we get and the American people aren't going to be able to see everything. That is why we subpoenaed all.

Mr. CUMMINGS. So, therefore, and hopefully this will be helpful. So do you understand that? And I see that the chairman of the full committee, I guess he is in agreement with what was just said. Do you understand that, as to what we want?

Mr. KOSKINEN. What they want is something that is going to take years to produce, not just the emails. What they want is documents. And, again, our point is not that we are not going to give it; we are just telling you it is not going to happen overnight. We have tried to prioritize. First you got 690,000 to Ways and Means. Tried to prioritize that to Lois Lerner emails. We said we would provide them. We said the first priority is we will get them that say this. We have to redact them. We have given them to Ways and Means. To the extent I said it was very helpful if you say the months that we are really interested in are these, thous, and those, we can prioritize those. It doesn't mean we won't give you the rest of the months, but this doesn't happen overnight. It is not a question of showing up with another 150 people who become 6103 experts overnight. We have a team. We aren't a document production team organization, but we have created one.

Mr. ISSA. If the gentleman would yield. For the foreseeable future there is only one person you have to work with on priorities, and that will be the people working for the committee, and I will work with them. When Mr. Gowdy said he is very interested in January, so am I. I want to attach my comments to the ranking member here to the greatest extent possible. We do not want to be overly burdensome. We do, Mr. Lynch and others, think that certain individuals we want all of their emails. I would note for the record that of your six investigations there are only two that you have to do 6103 for. You don't 6103 for the TIGTA, you don't do 6103 for Senate Finance or Ways and Means. And I am assuming the Justice Department has a way to fast-track getting what they want.

So of the two entities, us and our counterpart in the Senate, one of the challenges is we have watched Ways and Means negotiate to get less than all of Lois Lerner's emails, when in fact, six months ago, you could have pumped out all of Lois Lerner's emails and dumped them in one fell swoop on Senate Finance and Ways and Means. You did not do that. They eventually negotiated, to my consternation, a subset of all of her emails. I find it less than helpful and I find your talking about redaction and time inappropriate, when you could have given Ways and Means all Lois Lerner's emails in a matter of seconds. It really is that simple. You have already gathered them and I assume that TIGTA has access to them.

So I appreciate that we will have to work with you to prioritize, and we will and we always have. In the case of any parts of the

document production in which there are massive numbers of potential documents, we will particularly prioritize. For today, for the record, on behalf of people on both sides that have spoken, Lois Lerner's emails, all of Lois Lerner's emails is the highest current priority of this committee, and it will remain so as long as I am chairman. So I am not going to get into January, because I believe that if your team had been actively working in a matter of days you would have been able to give us substantially all of Lois Lerner's emails, and within a matter of a couple weeks have given us the ones that required 6103 redaction. And I know this based on how long it took my people to hand-read the emails we got.

Mr. KOSKINEN. Right. I would just say that that is not the information I have.

Mr. JORDAN. The gentlelady from New Mexico is recognized.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman. I am going to take something the chairman said, and I hope he doesn't mind, and use it out of context. So all means all. I am going to go back to none means none. And I want to talk about the exclusivity requirements of 501(c)(4)s and the fact that we don't do that, and I am going to do what other members have done, and I hope you will take me back through these baselines again.

So, commissioner, your agency administers how 501(c)(3)s or charities are treated under the tax code, correct?

Mr. KOSKINEN. Correct.

Ms. LUJAN GRISHAM. And under Federal statute, charities cannot engage in any political activity, correct?

Mr. KOSKINEN. That is correct.

Ms. LUJAN GRISHAM. How much did charities spend on partisan political campaign activities in the last presidential election?

Mr. KOSKINEN. I assume none.

Ms. LUJAN GRISHAM. I hope that is true. I am assuming that it is zero dollars as well.

Now, you also administer social welfare organizations, 501(c)(4)s.

Mr. KOSKINEN. Correct.

Ms. LUJAN GRISHAM. And under Federal statute, laws that Congress passes—we get very excited when the administration and others don't follow the laws and the rules that Congress passes—we said, Congress, that social welfare organizations must operate exclusively for the promotion of social welfare, correct?

Mr. KOSKINEN. Correct.

Ms. LUJAN GRISHAM. And political campaign activities are not a (c)(4) social welfare, not part of their mission, correct?

Mr. KOSKINEN. Campaign activities, with regard to supporting individual candidates, are not social welfare activities.

Ms. LUJAN GRISHAM. That is exactly what I mean. I understand that they can do advocacy, and I might even ask that again. So we are creating our baseline.

How much did social welfare organizations spend on political candidate campaign activities in 2012?

Mr. KOSKINEN. Quite a bit. I have no idea what the final number is.

Ms. LUJAN GRISHAM. Well, let me tell you that it is pretty close to a quarter billion dollars. A quarter billion dollars on political campaign activities in 2012.

Do social welfare organizations have to disclose their donors behind this quarter billion dollars?

Mr. KOSKINEN. No.

Ms. LUJAN GRISHAM. So social welfare organizations must exclusively promote social welfare under Federal law but, instead, they are spending hundreds of millions of dollars on political campaign activity while keeping their donors secret.

Mr. KOSKINEN. Correct.

Ms. LUJAN GRISHAM. Social welfare organizations are blatantly violating Federal law. Doesn't make sense to me, and I don't think it makes sense to most of the people who are here. What will it take for the IRS to enforce Federal statute for social welfare organizations, just as you have successfully done for charities, so that social welfare organizations are exclusively promoting social welfare agendas and not their partisan political agendas? Does it take another act of Congress?

Mr. KOSKINEN. Well, at a minimum, it would take a new set of regulations under 501(c)(4) because, as you know, the present regulations adopted in 1959 provide that a social welfare organizations only has to be primarily involved in social welfare activities.

Ms. LUJAN GRISHAM. And I have to tell you I don't understand that because the law is clear. We have a reg that, in my mind, is completely in violation, and I am a little worried, although I have a bill that proposes to do just that, require the IRS to follow the Federal law and not make decisions after the fact, subsequent to that, that are some interpretation that, I have a dictionary, exclusive means exclusive, none means none. I need to know that another act of Congress would actually be taken seriously and be followed exactly as the law says. If we pass another law, will the IRS follow that law?

Mr. KOSKINEN. We will follow that law, although the IRS and the Treasury Department always issue regulations for interpreting and applying the law in a way that seems to be most effective.

Ms. LUJAN GRISHAM. And I certainly don't want to push you into—you didn't, I think, come up with this regulation on your own, but in fact I don't understand how any regulation would be interpreted to allow up to 49 percent when the law says you must do exclusively social welfare. Because my bill clarifies that that is what we should do because I want to ensure that political money is disclosed in the way that it is supposed to be.

I can't believe, really, that we are here, but I am encouraging the IRS, because I don't think that we should be doing the regulatory work because I think exclusively means exclusively, but given the reality that we are there, that this did occur, I encourage you to implement a regulation that complies with the Federal statute, ensures that the social welfare groups do not engage in political activities, instead of continuing to debate how you would go about identifying what constitutes political activity and continue on a debate like this about what might have gone wrong, if it went wrong. I would suggest that you go back to what the law said you must do and go back to exclusive, and not allow social welfare organizations to engage in any partisan campaign activities.

Mr. KOSKINEN. Well, as I noted, the draft regulation asks for public comment on three issues. One is what is the definition of po-

litical activity; two, how much of it should you be allowed to do without jeopardizing your tax exemption; and, three, to what organizations should it apply. So we have comments and we will have a public hearing, and the issue about how much is appropriate will be available for comment, and any final regulation will have to deal with that.

Ms. LUJAN GRISHAM. Thank you very much. And I realize I am out of time. I disagree that there ought to, still, be any effort not to hold them accountable based on what the Federal law says.

With that, Mr. Chairman, I yield back.

Mr. JORDAN. The gentleman from Arizona is recognized.

Mr. GOSAR. Mr. Commissioner, I am a dentist, I am not an attorney, so I want to talk about the leadership and how we do things efficiently. So I have a patient, and when they come in I want to make a diagnosis, so I kind of want to know the storyline, true?

Mr. KOSKINEN. I am sorry, you want to do what?

Mr. GOSAR. I want to do a diagnosis. I have a problem. I want to do a storyline, I want to figure out what the story is, right? In your world it is called discovery?

Mr. KOSKINEN. Yeah. We actually would want to do—if you are interested in finding out what a problem is, you would actually go find what the——

Mr. GOSAR. So it makes sense that you would create this storyline from where it started and move it back, don't you think?

Mr. KOSKINEN. Actually, if you——

Mr. GOSAR. One of the lines of my colleague over here, Mr. Gowdy, asked——

Mr. KOSKINEN. Well, I am not quite sure. If I were doing an investigation, I would actually want to know what the facts were before I developed the storyline.

Mr. GOSAR. But you base the facts off of the inquiry about documents, like all of this stuff that has all these redacted comments. But if you want to start at the beginning of the storyline, you don't want to start in the middle. I mean, most authors will start at the beginning of an instance and move forward, right? And it takes leadership to direct troops or direct people within the IRS to do so, wouldn't you think?

Mr. KOSKINEN. It certainly takes leadership to direct the employees.

Mr. GOSAR. And I guess that is my point. If I am doing my job, I want to create a storyline to facilitate this oversight committee, true? Make it easy.

Mr. KOSKINEN. I am not sure what you mean by a storyline.

Mr. GOSAR. Well, you want to make sure that you are presenting this to us in a rational manner that allows us to do our job.

Mr. KOSKINEN. Yes. I have made it clear to our employees, a, that a priority is to cooperate with the six investigations, get the documents as quickly as we can to them, and, to the extent that they are voluminous, try to figure out with them what the priority is in terms of providing them.

Mr. GOSAR. I am going to catch you right there because it is the comments I keep hearing here. It is the storyline. I can tell all my employees, okay, I need an x-ray of this, this, this, and this, and

they can just go off on tangents; and it is not efficient in giving us the documentation in which we want to learn, true?

Mr. KOSKINEN. Again, if we give you heaps of documents——

Mr. GOSAR. But once again I am going back to a storyline, because it seems like——

Mr. KOSKINEN. I am not sure where the storyline——

Mr. GOSAR. Well, the storyline starts at the beginning of the story, right? You want to go back. Mr. Gowdy asked don't you think it is important that we start in January. Doesn't that make sense? I mean, you rationally put this together and you want to have oversight from this committee, so you rationally want to put this storyline together in a rational manner. I mean, you can do all you want, throw stuff at us, and it is going to take us a lot of time. But it seems like more efficiently, from a director of your position, that you would direct employees to say let's start at the beginning or what we think is the beginning. We are going to start giving you all this information starting in January of 2010.

Mr. KOSKINEN. No, we didn't do that and we wouldn't do that. We actually sat down with the committees and their staffs and said what documents do you want, how should we search them, what issues are you looking for; and we took the storyline from you all.

Mr. GOSAR. And you took it from oversight that when we said we want Lois Lerner's, all of her emails, the comment from you would have been, then, if I am logistically thinking as somebody that is choreographing this story, you want me to start in January? Where would you like me to start.

Mr. KOSKINEN. For the Lois Lerner emails, as I said, with Lois, the idea is if January is a good place to start, that is fine. Ultimately, as I said, we have provided already, and you will get more this afternoon——

Mr. GOSAR. You are running around and around and around. I am from the private sector and this makes no sense.

Mr. KOSKINEN. I spent 20 years in the private sector.

Mr. GOSAR. Well, then you should know better. You should know better in producing a storyline that makes sense, to say, listen, you are here to serve, right? Because I am here to serve. How do I make this easier for you to have oversight?

So I am going to stop there and let's go to something here.

Mr. KOSKINEN. All right.

Mr. GOSAR. Since Lois Lerner didn't comply with our questions, we need all those emails. And I want to make sure you are willing to provide them, like we said.

Mr. KOSKINEN. Correct.

Mr. GOSAR. Okay. And would you be interested in choreographing them start, finish, kind of in bulk?

Mr. KOSKINEN. Yes. We already have a search going on for examinations, appeals, and the regulatory process because that was determined to be the storyline that would be most helpful. We have added now, the next thing we are going to do is January of 2010. And, in fact, if we can do that first, because if it were easy, I would be happy to comply with that request. But the storyline is, thus far, of her emails, which will take us weeks still to redact, the suggestion and request wasn't—because we try to deal with all inves-

tigators the same day, start with exams, appeal, and regulatory process.

Mr. GOSAR. I got you. I have one more question to ask. Is it true the IRS has given the same documents to the White House and to Congress that had different redactions? It is my understanding that may have occurred.

Mr. KOSKINEN. I have no understanding that we redacted differently for anybody. There are those who have no redactions, and those who get redactions get 6103 redactions, and they are redactions for 6103 apply to everybody.

Mr. GOSAR. I would want to make sure that that is followed up and——

Mr. KOSKINEN. That is fine. If you have other information, again, we would be delighted to know it.

Mr. GOSAR. Thank you.

Mr. JORDAN. Mr. Koskinen, if I could, real quickly, while Ms. Holmes Norton is talking to the chairman, prior to being nominated, did anyone from the White House approach you, ask you, talk to you about the proposed (c)(4) rule?

Mr. KOSKINEN. No.

Mr. JORDAN. Did anyone in the course of before you were officially nominated, anyone from the Administration talk to you about the proposed (c)(4) rule?

Mr. KOSKINEN. No.

Mr. JORDAN. And I am just curious of your mind-set. Do you view your role as commissioner of the Internal Revenue Service, do you view that as an independent role, or are you part of Treasury and part of the Administration? How do you view your role as commissioner of the IRS?

Mr. KOSKINEN. The IRS is a division of Bureau of the Department of Treasury, but it runs independent as far as tax administration. And, as I said, I view it as a critical issue. Randolph Thrower died recently who set a standard that the IRS should be independent, should not be——

Mr. JORDAN. You view the IRS as an independent agency even though it is housed within Treasury.

Mr. KOSKINEN. And not a political agency at all.

Mr. JORDAN. And when you prepared your testimony, did you and the people at the IRS prepare that, or did someone from the Administration or the Treasury help you prepare that testimony?

Mr. KOSKINEN. Testimony for today?

Mr. JORDAN. Testimony you submitted.

Mr. KOSKINEN. I prepared it.

Mr. JORDAN. Came from you and the IRS.

Mr. KOSKINEN. Right.

Mr. JORDAN. If I could real quickly, I want to put up a couple slides here. I want to start with slide 1.

[Slide.]

Mr. JORDAN. This is a letter that Chairman Dave Camp received one month ago from—okay, I will wait.

Ms. Norton was talking with the chairman and I thought I would use the time, Mr. Ranking Member, to get some important information.

Mr. CUMMINGS. Can we get equal time?

Mr. JORDAN. I would be happy to. If you let me go, I would be happy to give additional time.

Ms. NORTON. I would just like to go because I have something at 12:00, if I could.

Mr. JORDAN. The gentlelady is recognized.

Ms. NORTON. Thank you.

I wanted to come because John Koskinen is a good and should I say an old friend because we were in law school together, and he turns out to be the man who, if there is a job in the Government that can't be done, they call on John Koskinen. So I think this is one of those jobs.

Mr. KOSKINEN. Eleanor started law school as a very young person; I was older.

Ms. NORTON. I do want to say that the committee's obsession with Lois Lerner I think could have been avoided. The committee asked her attorney would he be willing to engage in a proffer; a proffer would have said what she would have testified. And then I think all that, a lot of what is in the emails would have come out in an attorney's proffer. If the point is to find out the truth, it seems to me at least we could have gotten through a lot of that here.

But I do want to clear up something about these so-called lists. And I looked at what the IG had found and I am intrigued and I think the record needs to show this. It is clear that the IG found that they had used inappropriate lists for these so-called BOLO lists, the Be-On-The-Lookout lists. But he also found, is it not true, that high level management was not involved. Apparently, IRS people do these kinds of things all the time. They did not know, only first-line management knew about the references that trouble us, to Tea Party. And so this just stayed in place, is that not the case?

Mr. KOSKINEN. That was the IG's report, yes.

Ms. NORTON. Then the IG later found that Lois Lerner, who has been the obsessive subject of these hearings, didn't even learn about it, these inappropriate criteria, until a year later; and then she immediately ordered the BOLO lists to be eliminated. And again, and isn't this interesting, for lack of proper, I think, oversight, perhaps, these workers just went back to it because they couldn't figure out a way to deal with the issue that has been discussed earlier in these hearings, which is how do you know which are primarily and which are not, so they went back to the lists. And when the IRS learned that their subordinates were again using this criteria, they then said you will have to have executive approval.

Well, what impressed me was that your predecessor has gone beyond the notion of getting executive approval and he said there is to be no more use of these Be-On-The-Lookout lists, these BOLO lists. Is it correct, commissioner, that the IRS no longer uses these Be-On-The-Lookout lists for anybody at any time?

Mr. KOSKINEN. That is correct.

Ms. NORTON. So they have gone further. The IRS has gone further than the IG asked to go. As I understand it, the IRS has now complied with or is in the process of complying with all of the recommendations of the IG, is that correct?

Mr. KOSKINEN. That is correct.

Ms. NORTON. I must tell you, John Koskinen, if we want to find out anymore, I think what I would do, rather than trouble you to go through thousands more emails, is to take the agreement, apparently, of Lois Lerner's attorney to offer a proffer so that we could find out what she would have testified, and then we may get closer to the truth and eliminate some of the need for some of the emails.

Thank you very much for coming forward and thank you for agreeing to do this job.

Chairman ISSA. [Presiding.] Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

A lot has been said about emails, when you produce them, and we are going to talk about that in a minute, but I think one of the issues that really hits at the heart here of people not understanding when it is portrayed and it is put out that the IRS has done something that was wrong, that was misguided, the terms that I have heard you use today, this is what has drawn the parallel of looking at Government and not trusting it, and heightened it even more. So if we started off with a bad taste, now we are getting worse, and then when it seems like we are obfuscating and we are keeping back and we are hiding behind requests and defining all and every and what are these definitions, people don't get that. And to come to this committee, for either one of us, and to say simply, well, we are going through them, we are working that out, people don't get that. And both sides. This is actually from a hearing we just had a few weeks ago. Groups on the left and the right are tired. They don't get this and they don't understand why the IRS acted this way.

But I do have some questions. You officially took over when?

Mr. KOSKINEN. I started on December 23rd.

Mr. COLLINS. So you started December 23rd. Are you familiar on the date that the first subpoena was issued to the previous commissioner?

Mr. KOSKINEN. The first what?

Mr. COLLINS. The first subpoena for documents for these——

Mr. KOSKINEN. The first subpoena actually went to the secretary of the Treasury.

Mr. COLLINS. And do you know what date that was?

Mr. KOSKINEN. That was in August.

Mr. COLLINS. Yes, it was. You came in in December. You were issued a subpoena on February 14th, correct?

Mr. KOSKINEN. Correct.

Mr. COLLINS. At what stage did you find what we will just say is the compliance to the first subpoena when you took over in December?

Mr. KOSKINEN. I was not familiar with it and wasn't focused on the first subpoena; it went to the Treasury Department.

Mr. COLLINS. Okay. When it was being worked on the IRS to get to when you get the subpoena on February 14th, are you saying, then, that basically we just started over to answer the subpoena that you got?

Mr. KOSKINEN. No. Actually, it turns out we had already provided and have provided significant information on all of the categories of the subpoena.

Mr. COLLINS. Significant. Okay, but the February subpoena asked for what?

Mr. KOSKINEN. The February subpoena asked for all emails, all documents related to 501(c)(4)s.

Mr. COLLINS. Okay. And does significant mean all?

Mr. KOSKINEN. No. We actually have not provided all, we have provided——

Mr. COLLINS. And I think we——

Mr. KOSKINEN. And we have said we are going to continue to work with the committee to provide the other documents.

Mr. COLLINS. And this is where it gets to the point of understanding, because this has not been discussed in the last three months. It has not been discussed since December. This has been going on for coming up on a year now. It has been discussed and understood and has been talked about, and especially as it got targeted around several individuals, Lois Lerner being one of them, that there seems to be—this is what I think previously was talked about—a storyline or however you want to put it. It is not a storyline, it is the fact that there is information wanted, there has been information requested, and that—you made a statement earlier and you said that the public needs to feel satisfied about what is going on. Do you feel they are satisfied right now?

Mr. KOSKINEN. I think the public will be very satisfied when this committee issues its report.

Mr. COLLINS. Okay. But one of the issues that they are right now, that they are being satisfied, is they feel like they are not getting—wouldn't it be—you said you wanted to get this as soon as possible. I agree with what I believe the chairman said earlier and others. Make this a priority. Get this off the table. Wouldn't it seem to me that if you want to provide all, and you said and I take you at your word that you want to provide all, that this would be something that you would go ahead and get off the table as quickly as possible? And I am not sure we buy the fact that it is going to take this in redaction, because you have already said most of it might not even need redacting.

Mr. KOSKINEN. No, I did not say that, others have said that.

Mr. COLLINS. Okay, so you are saying that every one of them is going to need redacting?

Mr. KOSKINEN. No, every one has to be reviewed to see whether it has to be redacted.

Mr. COLLINS. Okay. And——

Mr. KOSKINEN. We cannot give you any taxpayer information, and every document, every page has to be reviewed.

Mr. COLLINS. And nobody is asking you to do that. But I think the problem here is this: You have walked into a position in which the trust level is zero. And now this committee has asked for all documents, and it is not a matter of what we are going to redact, it is just get all. We are asking and you said we need to do that. But the people don't trust us anymore.

With my last minute, though, I will yield to the gentleman from Ohio. He had a question. We need to get this off the table. Gentleman from Ohio.

Mr. JORDAN. I thank the gentleman for yielding, but I don't know if I have enough time to get through the material I wanted to with the commissioner, so would yield back to the gentleman from Georgia.

Mr. COLLINS. With that, Mr. Commissioner, I take you at your word, but the people that I go home, we don't talk about hardly anything else when I go home except IRS, Benghazi, these other issues that the people feel like they are not getting an answer on, and they are tired of these kinds of hearings in which we say, well, we are getting to it, we are coming around to it; and especially when they are asked for it, they are demanded the answers from the IRS or others when they are asked for it on a different time line. It is time to get this done.

Chairman ISSA. Would the gentleman yield?

Mr. COLLINS. The gentleman will always yield.

Chairman ISSA. I just want to make it clear of one thing. You know, every time you go back and talk about $6 million of new computer equipment and the time it takes to redact, I am reminded that Ways and Means, only a week ago, was still negotiating to try to get subsets of information when, in fact, there was no redaction necessary, you could just do a computer dump on them. So very clearly you did not use that $6 million of new equipment to grab all the emails and just send them over, but, in fact, your agency and Treasury was slow-rolling Ways and Means and Senate Finance exactly the same way as you are slow-rolling us, but without the excuse for redacting.

Mr. KOSKINEN. I think that is an improper characterization. We, with Ways and Means, have been working through the priorities, trying to figure out how we could get them the most important, significant information that they think is significant as quickly as we can. It is going to take time; it has taken time. There is no higher priority in this agency than providing the documentation, but oversimplifying how easy it is doesn't help us very much; it won't make it go any faster. We are committed to continuing to cooperate. I said earlier, to the extent we can work with you and identify within the broad range of the subpoena what you would like first, we are happy to do it. It doesn't mean we won't give you other stuff later. With Ways and Means, we have never said that is all you are ever going to get; with Ways and Means, we have worked with their staff very productively to say here is where we are, what else would be helpful to you, what else do you need, and we have been providing it.

Chairman ISSA. Very productively for over a year and they still don't have it all. That says a lot when there is no reduction required.

Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

Commissioner, I want to go to that time frame. If you have someone where the IRS is requiring documents from an individual, audit or whatever, is it an excusable excuse to say that they don't have the time and it is going to take a year or two to get you the

information? Is that a permissible excuse to not give the IRS documentation?

Mr. KOSKINEN. In the course of examinations, we have audits of large corporations and it takes us years.

Mr. MEADOWS. But me as an individual. Let's say if I came to you and just said, golly, commissioner, it is going to take a long time to get it, at what point does the IRS say that that is not okay?

Mr. KOSKINEN. We would say that after we understood what your circumstances were. If there was a legitimate reason it was going to take time, we would take time. There is no way we would ask you to something you couldn't do.

Mr. MEADOWS. All right, so you are saying that it is going to take years to get us this information, according to your testimony a few times ago.

Mr. KOSKINEN. With regard to all of the documentation about all of the applications for four years, my understanding is it is going to take years.

Mr. MEADOWS. We are talking about Lois Lerner, all of her emails. How long would that take?

Mr. KOSKINEN. I cannot tell you. All I can tell you is the redacted version of——

Mr. MEADOWS. So let me ask you this. Let me change, let me ask this. At what point should this committee hold you and your agency in contempt for not complying? I mean, what is the time line?

Mr. KOSKINEN. Well, I think the time line is whenever you think you can actually sustain that in a court. I think we have a strong case that we have been cooperative, continue to be cooperative, and anybody looking at the systems we have and the time it takes would find that we have provided you more cooperation than in fact might be expected. And I think that, in fact, arguing and threatening contempt in that situation without understanding the circumstances is probably not going to be held up.

Mr. MEADOWS. Well, I appreciate your opinion. I can tell you the people that I represent, they believe that you are stonewalling, and this testimony today is an indication, because you have gone over and over again of trying not to answer the questions that many of my colleagues have answered, you have qualified those.

But let me go on to another point. February 3rd you made an announcement that you were going to reinstate bonuses to the tune of $62.5 million and give those back, and go against the decision that was made on July 29th. On March 5th, Secretary Lew, I guess testifying before the Senate Finance Committee, said that the "senior managers who were anywhere in the chain of command who exercised bad judgment in the running of the program are no longer there," implying that they would not get a bonus. Would you agree that they didn't get a bonus? Anybody who could have been involved in this targeting did not get a bonus?

Mr. KOSKINEN. Those people aren't in the pool. This is not a bonus pool, it is a performance award pool that goes to bargaining unit employees——

Mr. MEADOWS. So anybody involved in the targeting—my question, let me make it specific. Anybody who was involved in the targeting did not get a bonus, is that correct?

Mr. KOSKINEN. First of all——

Mr. MEADOWS. Yes or no? Yes or no?

Mr. KOSKINEN. I have never said there was targeting. So if you would let me clarify what the answer is. Nobody——

Mr. MEADOWS. So today you are saying that there was not targeting?

Mr. KOSKINEN. I am saying the IG found that——

Mr. MEADOWS. I am saying what did you say. You are the one here testifying.

Mr. KOSKINEN. I have said that this committee and five other investigations will tell us what the facts are. I have made no judgment about what happened because I have made no investigation.

Mr. MEADOWS. All right, so anybody who might have been in what I would call targeting, did they get a bonus? Do you know?

Mr. KOSKINEN. They would not have been eligible unless they were in a bargaining unit. I don't know who is in the bargaining unit and who would have gotten those.

Mr. MEADOWS. So somebody that was involved in this could have gotten a bonus?

Mr. KOSKINEN. There are front-line employees in the Exempt Organization Division——

Mr. MEADOWS. What about senior level management employees? Those bonuses come out to the tune of 10, $20,000 per employee. Did anybody that potentially could have been involved in these decisions, in the bad management practices, could they have gotten a bonus?

Mr. KOSKINEN. Not to my knowledge; none of them, in fact, are there.

Mr. MEADOWS. All right. So let me ask you how do you make that definitive of a statement if the investigation is not done? Because we don't know who is actually involved, unless you are making an assumption of guilt or innocence. So how would you know that?

Mr. KOSKINEN. I would know that because you have given us a list of everybody you think is involved. We have actually gone through the production of documents. So if there is somebody who has been involved that isn't on any of those lists and hasn't shown up, it would be a surprise to all of us.

Mr. MEADOWS. So your testimony here today is everybody that we have identified is innocent. That is your testimony?

Mr. KOSKINEN. No, you asked whether they got bonuses. I said nobody who is not there got a bonus. Whether they are innocent or not, I don't know. I am waiting for the results of the investigations.

Mr. MEADOWS. Okay, so you can't assure us that they didn't get bonuses, because you don't know who they are.

Chairman ISSA. If I can clarify the gentleman's answer, I believe, and correct me if I am wrong. If we have identified individuals as people of our specific inquiry, those names, I think the commissioner is saying he knows they did not get bonuses. Is that correct?

Mr. KOSKINEN. That is correct.

Chairman ISSA. Okay. And obviously there may be others involved, but if we haven't identified them I can see the commissioner's point.

Mr. MEADOWS. I thank the chairman. I yield back.

Chairman ISSA. Thank you.

The gentleman from Michigan.

Mr. BENTIVOLIO. Thank you, Mr. Chairman.

I have been here all day or all morning listening to you and the questions being asked, and somehow I feel like you should have come in here with boots on because we are mucking out a chicken coop. That is what it feels like. Trying to get to the truth, the hardest thing to find in Washington. I have heard you say you made no investigation. You have been here four months, correct, working for the IRS for four months?

Mr. KOSKINEN. Right.

Mr. BENTIVOLIO. Made no investigation. Yet you said we have six investigations going and it is a serious issue. I think that should have been the first thing on your list. I have heard the opposing side say we are spending a lot of money on this investigation, why? And I can't help but think my brothers and sisters in uniform fought for this Country on the beaches and jungles and deserts defending the freedoms guaranteed by the Constitution, and the IRS takes that with, well, it must not be very important to them. And that is insulting to me. It really is.

Freedom of speech is very dear to my heart, as is the rest of the Constitution. I fought in two wars. I don't care how much it costs to guarantee those freedoms. And I would like to thank the chairman and the committee for spending so much time and energy on this.

But I am going to cut through everything, because I don't really believe you when you say it is going to—20,000 pages and it is going to take years to get emails.

Mr. KOSKINEN. I didn't say it about emails. I said it would take years if you want all of the (c)(4) applications for four years and all of the documents related to them.

Mr. BENTIVOLIO. Okay, we are just talking about emails.

Mr. KOSKINEN. If you are talking about emails, I never said it would take years.

Mr. BENTIVOLIO. Okay. You know what? I know students in my high school class who could probably go in there for you and get them done in a morning.

Mr. KOSKINEN. I bet they couldn't make 6103 determinations.

Mr. BENTIVOLIO. No, that is right, and that is not what we are looking for. What I am looking for is the emails from Lois Lerner.

Mr. KOSKINEN. Emails from Lois Lerner, every page has to be looked at to make sure there is no 6103 information on them.

Mr. BENTIVOLIO. Maybe we should just get those from the other committee where you didn't have to do that.

Mr. KOSKINEN. That is right.

Mr. BENTIVOLIO. And they could do that. And you can just provide it to them, we can get them from them and redacted.

But, anyway, I have some really quick questions. In four months you haven't done any investigation, but I know that you have talked to people in your office. You have asked them some tough questions that you are not coming forth with us today.

Mr. KOSKINEN. That is not true. Not true.

Mr. BENTIVOLIO. Well, let me ask you. In your opinion, were conservative groups targeted by the IRS to stifle opposing views prior to the presidential election?

Mr. KOSKINEN. All I know is what the IG found, and he found that inappropriate——

Mr. BENTIVOLIO. What do you know?

Mr. KOSKINEN. Pardon?

Mr. BENTIVOLIO. Yes or no, do you believe, in your opinion, do you believe the IRS has done that?

Mr. KOSKINEN. I have not taken an opinion on this. My position is——

Mr. BENTIVOLIO. That is an easy way out. Thank you.

Did Lois Lerner, plan, organize, or target conservative groups in cooperation with, at the suggestion of, or at the direction of members of the Senate or White House staff?

Mr. KOSKINEN. I have no information about that. I am waiting——

Mr. BENTIVOLIO. You have been there four months? You said it was a serious issue and there are six investigations. You would think you would ask your people directly those questions.

Mr. KOSKINEN. No. What I have asked my people directly is have we implemented and accepted the IG's recommendation to solve whatever management problems were in the system to make sure that whatever happened never happens again. That is what I think my job is, is to take the organization, manage it going forward. My job is not to look backwards in time, my job is to try to make sure that we can assure the American public that whoever deals with the IRS, no matter what their political background, their affiliations, what church they go to, who they voted for are going to be treated fairly. That is what I think my responsibility is. That is what I think I have an obligation to the American taxpayers to do.

Mr. BENTIVOLIO. Thank you, Mr. Chairman. I would like to yield to the gentleman from Ohio.

Mr. JORDAN. I appreciate the gentleman yielding.

If we could go back to where we were just a few minutes ago, Mr. Commissioner. You had indicated that you view your role as independent from anyone in the White House, the Treasury, even though you are housed in the Treasury. You had indicated that your testimony you prepared, you put together, and you submitted and read from some of that today when we started the hearing. I want to just point out a couple things that I find interesting.

Let's go to slide 1, if we could.

[Slide.]

Mr. JORDAN. This is a letter from Alastair Fitzpayne, Assistant Secretary of the Treasury, to Dave Camp from one month ago. And then we have your testimony from today, March 26th, a month later. Second slide there your testimony, seven or eight pages, I think in your testimony. And then I want to go to page 7 of your testimony.

Next slide, if we could.

[Slide.]

Mr. JORDAN. Now, this is what I find interesting. This is your testimony side-by-side from a paragraph that the Treasury wrote to Chairman Camp, and this language is even closer than earlier

when I asked you about the proposed questions and the inappropriate questions and the similarity there. This is basically word-for-word. There have been numerous misleading reports and public statements regarding post-regulations. Exact same language from yours. Then you talk about the first draft regulation does not restrict any form of political speech. Mr. Alastair Fitzpayne's letter, exact same language. Second, exact same language. We will give you a copy of this.

Go to the next slide, if we could.

[Slide.]

Mr. JORDAN. This is all, again, talking about the (c)(4) rule, the draft regulation.

Chairman ISSA. You are going to have to wrap up.

Mr. JORDAN. Okay.

Draft regulation. What I want to know is if you are independent, if you put together your own testimony, why does it read word-for-word exactly what the Treasury sent to Chairman Camp? It seems to me either it is plagiarism or it contradicts what you told me earlier, that you prepared your own testimony and that you are an independent agency.

Chairman ISSA. The gentleman's time has expired.

Mr. KOSKINEN. May I respond?

Chairman ISSA. Please.

Mr. KOSKINEN. I respond on my time. I wrote this testimony. I read Mr. Fitzpayne's letter to Chairman Camp. I did not have any role in drafting it. I thought the points he raised were good points and I thought it was important to put them in my testimony, that, in fact, it is important for people to understand that these draft regulations are open to public comment. I have an open mind about them, but it is important for people to understand that people can engage in political activity any way they would like. They could become a 527 and do nothing in an organization but engage in political activity. Whatever regulation we come up with is not going to be focused on, and should not be focused on, keeping people from doing whatever they want elsewhere; it is focused on what should 501(c)(3), (4), (5), (6), and (7)s be able to do or not able to do, and I thought it was Mr. Fitzpayne's letter to the chairman seemed to me accurately portrayed the situation and I thought that, therefore——

Mr. JORDAN. So you looked at the letter——

Chairman ISSA. No, the gentleman's time—I apologize, but we are going to go to the gentleman from Florida, Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

So, commissioner, if you, right now, had a stack on the table there of every email to, from or that copied Lois Lerner and all the 6103 information was redacted, would you have any problem just delivering all those emails to us immediately?

Mr. KOSKINEN. No. If I could get them on a stack on the table——

Mr. DESANTIS. So it is basically about the process and the burden of getting the emails. You don't have a substantive objection to the fact that we want this information.

Mr. KOSKINEN. No.

Mr. DESANTIS. Okay. So do you know how long it would take to just pull those emails that I mentioned? Don't do the 6103, just get the emails, most likely in electronic form. Do you have any idea how long just that first step would take?

Mr. KOSKINEN. I do not.

Mr. DESANTIS. Can you find out and report back to us?

Mr. KOSKINEN. I would be delighted.

Mr. DESANTIS. My understanding is that that part would not take very long. So you have no idea, as you sit here, how many of these emails involving Lois Lerner even exist, correct?

Mr. KOSKINEN. I have no idea, that is right.

Mr. DESANTIS. So you can't say that going through the documents for 6103 information would necessarily be burdensome because we just don't know how many emails we are talking about, correct?

Mr. KOSKINEN. That is correct. All I know is the burden of just trying to get you the redacted versions of her emails about exams, appeals, and the regulatory process is going to take several weeks.

Mr. DESANTIS. No, I understand, but I mean, for example, we don't know, there may be 50 emails of her cheerleading Democrats, criticizing Republicans.

Mr. KOSKINEN. That is correct.

Mr. DESANTIS. There could be 500 of those. So we don't know.

Mr. KOSKINEN. Exactly.

Mr. DESANTIS. So I think you understand the committee views Lerner's emails as the highest priority. I think if you could figure out for us how long it would take just to pull them, and then once that is done, let us know how many we are talking about. Because what we don't want is to just see this being dragged on, dragged on. And that may not be your intent, but a lot of my constituents don't believe that the IRS has been forthright, and I think that that is bad going forward generally.

There is another issue that I get asked about a lot by my constituents, and you were not the commissioner so this is not on you, obviously, but Lois Lerner testified last May, she basically said she didn't do anything wrong, then she took the Fifth Amendment. Now, obviously, we think that she waved at some people. Put that aside. Just as an IRS commissioner, if you have somebody that high-ranking that comes and they are being asked questions about their official conduct in office, what do you do if somebody invokes the Fifth Amendment? Now, we know that that protects them against criminal prosecution, but just running your organization, what then happens to an employee going forward if someone is in that situation, where they cannot discuss what they did in this official capacity?

Mr. KOSKINEN. Well, as you know, she doesn't work for the IRS anymore. If an employee takes the Fifth——

Mr. DESANTIS. Well, she did at the time, though, and I know you weren't there, but I am just asking you how do you analyze that situation. Because we had another IRS official take the Fifth involving some fraudulent conduct, not related to this investigation; and it just seems like, when that happens, it is kind of like, okay, we will reassign somebody and you kind of go on your day. But a

lot of my constituents look at that and they lose confidence in that official's ability to conduct their duties.

Mr. KOSKINEN. Right. And as you know the assertion of the Fifth Amendment is not meant in any way to cast doubt on the guilt or innocence of the party or what they would say, so what we would do in any normal circumstance like that is consult with our personnel people and our legal people to see what the circumstances are and what authority we have to take whatever action we do. But any time anybody exercises their constitutional rights, if that was grounds for dismissal, it clearly would undercut the vitality of those rights. So I don't think you can automatically say everybody who ever asserts the Fifth Amendment on any issue would automatically have adverse personnel actions, but we would immediately take a look at it.

Mr. DESANTIS. So you think, though, that it could cause you to reevaluate that individual's position and whether they can conduct their duties? Because I just think that this is the public's business. If we can't get answers to some of these questions, put aside what happens to them criminally, I am not talking about that. I am just talking about the transparency that I think the taxpayers deserve, especially given the power of your institution; that if you do have people who are misbehaving and targeting citizens, there are few organizations where that is more detrimental to freedom than the Internal Revenue Service. So I appreciate your diligence on getting us the answer on Lois Lerner's emails and I yield back the balance of my time.

Chairman ISSA. I thank the gentleman.

We now go to the dean of the Wyoming House delegation, Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman.

Mr. Koskinen, welcome to the committee. Thank you for being here.

Mr. KOSKINEN. It has been a wonderful day.

Mrs. LUMMIS. I am sure.

I would like to ask you if you ever met Lois Lerner, Holly Paz, William Wilkins, or Jonathan Davis.

Mr. KOSKINEN. The only person I have met is William Wilkins, who is still the general counsel of the agency.

Mrs. LUMMIS. Have you ever spoken to him about tax-exempt organizations?

Mr. KOSKINEN. Tax-exempt organizations. I have not talked to him about specific ones. He has been in on meetings where we have talked about issues such as responding to the IG's recommendations.

Mrs. LUMMIS. Have you ever talked to him about Lois Lerner?

Mr. KOSKINEN. No.

Mrs. LUMMIS. Have you ever talked to him about Holly Paz?

Mr. KOSKINEN. No.

Mrs. LUMMIS. Have you ever talked to him about Jonathan Davis?

Mr. KOSKINEN. No. I should say I have never talked to him about any of those people in terms of who they are and what they did. He has been in meetings where we have discussed trying to comply with the requests for discovery and those names have been men-

tioned, but I have never talked to him about any of those people individually or their role at the agency.

Mrs. LUMMIS. Do I understand correctly that you are willing to respond to item 1 in the subpoena prior to responding to items 2 through 8 in the subpoena?

Mr. KOSKINEN. Item 1 is Lois Lerner's emails?

Mrs. LUMMIS. It is.

Mr. KOSKINEN. Yes. No, as I have said, we understand. We are going to start with January. We are going to continue, because we have already started that process and I think it is important to get you all of the emails in the areas that I talked about, and then we are going to find out about January; and we will continue to work with you as to what order and priority, and we will let, as noted over there, let you know how many emails there are and what the process would be. We are delighted to do that.

Mrs. LUMMIS. Thank you. Are you aware that there is a deficit of trust on the part of the American people with the IRS?

Mr. KOSKINEN. I do not know that personally. I have heard from a number of people talking about their constituents being concerned, and I assume and I believe those are accurate representations. Whether they represent the entire public or not to me is not important. I think every individual member and every organization in the Country deserves to feel comfortable that they are going to be treated fairly by the IRS, so my view is whether it is the entire Country or only segments or parts of it is not the question; it is important that everyone feel confident and comfortable dealing with the IRS.

Mrs. LUMMIS. And, indeed, when I go home, as other members have stated, including Mr. Lynch, what I hear is there is a deficit of trust; that people feel that they are being targeted not only from the tax-exempt organizations, but from other entities within the IRS. I have a constituent who has been involved in an estate matter for years since her husband died, who has the IRS coming and asking what brand of bedroom furniture she has. And she has paid $50,000 to accountants to try to address the questions of the IRS. That seems to me—by the way, she just happens to be a national committeewoman for the Republican National Committee and has contributed to Republican candidates.

I would inform you that there are people that believe that IRS targeting has gone beyond conservative groups in the 501(c)(4) and into other areas of the IRS. I would like to inform you that the deficit of trust goes beyond tax-exempt organizations, and I would like you to know that when 100 percent of those targeted tax-exempt organizations turned out to be conservative organizations and people start threading their other problems with the IRS into their Republican affiliation or conservative affiliation, it begins to create a connect-the-dots situation that has created an enormous deficit of trust. And I appreciate your willingness to address what is coming up.

I do want to yield the balance of my time to the gentleman from Ohio, Mr. Jordan.

Chairman ISSA. And, with that, we are going to give the gentleman from Ohio two full minutes to conclude.

Mr. JORDAN. I appreciate that, chairman.

When do you anticipate completing looking at the comments and making a decision on the proposed rule relative to (c)(4) organizations?

Mr. KOSKINEN. Again, that is difficult to project. We obviously have a lot of comments——

Mr. JORDAN. You are obligated to look at all those comments.

Mr. KOSKINEN. We need to review those. We will hold a public hearing where the public and members of Congress can testify. If we are going to significantly change, which is possible, certainly, the regulation, we would probably have to republish it. So as I have said in the past, I think it is unlikely we are going to get this done——

Mr. JORDAN. Do you have an opinion on the proposed rule now, prior to looking at the comments? You said you haven't looked at them. Do you have an opinion on the rule now? Do you think it is a good rule? Do you think you are going to stick with it or do you think you are going to change, you being the head of the IRS?

Mr. KOSKINEN. Head of the IRS, my position has been that I am going to keep an open mind about the entire thing so that I can look at all the comments fresh. I wasn't here when the regulation was drafted, so I don't have a dog in that fight. My commitment is that any regulation that comes out ought to be fair to everybody, it ought to be clear, and it ought to be easy to administer.

Mr. JORDAN. I have 50 seconds. Let me go back to where I was earlier on your testimony. You indicated that you took this directly from Mr. Fitzpayne's letter, lifted it from his and inserted it into yours. Do you view that as plagiarism, Mr. Koskinen?

Mr. KOSKINEN. If I were publishing it for credit of one kind or another I would. In terms of——

Mr. JORDAN. Do you think you should have cited where it came from?

Mr. KOSKINEN. Pardon?

Mr. JORDAN. Do you think you should have cited that it came from the Treasury Department? I mean, your answer to me earlier was we are independent, I view my role as independent; no one talked to me about the (c)(4) rule during the nomination process, no one at the White House, no one asked me about it prior to being nominated, going through the confirmation process; and yet you take directly from the Treasury Department their exact language regarding the (c)(4) rule, insert it into your testimony and then come here and say you are independent. That is our concern.

Mr. KOSKINEN. If I find a good idea somewhere and I think it is appropriate to put into the public domain, I am happy to do it.

Mr. JORDAN. I understand that, but you specifically told me you didn't do that; that you work independent and you put together your own testimony and you didn't work with the Treasury, no one influenced you about the (c)(4) and no one asked you about it when you went through the nomination process.

Mr. KOSKINEN. I am independent of this committee. If you have a very good idea, I am likely to adopt——

Mr. JORDAN. You know what? We have a good idea. We have a real good idea. Give us every one of Lois Lerner's emails as soon as possible.

Mr. KOSKINEN. Right. And we are going to work on that together.

Chairman ISSA. I thank you.

We now go to the gentleman from Maryland, Mr. Cummings, for his close.

Mr. CUMMINGS. Thank you very much. Mr. Chairman, this hearing has been very helpful in that I think we were able to, to some degree, focus on an IG report. The IG had nine recommendations and they have all been met.

And I want to take a moment to say to the IRS employees who are watching us, and to you, Mr. Koskinen, I just want to thank you for your service. You all have one of the toughest jobs in America, collecting taxes. At the same time, you have laws that you have to make sure are adhered to. And when people get those letters saying that they are about to have an audit, or they get anything from the IRS, except a check, their blood pressure probably goes up a little bit because they are concerned.

And the reason why I say all that is I want to go back to something that Mr. Lynch said. I think that when you have any kind of breach of trust, what happens is that it makes everything suspect; and I know that you have come in to try to restore that trust, and it is not easy. On the one hand, you have come in and you have taken up where Mr. Werfel left off; and I give him a lot of credit, as I know you do.

Mr. KOSKINEN. Right.

Mr. CUMMINGS. And all those employees who are working hour after hour, giving their blood, sweat, and tears to try to make this work. But then, no matter what happens, there is still a search for what part Ms. Lois Lerner played in this, and she really brought on some of her own problems, to be frank with you. So you have the committee trying to get to that and, in reality, it is relevant to a degree, and that is so that we figure out what happens so that we make sure it doesn't happen again. So that is significant.

But I don't want that to take away from what you all have accomplished, because I know that it has not been easy. And there has been much talk about the regulations, the proposed regulation, and I was just looking here at the recommendations of the IG. He recommended to IRS chief counsel and Department of Treasury that guidance on how to measure the primary activity of IRC and 501(c)(4) social welfare organizations be included for consideration in the Department of Treasury priority guidance plan. That is what the IG said.

And somebody here, I think it may have been Mr. Jordan, went on and on and on and on and on and on and on about how nobody is happy. Well, in my 32 years being in public life and looking at laws and regulations, I can tell you most people aren't happy about something in a law. That is the way it is. So the thing that I want to make sure does not happen is that there is not a chilling effect on the IRS and the job that they are supposed to do. I don't want them to be in a position where they become so paranoid that they don't do what we, the Congress, had mandated that they do.

So I am hoping that, again, the employees will do their jobs, will continue to do the very best that they can, use their best judgment. Hopefully, and I pray that they will, leave their political hats at the door so that Americans, all of them, will be served the way that

the Congress intends for them to be served, and that is everybody treated fairly and equally.

With that, I want to thank you.

Mr. KOSKINEN. Can I just comment for a minute?

Mr. CUMMINGS. I hope the chairman will give you a second.

Mr. KOSKINEN. I would have responded to the congresswoman from Tennessee that even with our restrained and constrained resources, we will do a 1,300,000 audits this year. Some of them are going to be Democrat, some of them are going to be Republican; some are going to be long to one organization or another; some will go to church, some won't go to church; some will have been in a meeting two months ago.

It is important for us and critical for the taxpayers to understand that no matter who you are, what your background is, at this point, dealing with the IRS, when you get an inquiry from us, it is because of something in the material you filed, and you are going to be treated fairly. And if anybody else had the same information in their material they filed, they would get an inquiry from us. It may mean we need more information, we need an explanation, maybe there has been a mistake.

But, across the board I think the point is well taken, if there is a decline in trust, people are all going to try to figure out, when they get a letter from the IRS, why are they getting it; and what I want them to be comfortable with, and it will take time to reassure them, they get that letter because of something they filed in their returns. It has nothing to do with who they are, nothing to do with their political beliefs, nothing to do with who they voted for in the last election. And I understand that for some people that is hard to believe right now, but that is our commitment and that is our goal in the years going forward.

Mr. CUMMINGS. Thank you.

With that, Mr. Chairman, I yield back.

Chairman ISSA. Thank you.

Often, for a chairman it is hard not to bring your past experiences into Congress. Sometimes it is helpful. When I was starting in business, my very first year, I was audited on my income as an Army 1st lieutenant. Went in with the paperwork and my fledgling new accountant from my new firm, and it turns out that the auditor was a former military officer and he was horrified that I had received so much per diem from temporary duty; and he kept saying, but I never got anything like this, it is not possible. He wasn't a military expert, he was an IRS auditor, and he was just angry as hell that I was in TDY apparently full time except for one or two days a quarter for years. I was with an experimentation command; we were always there.

Ultimately, I paid no new taxes and there wasn't a problem, but it was remarkable to me to realize that he came with a prejudice. It wasn't a Republican prejudice, it wasn't a Democratic prejudice; it was a prejudice about the money I got tax-free as a per diem recipient. That is human nature. We are dealing with human beings.

This investigation may be about politics or it may be about human beings, and your charge, of course, is to try to wring out the wrong behavior in both cases. You are charged not just with making sure they don't pick on me because I am a conservative or

Mr. Cummings because he is comparatively liberal, but also the whole question of they audit a lot of people who make a lot more money than they do. That is not a get-even time. All of those and more are part of your charge.

But the investigation before us primarily is about some past conduct, and I want to put into the record—these are from a previous hearing, but I will put them in at this point for continuity—July 10th, 2012, two emails related to Lois Lerner's emails in which it has in it Democrats say anonymous donors unfairly influence Senate races. It says, perhaps the FEC will save the day. Now, this includes Holly Paz, Sharon Light, and Lois Lerner in the train, and it also mentions Crossroads GPS and a number of other things; and it particularly says the Obama campaign, and then it is semi-redacted, filed e similar complaint against Crossroads GPS, watchdog groups, and so on.

One of the things that we are finding, and it was here today in testimony that you made, it was definitely on a number of my Democratic members, Ms. Speier and others, Ms. Grisham, they have a real problem with the 501(c)(4) not disclosing their donors. They want 501(c)(4)s to essentially not be able to do what they do; they want them to be 527, another category, correct?

Mr. KOSKINEN. I don't know what they want. The 527 is another tax category for political organizations.

Chairman ISSA. So 527s can do all the activities they want to do, political; they just have to disclose their donors. That falls under the Federal Election Commission.

The charge this committee has in Government oversight and reform includes making sure that we properly allocate resources and authorities where they are supposed to be. In 1959, more than 50 years ago, 50 years before Barack Obama was elected President, the American people made certain decisions on a 501(c)(4), and the ruling that came out of that stood for all those years, and there was clearly political activity by 501(c)(4)s and they did not report their donors.

When Congress created the Federal Election Commission, and through Shays-Meehan, McCain-Feingold, and other reforms over the years, changes were made. I find no record that they made a decision that the American people, through their elected representatives, Republicans and Democrats, made any decision to make 501(c)(4)s report their donors or to limit their ability beyond the majority decision that had been made and the rule for decades.

It would appear as though, through these emails and other activities of Lois Lerner and others, individuals at a very high level in Washington working for your agency made a decision that they were going to do what the FEC was charged to do but use their authority. I believe that it has been well shown there. I believe that is one of the challenges we face, beyond the fundamental investigation of the targeting.

If the IRS is allowed to become a wing of the Federal Election Commission, if you are allowed to create a rule, modify rules because you, the President, or executives within the IRS or Treasury believe that it shouldn't be some way, that they should have to report, and that is the reason for changing a 501(c)(4), which cannot exclusively do politics, but can do some amount of politics, even by

your own self-declaration right now, 40 percent, without reporting their donors, that in fact the IRS is legislating and regulating using authority they don't have to legislate and regulatory authority they don't have that the FEC has.

Congress, in its wisdom, and past presidents have, in fact, provided the rules under which the Federal Election Commission operates and where the disclosure is. Many members of this committee have expressed their willingness and their concern and their belief that the rule should be changed. Whether I share that or not, my concern, as the head of this oversight committee, and I would hope all the committees doing oversight, is that you not take it on yourself, or anyone that works for you or for the Executive Branch, to legislate a change. That is the exclusive purview of Congress. And reevaluating an existing law 50 years ago, quite frankly, belongs to the courts, not to an agency to conveniently reinterpret something based on who is using it and how, and whether it is politically acceptable.

So our committee will continue to investigate on behalf of the American people because we do find the fundamental evidence, beyond the targeting of conservative groups, that the decision of Citizens United and the growth of the use of 501(c)(4)s to do some politics, but not exclusive, in fact appears to be the reason for action by the IRS. It is within our jurisdiction, it is within our purview to continue that.

So, in closing, I must tell you we do want all of Lois Lerner's emails. We do want all of Holly Paz's emails. We don't believe that you have been forthcoming in a timely fashion. We do believe that you have given us what you believe is responsive, hoping we would never get the rest, when in fact, when I issued the subpoena and then reissued a subpoena to you, I did so to make it very clear that our investigation as to emails like this one tell us we need to look at all of her correspondence for why she was doing what she was doing and who she was doing it with.

Mr. CUMMINGS. Can he respond to that?

Chairman ISSA. No, it is a closing statement. And I didn't ask a question, I made a statement.

Mr. KOSKINEN. Right. I may not agree with all the conclusions in the statement, but it is the chairman's right to make whatever statement he would like.

Chairman ISSA. It is only a statement. I certainly let him answer yours. But this was a statement and I wanted you to understand where the investigation was going, which is really what the close was about.

Mr. Cummings, during the course of this investigation, you raised procedural questions related to Ms. Lerner's conduct when she appeared before the committee on May 22nd, 2013, and again on March 5th, 2014. You had a consultant, Mr. Mort Rosenberg, look into this. He prepared a memo. The Office of General Counsel in turn prepared a memo to advise the members of the committee on this topic. I now ask unanimous consent that that memo be placed in the record. Without objection, so ordered.

Chairman ISSA. Mr. Commissioner, I appreciate you were treated well in some cases and in some cases our members went off topic. You handled yourself incredibly well. We do have disagreements on

discovery speed; I am sure we always will. I do appreciate your being here today and your answering all questions. I did not weigh in when people went off topic and you handled yourself very well. I would have weighed in if I thought that you were sinking. You were not. So I want to thank you.

Is there anything more, Mr. Cummings?

Mr. CUMMINGS. No, just that we will provide you with our memo in response to yours, which has 23 experts who agree with us.

Chairman ISSA. We can continue to play the tit-for-tat.

Mr. CUMMINGS. No tit-for-tat, I was just letting you know, that's all.

Chairman ISSA. Okay, very good. Thank you.

Mr. CUMMINGS. Very well.

Chairman ISSA. And, Mr. Commissioner, thank you.

We stand adjourned.

Mr. KOSKINEN. Thank you.

[Whereupon, at 12:45 p.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Exempt Organizations Recommended Actions Ending February 24, 2014 (updated # 7 only)

No.	Recommendation	Lead	ECD	Status*	Actions Taken
1	Ensure that the memorandum requiring the Director, Rulings and Agreements, to approve all original entries and changes to criteria included on the BOLO listing prior to implementation be formalized in the appropriate Internal Revenue Manual.	Director, Exempt Organizations	6/28/2013 9/30/2013		Because the use of the BOLO lists was suspended (reported in June), the memorandum is no longer operational therefore we are closing this recommendation. However, separately, we are revising the IRM that provides guidance on processing exempt application and have incorporated into the draft comments received from the Taxpayer Advocate and providing training to staff on how to apply approriate screening criteria.
2	Develop procedures to better document the reason(s) applications are chosen for review by the team of specialists (*e.g.* , evidence of specific political campaign intervention in the application file or specific reasons the EO function may have for choosing to review the application further based on past experience).		9/30/2013		Procedures were issued to all specialists on September 30, 2013, providing written instruction on classifying applications when issuing an approval based on the original submission is not an option. This recommendation is closed. The following procedures will be incorporated into the Internal Revenue Manual: • Interim guidance issued on September 30, 2013 on procedures for EO Determinations Unit regarding initial classification of applications. • Interim guidance issued on September 30, 2013 on new Emerging Issue Committee as the central point of contact for all emerging issues.
3	Develop training or workshops to be held before each election cycle including, but not limited to, the proper ways to identify applications that require review of political campaign intervention activities.	Director, Exempt Organizations	1/31/2014		Training materials are completed. Formal training courses number have been assigned as Identification of Possible Political Campaign Intervention Activity. Training will be held before each federal election cycle. This recommendation is closed.
4	Develop a process for the Determinations Unit to formally request assistance from the Technical Unit and the Guidance Unit. The process should include actions to initiate, track, and monitor requests for assistance to ensure that requests are responded to timely.	Director, Exempt Organizations	6/28/2013 1/31/2014		**Updated OCTOBER 2013** The long-term plan as noted in the June report was to engage Business Systems Planning to research subsequent electronic solutions to be completed by January 31, 2014. The new process is documented in written procedures, which enables the use of a spreadsheet-based tracking tool. We are closing this recommendation as the required actions have been completed. However, IRS will expand its efforts through development of a long-term plan.
5	Develop guidance for specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention. This guidance should also be posted to the Internet to provide transparency to organizations on the application process.	Director, Exempt Organizations	6/27/2013 1/31/2014		In June 2013, the IRS issued an interim guidance memorandum to offer optional, expedited processing to certain section 501(c)(4) organizations whose applications had been pending for more than 120 days as of May 28, 2013. On December 23, 2013, further interim guidance was issued expanding this optional expedited processing to all section 501(c)(4) applicants whose applications indicate that the organization may be involved in political campaign intervention or in providing private benefit to a political party and that otherwise do not present any issue with regard to exempt status. Both memoranda are posted on the internet (linked above). This recommendation is closed.
6	Develop training or workshops to be held before each election cycle including, but not limited to: a) what constitutes political campaign intervention versus general advocacy (including case examples) and b) the ability to refer for follow-up those organizations that may conduct activities in a future year which may cause them to lose their tax-exempt status.	Director, Exempt Organizations	1/31/2014		Training materials are completed. Formal training courses number have been assigned for 6a: as Political Campaign Intervention and Other Advocacy and 6b: as Referral of Cases to EO Exam Classification. Training will be held before each federal election cycle. This recommendation is closed.
7	Provide oversight to ensure that potential political cases, some of which have been in process for three years, are approved or denied expeditiously.	Director, Exempt Organizations	1/31/2014		New review process and an expedited option for priority backlog cases was implemented on June 8th, 2013. Representation letters were sent to applicants the week of June 24, 2013 with the opportunity to self-certify. This recommendation was kept open to report the current status of those original backlogged cases. We will continue to report monthly until they are closed, but are changing the status to closed. **• As of February 21, 2014, 112 cases in the original backlog (55%) have been closed. This includes 85 cases that received favorable determination letters, including 40 applicants participating in the optional expedited process.**
8	Recommend to IRS Chief Counsel and the Department of the Treasury that guidance on how to measure the "primary activity" of I.R.C. § 501(c)(4) social welfare organizations be included for consideration in the Department of the Treasury Priority Guidance Plan.	Commissioner, Tax Exempt and Government Entities	5/3/2013		Updated AUGUST 2013 • Department of the Treasury released the 2013-2014 Priority Guidance Plan on August 9, 2013 and includes guidance under §501(c)(4) relating to measurement of an organization's primary activity and whether it is operated primarily for the promotion of social welfare, and guidance relating to political campaign intervention.
9	The Director, EO, should develop training or workshops to be held before each election cycle including, but not limited to, how to word questions in additional information request letters and what additional information should be requested.	Director, Exempt Organizations	1/31/2014		Training materials are completed. Formal training courses number have been assigned as Political Campaign Intervention and Other Advocacy – Requesting Information. Training will be held before each federal election cycle. This recommendation is closed.

Cumulative for the Record 3/26/14

Mica for the Record 3/26/14

From: Thomas Cindy M
Sent: Friday, May 10, 2013 12:59 PM
To: Lerner Lois G
Cc: Paz Holly O
Subject: Low Level Workers thrown under the Bus

As you can imagine, employees and managers in EO Determinations are furious. We been receiving comments about the use of your words from all parts of TEGE and from IRS employees outside of TEGE (as far away as Seattle, WA)

I wasn't at the conference and obviously don't know what was stated and what wasn't. I realize that sometimes words are taken out of context. However, based on what is in print in the articles, it appears as though all the blame is being placed on Cincinnati. Joseph Grant and others who came to Cincinnati last year specially told the **low-level workers** in Cincinnati that no one would be "thrown under the bus." Based on the articles, Cincinnati wasn't publicly "thrown under the bus" instead was hit by a convoy of mack trucks.

Was it also communicated at that conference in Washington that the **low-level workers** in Cincinnati asked the Washington Office for assistance and the Washington Office took no action to provide guidance to the **low-level workers?**

One of the **low-level workers** in Cincinnati received a voice mail message this morning from the POA for one of his advocacy cases asking if the status would be changing per "Lois Lerner's comments." What would you like for us to tell the POA?

How am I supposed to keep the **low-level workers** motivated when the public believes they are nothing more than low-level and now will have no respect for how they are working cases? The attitude/morale of employees is the lowest it has ever been. We have employees leaving for the day and making comments to managers that "this low-level worker is leaving for the day." Other employees are making sarcastic comments about not being thrown under the bus. And still other employees are upset about how their family and friends are going to react to these comments and how it portrays the quality of their work.

The past year and a half has been miserable enough because of all of the auto revocation issues and the lack of insight from Executives to see a need for strategic planning that included having anyone from EO Determinations involved in the upfront planning of this work. Now, our leader is publicly referring to employees who are the ones producing all of this work with fewer resources than ever as **low-level workers!**

If reference to **low-level workers** wasn't made and/or blame wasn't placed on Cincinnati, please let me know ASAP and indicate what exactly was stated so that I can communicate that message to employees.

[redacted]

IRSR0006 86-782

From: Cindy Thomas
To: Lois Lerner
Cc: Holly Paz
Date: May 10, 2013
Subject: Low-Level Workers thrown under the Bus.

"Based on the articles, Cincinnati wasn't publicly 'thrown under the bus' instead was hit by a convoy of mack trucks."

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MEMORANDUM

TO: **Honorable Darrell E. Issa, Chairman**
Committee on Oversight and Government Reform

Stephen Castor, General Counsel
Committee on Oversight and Government Reform

FROM: **Office of General Counsel**
United States House of Representatives

DATE: **March 25, 2014**

RE: **Lois Lerner and the Rosenberg Memorandum**

You advised us that the Committee on Oversight and Government Reform ("Oversight Committee" or "Committee") may consider a resolution recommending that the full House hold former Internal Revenue Service ("IRS") employee Lois G. Lerner in contempt of Congress for refusing to answer questions at a Committee hearing that began on May 22, 2013, and continued on March 5, 2014.

To assist you in determining whether the Committee should take up such a resolution, and to assist Committee Members (who, we understand, will be privy to the contents of this memorandum) in determining how to proceed if such a resolution is taken up, you asked that we analyze a March 12, 2014 memorandum, prepared by former Congressional Research Service ("CRS") attorney Morton Rosenberg. That memorandum concludes that "the requisite legal foundation for a criminal contempt of Congress prosecution mandated by the Supreme Court

rulings in [*Quinn v. United States*, 349 U.S. 155 (1955), *Emspak v. United States*, 349 U.S. 190 (1955), and *Bart v. United States*, 349 U.S. 219 (1955)] ha[s] not been met" as to Ms. Lerner. Mem. from Morton Rosenberg, Leg. Consultant, to Hon. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform at 4 (Mar. 12, 2014) ("Rosenberg Memorandum"), attached to Letter from Hon. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform, to Hon. John Boehner, Speaker (Mar. 12, 2014).

By "criminal contempt of Congress prosecution," Mr. Rosenberg presumably means the approval of a resolution of contempt by the full House, followed by a referral to the United States Attorney for the District of Columbia pursuant to 2 U.S.C. § 194, followed by an indictment and prosecution pursuant to 2 U.S.C. § 192 for "refus[al] to answer . . . question[s] pertinent to the" Committee's investigation. If so, we agree with Mr. Rosenberg that the *Quinn* trilogy of cases articulates a key legal standard that underlies the viability of such a prosecution. However, we disagree with his conclusion that that standard has not been satisfied here.

The question, in brief, is whether Ms. Lerner was "clearly apprised that the [C]ommittee demand[ed] [her] answer[s] [to its questions] notwithstanding h[er Fifth Amendment] objections." *Quinn*, 349 U.S. at 166. Based on our review of the record, we believe Ms. Lerner clearly was so apprised for two independent reasons. *First*, the Committee formally rejected her Fifth Amendment claims and expressly advised her of its determination (a fact that she, through her attorney, acknowledged prior to her appearance at the reconvened hearing on March 5, 2014). *Second*, the Committee Chairman thereafter advised Ms. Lerner in writing that the Committee expected her to answer its questions, and advised her orally, at the reconvened hearing on March 5, 2014, that she faced the possibility of being held in contempt of Congress if she continued to decline to provide answers.

We now explain our reasoning in more detail.

PERTINENT FACTUAL BACKGROUND

The underlying Oversight Committee investigation concerns allegations that the IRS subjected organizations applying for tax-exempt status to differing degrees of scrutiny, and/or applied to them differing standards of approval, depending on the political orientation of the organizations. From the outset, Ms. Lerner, who at all pertinent times was the Director of the Exempt Organizations Division of the IRS' Tax Exempt and Government Entities Division, was a central figure in the investigation.[1]

Ms. Lerner, accompanied by her experienced personal counsel,[2] appeared at the Oversight Committee's May 22, 2013 hearing session pursuant to a Committee subpoena which commanded her to "appear" and "**to testify**." Subpoena to Lois Lerner (May 17, 2013) ("Subpoena"). After being sworn, Ms. Lerner voluntarily made a lengthy statement in which she effectively testified about a number of matters, including (i) the fact that she was a lawyer and had practiced law at the Department of Justice ("DOJ") and the Federal Election Commission; (ii) her experience with the IRS, including, in particular, the Exempt Organizations Division; (iii) a May 14, 2013 Treasury Inspector General for Tax Administration ("TIGTA") report which concerned issues similar to those being investigated by the Committee and which criticized the Exempt Organizations Division headed by Ms. Lerner, *see* Treasury Inspector Gen. for Tax

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[1] According to press reports, Ms. Lerner retired from government service, effective September 23, 2013. *See, e.g.*, John D. McKinnon, *Lois Lerner, at Center of IRS Investigation, Retires*, Wall St. J., Sept. 23, 2013, *available at* http://online.wsj.com/news/articles/SB10001424052702304713704579093461064758006.

[2] Ms. Lerner's counsel, William W. Taylor, III, is a senior partner with Zuckerman Spaeder, a Washington, D.C.-based law firm. He is a seasoned white-collar criminal defense attorney and has prior experience, dating back to the 1980s, representing clients before congressional committees. *See* Zuckerman Spaeder LLP, William W. Taylor, III, http://www.zuckerman.com/william_taylor (last visited Mar. 25, 2014).

Admin., *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, Ref. No. 2013-10-053 (May 14, 2013), *available at* http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf; (iv) DOJ's investigation into the same matters being investigated by TIGTA; and (v) her asserted innocence: "I have done nothing wrong. I have not broken any laws. I have not violated any IRS rules or regulations, and I have not provided false information to this or any other congressional committee." *The IRS: Targeting Americans for Their Political Beliefs: Hr'g Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. 22 (May 22, 2013) (statement of Lois Lerner). In addition, in conjunction with her statement, Ms. Lerner authenticated a collection of her written responses to questions asked of her by TIGTA in the course of its investigation. *See id.* at 22-23.

After Ms. Lerner completed her statement, and after she had authenticated the collection of her written responses, the following exchange occurred:

> **CHAIRMAN ISSA**. Ms. Lerner, the topic of today's hearing is the IRS' improper targeting of certain groups for additional scrutiny regarding their application for tax-exempt status. As Director of Exempt Organizations of the Tax-Exempt and Government Entities Division of the IRS, you were uniquely positioned to provide testimony to help this committee better understand how and why the IRS targeted these groups. *To that end, I must ask you to reconsider, particularly in light of the fact that you have given not once, but twice testimony before this committee under oath this morning.* You have made an opening statement in which you made assertions of your innocence, assertions you did nothing wrong, assertions you broke no laws or rules. Additionally, you authenticated earlier answers to the IG.
>
> *At this point I believe you have not asserted your rights, but, in fact, have effectively waived your rights. Would you please seek* [counsel] *for further guidance on this matter while we wait?*
>
> **MS. LERNER**. I will not answer any questions or testify about the subject matter of this committee's meeting.

CHAIRMAN ISSA. We will take your refusal as a refusal to testify.

Id. at 23 (emphases added); *see also id.* (statement of Rep. Gowdy) ("She just testified. She just waived her Fifth Amendment right to privilege. You don't get to tell your side of the story and then not be subjected to cross examination. That's not the way it works. She waived her right of Fifth Amendment privilege by issuing an opening statement. She ought to stay in here and answer our questions.").

After hearing testimony from the remaining witnesses, the Chairman recessed the May 22, 2013 hearing session with the following remarks:

> And, with that, at the beginning of this hearing, I called four witnesses. Pursuant to a subpoena, Ms. Lois Lerner arrived. We had been previously communicated by her counsel – and she was represented by her own independent counsel – that she may invoke her Fifth Amendment privileges.
>
> Out of respect for this constitutional right and on advice of committee counsel, we, in fact, went through a process that included the assumption which was – which I did, which was that she would not make an opening statement. She chose to make an opening statement.
>
> In her opening statement, she made assertions under oath in the form of testimony. Additionally, faced with the interview notes that we received at the beginning of the hearing, I asked her if they were correct, and she answered yes.
>
> It is – and it was brought up by Mr. Gowdy that, in fact, in his opinion as a longtime district attorney, Ms. Lerner may have waived her Fifth Amendment rights by addressing core issues in her opening statement and authentication afterwards.
>
> I must consider this. *So, although I excused Ms. Lerner, subject to a recall, I am looking into the possibility of recalling her and insisting that she answer questions in light of a waiver.*
>
> For that reason and with your understanding and indulgence, this hearing stands in recess, not adjourned.

Id. at 124 (statement of Chairman Issa) (emphasis added).

On June 28, 2013, the Committee met in public to consider whether Ms. Lerner had waived her Fifth Amendment privilege by making her voluntarily statement. The Chairman noted that, while he could have ruled on the waiver issue himself during the course of the May 22, 2013 hearing session, he had chosen the more deliberate course of putting the issue to a Committee vote. *See Tr. of Bus. Meeting of the H. Comm. on Oversight & Gov't Reform*, 113th Cong. 4 (June 28, 2013) ("June 28, 2013 Business Meeting Transcript") (statement of Chairman Issa), *video record available at* http://oversight.house.gov/markup/full-committee-business-meeting-15. During the intervening 37 days, the Committee had received and considered, among other things, Ms. Lerner's views on the waiver issue, as expressed in writing by her counsel on her behalf. *See id.* at 5 (entering Ms. Lerner's views into the record).

The Chairman then expressed his views as follows:

> Having now considered the facts and arguments, I believe Lois Lerner waived her Fifth Amendment privileges. She did so when she chose to make a voluntary opening statement.
>
> Ms. Lerner's opening statement referenced the Treasury IG report, and the Department of Justice investigation . . . and the assertions that she had previously provided false information to the committee. She made four specific denials. Those denials are at the core of the committee's investigation in this matter. She stated that she had not done anything wrong, not broken any laws, not violated any IRS rules or regulations, and not provided false information to this or any other congressional committee regarding areas about which committee members would have liked to ask her questions. Indeed, committee members are still interested in hearing from her. Her statement covers almost the entire range of questions we wanted to ask when the hearing began on May 22.

Id.

After a vigorous debate, the Committee approved, by a 22-17 vote, a resolution which states in pertinent part as follows:

> Resolved, That the Committee on Oversight and Government Reform determines that the voluntary statement offered by Ms. Lerner constituted a waiver of her Fifth Amendment privilege against self-incrimination as to all questions within the subject matter of the Committee hearing that began on May 22, 2013, including questions relating to (i) Ms. Lerner's knowledge of any targeting by the Internal Revenue Service of particular groups seeking tax exempt status, and (ii) questions relating to any facts or information that would support or refute her assertions that, in that regard, "she has not done anything wrong," "not broken any laws," "not violated any IRS rules or regulations," and/or "not provided false information to this or any other congressional committee."

Res. of the H. Comm. on Oversight & Gov't Reform, 113th Cong. (June 28, 2013) ("June 28, 2013 Resolution"), *available at* http://oversight.house.gov/wp-content/uploads/2013/06/Resolution-of-the-Committee-on-Oversight-and-Government-Reform-6-28-131.pdf; *see also* June 28, 2013 Bus. Meeting Tr. at 65-66 (recording vote).

On February 25, 2014, the Chairman wrote to Ms. Lerner's counsel as follows:

> At [the May 22, 2013 session of] the hearing, Ms. Lerner gave a voluntary opening statement, under oath, discussing her position at the IRS and professing her innocence. After that opening statement, during which she spoke in detail about the core issues under consideration at the hearing, Ms. Lerner invoked the Fifth Amendment and declined to answer questions from Committee Members . . . . I temporarily excused Ms. Lerner from, and later recessed, the hearing to allow the Committee to determine whether she had waived her asserted Fifth Amendment right. The Committee subsequently determined that Ms. Lerner in fact had waived that right.
>
> * * *
>
> *[B]ecause the Committee explicitly rejected [Ms. Lerner's] Fifth Amendment privilege claim, I expect her to provide answers when the hearing reconvenes on March 5.*

Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to William W. Taylor, III, Esq., at 1-2 (Feb. 25, 2014) ("Issa February 25, 2014 Letter") (emphasis added). Ms. Lerner's counsel responded the next day that "[w]e understand that the Committee

voted that she had waived her rights." Letter from William W. Taylor, III, Esq., to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, at 1 (Feb. 26, 2014) ("Taylor February 26, 2014 Letter").

Finally, on March 5, 2014, while still subject to the Subpoena and again accompanied by her counsel, Ms. Lerner appeared at the reconvened session of the Committee hearing that originally began on May 22, 2013. At the outset of the reconvened session, the Chairman stated as follows:

> Today, we have recalled Ms. Lois Lerner, the former director of Exempt Organizations at the IRS. Ms. Lerner appeared for the May 22nd, 2013, hearing under a subpoena, and that subpoena remains in effect.
>
> Before we resume our questioning, I am going to briefly state for the record a few developments that have occurred since the hearing began 9 months ago. *These are important for the record and for Ms. Lerner to know and understand.*
>
> On May 22nd, 2013, after being sworn in at the start of the hearing, Ms. Lerner made a voluntary statement under oath discussing her position at the IRS and professing her innocence.
>
> Ms. Lerner did not provide the committee with any advance notification of her intention to make such a statement.
>
> During her self-selected and entirely voluntary statement, Ms. Lerner spoke in detail about core issues under consideration at the hearing when she stated, "I have not done anything wrong. I have not broken any laws. I have not violated any IRS rules or regulations, and I have not provided false information to this or any other congressional committee."
>
> * * *
>
> At that hearing, a member of the committee, Mr. Gowdy, stated that Ms. Lerner had waived her right to invoke the Fifth Amendment because she had given a voluntary statement professing her innocence.

> I temporarily excused Ms. Lerner from the hearing and subsequently recessed the hearing to consider whether Ms. Lerner had in fact waived her Fifth Amendment rights.
>
> * * *
>
> At a business meeting on June 28, 2013, the committee approved a resolution rejecting Ms. Lerner's claim of Fifth Amendment privilege based on her waiver . . . .
>
> After that vote, having made the determination that Ms. Lerner waived her Fifth Amendment rights, the committee recalled her to appear today to answer questions pursuant to rules. *The committee voted and found that Ms. Lerner waived her Fifth Amendment rights by making a statement on May 22nd, 2013, and additionally, by affirming documents after making a statement of [her] Fifth Amendment rights.*
>
> *If Ms. Lerner continues to refuse to answer questions from our members while she is under a subpoena, the committee may proceed to consider whether she should be held in contempt.*

The IRS: Targeting Americans for Their Political Beliefs: Hr'g before the H. Comm. on Oversight & Gov't Reform, 113th Cong. 3-5 (Mar. 5, 2014) ("March 5, 2014 Hearing Session") (statement of Chairman Issa) (emphases added).

As the March 5, 2014 Hearing Session proceeded, Ms. Lerner did exactly what the Chairman warned her against: She continued to assert the Fifth Amendment and refused to answer any questions put to her by the Oversight Committee.

ANALYSIS

Part I: The Legal Framework – the *Quinn* Trilogy

On May 23, 1955, the Supreme Court released three opinions: *Quinn*, 349 U.S. 155; *Emspak*, 349 U.S. 190; and *Bart*, 349 U.S. 219. All three opinions concerned witnesses who refused to answer questions put to them by a House investigative committee, and all of whom then were prosecuted for, and convicted of, violating 2 U.S.C. § 192 for their refusal to answer that committee's questions. Section 192 provided then, as it provides now, that:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony . . . under inquiry before . . . any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

In each of the three cases (the principal cases on which Mr. Rosenberg relies in opining as he does), the Supreme Court considered whether the requisite criminal intent – i.e., "a deliberate, intentional refusal to answer," *Quinn*, 349 U.S. at 165 – could be proved beyond a reasonable doubt. The Court articulated the legal standard for resolving that question as follows: "[U]nless the witness is clearly apprised that the committee demands his answer notwithstanding his objections, there can be no conviction under § 192 for refusal to answer that question." *Id.* at 166; *see also id.* at 167 (all that is required is "a clear disposition of the witness' objection"); *Emspak*, 349 U.S. at 202 (witness must be "confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt"); *Bart*, 349 U.S. at 222-23 ("Without such a [clear-cut] ruling [on the witness' objection], evidence of the requisite criminal intent to violate § 192 is lacking.").

The Supreme Court went on to say that the prosecution could establish that the "witness [had been] clearly apprised that the committee demands his answer notwithstanding his objections," *Quinn*, 349 U.S. at 166 – and thereby defeat a motion to dismiss a section 192 indictment – in one of two ways:

- directly, by demonstrating that the congressional entity – here, the Oversight Committee – specifically overruled the witness' objection; *or*

- indirectly, by demonstrating that the congressional entity specifically directed the witness to answer.[3]

In *Quinn*, *Emspak* and *Bart*, the Court determined that the House investigative committee had done neither (and, as a result, concluded that the witnesses could not be prosecuted under section 192):

> At no time did the committee specifically overrule [the witness'] objection based on the Fifth Amendment; *nor* did the committee indicate its overruling of the objection by specifically directing [the witness] to answer. In the absence of such committee action, [the witness] was never confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt. At best he was left to guess whether or not the committee had accepted his objection.

Quinn, 349 U.S. at 166 (emphasis added).

> At no time did the committee specifically overrule [the witness'] objection based on the Fifth Amendment, *nor* did the committee indicate its overruling of the objection by specifically directing [the witness] to answer. In the absence of such committee action, [the witness] was never confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt.

Emspak, 349 U.S. at 202 (emphasis added).

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[3] *See also Presser v. United States*, 284 F.2d 233, 235-36 (D.C. Cir. 1960) (affirming conviction upon determining that witness sufficiently apprised of requirement that he testify based on Chairman's directing that he do so, notwithstanding absence of any express overruling of witness' Fifth Amendment objection); *Grossman v. United States*, 229 F.2d 775, 776 (D.C. Cir. 1956) (noting, in discussing *Quinn* trilogy, that Supreme Court "held that the Committee must *either* specifically overrule the objection *or* specifically direct the witness to answer despite his objection" (emphases added)); *United States v. Singer*, 139 F. Supp. 847, 848, 853 n.6 (D.D.C. 1956) ("To lay the necessary foundation for a prosecution under Section 192 . . . a congressional investigating committee before whom a witness appears must specifically overrule the objections of the witness *or* specifically direct him to answer despite his objections"; "Committee must *either* specifically overrule the objection *or* specifically direct the witness to answer despite his objection." (emphases added)), *aff'd sub nom. Singer v. United States*, 244 F.2d 349 (D.C. Cir.), *vacated & rev'd on other grounds*, 247 F.2d 535 (D.C. Cir. 1957).

> At no time did the committee directly overrule [the witness'] claims of self-incrimination or lack of pertinency. *Nor* was [the witness] indirectly informed of the committee's position through a specific direction to answer. . . .
>
> Because of the consistent failure to advise the witness of the committee's position as to his objections, [the witness] was left to speculate about the risk of possible prosecution for contempt; he was not given a clear choice between standing on his objection and compliance with a committee ruling.

Bart, 349 U.S. at 222-23 (emphasis added).

In ruling as it did, the Supreme Court made clear that the notice to a witness of the rejection of his or her objection need not follow "any fixed verbal formula." *Quinn*, 349 U.S. at 170; *see also Flaxer v. United States*, 358 U.S. 147, 152 (1958) ("'[T]he committee is not required to resort to any fixed verbal formula to indicate its disposition of the objection.'" (quoting *Quinn*, 349 U.S. at 170)). Rather, "[s]o long as the witness is not forced to guess the committee's ruling, he has no cause to complain." *Quinn*, 349 U.S. at 170; *accord Flaxer*, 358 U.S. at 152.

Part II: Application of the Legal Framework Here

Here, the factual record overwhelmingly supports the conclusion that Ms. Lerner would "ha[ve] no cause to complain" if she were to be indicted and prosecuted under 2 U.S.C. § 192 because she was "not forced to guess the [C]ommittee's ruling" on her Fifth Amendment claim. *Quinn*, 349 U.S. at 170. This is so for two reasons.

First, unlike in *Quinn*, *Emspak* and *Bart*, the Oversight Committee specifically overruled Ms. Lerner's Fifth Amendment objection (and then advised her that it had done so):

- By virtue of its June 28, 2013 Resolution, the Committee formally "determine[d] that the voluntary statement offered by Ms. Lerner constituted a waiver of her Fifth Amendment privilege against self-incrimination as to all questions within

the subject matter of the Committee hearing that began on May 22, 2013." June 28, 2013 Res.

- The Chairman then stated in his February 25, 2014 letter to Ms. Lerner's counsel that "[t]he Committee . . . determined that Ms. Lerner in fact had waived [her Fifth Amendment] right," Issa Feb. 25, 2014 Letter at 1, and that "the Committee explicitly rejected [Ms. Lerner's] Fifth Amendment privilege claim," *id.* at 2.
- The Chairman then reiterated during the reconvened hearing session on March 5, 2014 – at which Ms. Lerner physically was present with her counsel – that "[a]t a business meeting on June 28, 2013, the committee approved a resolution rejecting Ms. Lerner's claim of Fifth Amendment privilege based on her waiver," and that "[t]he committee voted and found that Ms. Lerner waived her Fifth Amendment rights by making a statement on May 22nd, 2013, and additionally, by affirming documents after making a statement of Fifth Amendment rights." Mar. 5, 2014 Hr'g Session at 4-5.

It is hard to imagine "a clear[er] disposition of [Ms. Lerner's] objection," *Quinn*, 349 U.S. at 167, and plainly she was "left to guess" at nothing, *id.* at 166. Through her counsel, she acknowledged that she "underst[oo]d that the Committee voted that she had waived her rights," Taylor Feb. 26, 2014 Letter at 1, and even Mr. Rosenberg admits that the Committee "on June 28, 2013 . . . reject[ed] Ms. Lerner's privilege claim," Rosenberg Mem. at 2.[4]

[4] Given Mr. Rosenberg's explicit acknowledgement of what occurred on June 28, 2013, we are at a loss to understand the significance he attaches to the fact that the "Chair [did not] . . . expressly overrule [Ms. Lerner's] claim of privilege" on March 5, 2014. Rosenberg Mem. at 2. The Chairman did not need to rule on Ms. Lerner's Fifth Amendment claim at the March 5, 2014 reconvened hearing because the Committee already formally had rejected her claim more than eight months earlier. To the extent Mr. Rosenberg implies that the Committee had to re-reject Ms. Lerner's Fifth Amendment claim on March 5, 2014, we are aware of no authority that

Second, although it was not required to do so (in light of its express rejection of Ms. Lerner's Fifth Amendment claim on June 28, 2013, and its communication of that determination to her), the Oversight Committee also specifically directed Ms. Lerner to answer its questions, and then reinforced that direction by making clear that she risked being held in contempt if she did not comply (again, unlike in *Quinn*, *Emspak* and *Bart*). In particular:

- The Chairman stated in his February 25, 2014 letter to Ms. Lerner's counsel that "because the Committee explicitly rejected [Ms. Lerner's] Fifth Amendment privilege claim, I expect her to provide answers when the hearing reconvenes on March 5." Issa Feb. 25, 2014 Letter at 2.[5]
- The Chairman's February 25, 2014 letter was preceded by extensive discussion at the Committee's June 28, 2013 public business meeting of the possibility that Ms. Lerner could be held in contempt. *See, e.g.*, June 28, 2013 Bus. Meeting Tr. at 24 (statement of Rep. Mica) ("And the ranking member is correct, she may be held in contempt in the future."); *id.* at 45 (statement of Rep. Meehan) ("To the extent that she will invoke the Fifth Amendment privilege, and we would hold her in contempt, it will go before ultimately a qualified court of law."); *id.* at 53 (statement of Rep. Lynch) ("[W]e assume that there will be a contempt citation issued by this Congress.").
- And, the Chairman's February 25, 2014 letter was succeeded, during the reconvened hearing session on March 5, 2014, by this verbal warning: "If Ms.

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supports such a suggestion, nor has Mr. Rosenberg cited any. Moreover, and in any event, the Chairman did reiterate at the March 5, 2014 reconvened hearing, after specifically drawing Ms. Lerner's attention to these developments, that, "[a]t a business meeting on June 28, 2013, the [C]ommittee approved a resolution rejecting Ms. Lerner's claim of Fifth Amendment privilege based on her waiver." Mar. 5, 2014 Hr'g Session at 4-5.

[5] The Rosenberg Memorandum does not mention the Chairman's February 25, 2014 letter.

> Lerner continues to refuse to answer questions from our members while she is under a subpoena, the [C]ommittee may proceed to consider whether she should be held in contempt." Mar. 5, 2014 Hr'g Session at 5.[6]

For all these reasons, we do not agree with Mr. Rosenberg that "the requisite legal foundation for a criminal contempt of Congress prosecution [against Ms. Lerner] . . . ha[s] not been met and that such a proceeding against [her] under 2 U.S.C. [§] 19[2], if attempted, will be dismissed." Rosenberg Mem. at 4. In this Office's opinion, there is no constitutional impediment to (i) the Committee approving a resolution recommending that the full House hold Ms. Lerner in contempt of Congress; (ii) the full House approving a resolution holding Ms. Lerner in contempt of Congress; (iii) if such resolutions are approved, the Speaker certifying the matter to the United States Attorney for the District of Columbia, pursuant to 2 U.S.C. § 194; and (iv) a grand jury indicting, and the United States Attorney prosecuting, Ms. Lerner under 2 U.S.C. § 192.

In other words, contrary to Mr. Rosenberg's conclusion, we think it highly unlikely a district court would dismiss a section 192 indictment of Ms. Lerner on the ground that she was insufficiently apprised that the Committee demanded her answers to its questions, notwithstanding her Fifth Amendment objection.

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[6] This is in sharp contrast to *Bart* – to which Mr. Rosenberg attaches substantial significance, *see* Rosenberg Mem. at 3 – where a committee Member "suggest[ed] to the chairman that the witness 'be advised of the possibilities of contempt' for failure to respond, but the suggestion was rejected [by the chairman]." *Bart*, 349 U.S. at 222 (footnote omitted). Here, the Chairman expressly advised Ms. Lerner that she risked being held in contempt of Congress if she continued to refuse to answer the Committee's questions.

Part III: Response to Other Rosenberg Conclusions/Theories

We discuss here four other respects in which Mr. Rosenberg's legal analysis is flawed.

1. Mr. Rosenberg appears to contend that the Committee was obligated to warrant in some fashion to Ms. Lerner that she would *in fact* be prosecuted if she did not answer its questions. *See* Rosenberg Mem. at 2 ("At no time during his questioning [during the March 5, 2014 reconvened hearing] did the Chair . . . make it clear that [Ms. Lerner's] refusal to respond would result in a criminal contempt prosecution."); *id.* at 3 ("[I]t [was not] made unequivocally certain that [Ms. Lerner's] failure to respond [to the Committee's questions] would result in criminal contempt prosecution."); *id.* at 4 ("[T]here could be no certainty for the witness and her counsel that a contempt prosecution was inevitable."). But Mr. Rosenberg cites no authority to support this "inevitability" proposition, and indeed there is none. *Cf. Quinn*, 349 U.S. at 166 (standard is whether witness clearly apprised that committee demands his answer notwithstanding his objections; emphasizing that standard requires only that witness be presented choice "between answering the question and *risking* prosecution for contempt" (emphasis added)); *Emspak*, 349 U.S. at 202 (same); *Bart*, 349 U.S. at 221-22 (same).

Indeed, there could be no such guarantee because a section 192 prosecution of Ms. Lerner would be a multi-step process, involving many different actors, none of whose conduct or decisions could be guaranteed in advance.

- The process would begin with a Committee vote on a resolution recommending to the full House that Ms. Lerner be held in contempt – and the outcome of that vote could not be guaranteed in advance.

- Assuming the Committee approved such a resolution, a vote in the full House on a resolution of contempt would follow – and the outcome of that vote also could not be guaranteed in advance.
- Assuming the full House approved such a resolution, the Speaker would be statutorily obligated to refer the matter to the United States Attorney (an officer of a separate branch of the federal government) who would be statutorily obligated to present the matter to a grand jury.
- Assuming the United States Attorney carried out his statutory obligation – again, something that could not be guaranteed in advance – a section 192 prosecution of Ms. Lerner still would require the return of an indictment by a grand jury that does not yet even exist, and whose actions also could not be guaranteed in advance.

In short, if Mr. Rosenberg were correct, no witness before a congressional committee *ever* could be prosecuted for violating section 192, no matter how contumacious his/her conduct.

2. Mr. Rosenberg also appears to contend that the *Quinn* trilogy required the Committee *both* to overrule Ms. Lerner's Fifth Amendment objection *and* to direct her to answer its questions. *See* Rosenberg Mem. at 3. But this is an incorrect reading of the Supreme Court's reasoning in the *Quinn* trilogy, *see supra* Analysis, Part I, as confirmed by the D.C. Circuit, both in its holding in *Presser* and in *Grossman*, *see id.* at n.3. We are not aware of any case that holds otherwise, and Mr. Rosenberg has not cited one.[7] Moreover, Mr. Rosenberg's contention is

[7] Aside from the *Quinn* trilogy, Mr. Rosenberg cites no authority on the notice issue other than *Fagerhaugh v. United States*, 232 F.2d 803 (9th Cir. 1956), and *Jackins v. United States*, 231 F.2d 405 (9th Cir. 1956), neither of which he discusses. Those cases are inapposite here for at least two reasons. *First*, the statements in those cases upon which Mr. Rosenberg presumably would rely are dicta. In *Fagerhaugh*, the House committee neither overruled the witness' Fifth

beside the point because the Oversight Committee *both* overruled Ms. Lerner's Fifth Amendment objection, *and* directed her to answer its questions. *See supra* Analysis, Part II.

3. Mr. Rosenberg also states, immediately after asserting that "a proceeding against Ms. Lerner under 2 U.S.C. [§] 19[2], if attempted, will be dismissed," Rosenberg Mem. at 4, that "[s]uch a dismissal will likely also occur if the House seeks civil contempt enforcement," *id.* By "civil contempt enforcement," Mr. Rosenberg presumably means a subpoena enforcement action – like the Committee's subpoena enforcement action against Attorney General Holder in the Fast and Furious matter – pursuant to a House resolution authorizing the Oversight Committee to initiate such an action against Ms. Lerner.[8]

Amendment objection nor directed the witness to answer after he had asserted his Fifth Amendment objection. *See* 232 F.2d at 804. In fact, after the witness asserted his Fifth Amendment objection, "the Committee seem[ed] to abandon the question and proceed[ed] to inquire about other matters." *Id.* at 805. Similarly, in *Jackins*, the House committee did not direct the witness to answer the relevant questions and, as far as the record reveals, also did not overrule the witness' objection. *See* 231 F.2d at 406-07. In short, neither case actually *held* that a section 192 prosecution requires that a witness' objection be overruled *and* that she be directed to answer – because neither court had occasion to actually decide that issue.

Second, Fagerhaugh and *Jackins* are not the law in the District of Columbia, where Ms. Lerner would be prosecuted if she were indicted for violating section 192. *See* Fed. R. Crim. P. 18 ("Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed."); 2 U.S.C. § 192 (not providing for different venue). *Presser* and *Grossman*, on the other hand, are the law in the District of Columbia, and both say that a section 192 prosecution can proceed if a committee *either* specifically overrules a witness' objection *or* specifically directs the witness to answer despite her objection.

Other circuits that have considered this issue agree with the D.C. Circuit that a committee may apprise a witness of the necessity of choosing between answering a question and risking contempt *either* by overruling her objection *or* by directing her to answer. *See Braden v. United States*, 272 F.2d 653, 661 (5th Cir. 1959) (affirming section 192 conviction after inquiring only whether committee provided direction to answer; no inquiry into whether objection expressly overruled); *Davis v. United States*, 269 F.2d 357, 362-63 (6th Cir. 1959) (same; emphasizing *Quinn*'s admonition that, "'[s]o long as the witness is not forced to guess the committee's ruling, [the witness] has no cause to complain'"; "'[T]he committee is not required to resort to any fixed verbal formula to indicate its disposition of the objection.'" (quoting *Quinn*, 349 U.S. at 170)).

[8] *See* H. Res. 706, 112th Cong. (June 28, 2012) (enacted) (authorizing Oversight Committee to initiate civil subpoena enforcement action against Attorney General); *cf.* H. Res. 711, 112th

Such a subpoena enforcement action would be a civil suit and would not arise under section 192, which means that criminal intent would not be at issue, and the *Quinn* trilogy would not apply. *Cf. supra* Analysis, Part I. Accordingly, the assertion that "civil contempt enforcement" likely would be dismissed is simply that: a bare assertion that is unsupported by any analysis or case law in the Rosenberg Memorandum.

4. Lastly, we note that Mr. Rosenberg more recently suggested that the Chairman's "last question to [Ms.] Lerner [on March 5, 2014] further reflects the uncertainty of what the [C]ommittee intended. He asked her whether she still wanted to 'testify' with a week[']s delay, referencing communications between the [C]ommittee and her attorney." Michael Stern, *Can Lois Lerner Skate on a Technicality?*, Point of Order (Mar. 20, 2014, 11:46 AM), http://www.pointoforder.com/2014/03/20/can-lois-lerner-skate-on-a-technicality/#more-5510 (scroll down to "Mort Rosenberg responds"); *see also* Mem. from Louis Fisher to H. Comm. on Oversight & Gov't Reform at 2 (Mar. 16, 2014) (suggesting, in similar vein, that (i) Ms. Lerner might have been willing to testify had the Committee recalled her one week later, and (ii) because Committee did not wait that week, it "has not made the case that [Ms. Lerner] acted in contempt . . . . [, and, i]f litigation resulted, courts are likely to reach the same conclusion"). The factual backdrop for these incorrect notions is as follows.

On March 1, 2014, Ms. Lerner's counsel suggested to a Committee staffer that she might testify if there was a one week delay in the reconvening of the hearing. The Committee's General Counsel promptly sought clarification: "I understand . . . that Ms. Lerner is willing to testify, and she is requesting a one week delay. In talking . . . to the Chairman, wanted to make sure we had this right." E-mail from Stephen Castor, Gen. Counsel, H. Comm. on Oversight &

Cong. (June 28, 2012) (enacted) (holding Attorney General Eric H. Holder, Jr. in contempt of Congress for failure to comply with Oversight Committee subpoena).

Gov't Reform, to William W. Taylor, III, Esq. (Mar. 1, 2014, 2:11 PM EST). One hour later, Ms. Lerner's counsel responded "[y]es." E-mail from William W. Taylor, III, Esq. to Stephen Castor, Gen. Counsel, H. Comm. on Oversight & Gov't Reform (Mar. 1, 2014, 3:10 PM EST).

Two days later, Ms. Lerner's offer, if that is what it was, was off the table. Specifically, the Committee's General Counsel emailed Ms. Lerner's counsel, on March 3, 2014, as follows:

> We are getting some mixed messages from reporters about your current position. . . . You said your client was going to testify and requested a one week delay. On Sat[urday, March 1, 2014,] I indicated the Chairman would be in a position to confer with his members on that request on Monday [March 3, 2014]. Do you have a current ask that you want us to take back? If so please state it.

E-mail from Stephen Castor, Gen. Counsel, H. Comm. on Oversight & Gov't Reform, to William W. Taylor, III, Esq. (Mar. 3, 2014, 11:01 AM EST). Three hours later, Ms. Lerner's counsel responded, "*I have no ask. She will appear Wednesday* [March 5, 2014]." E-mail from William W. Taylor, III, Esq., to Stephen Castor, Gen. Counsel, H. Comm. on Oversight & Gov't Reform (Mar. 3, 2014, 2:07 PM EST) (emphasis added).

At the reconvened hearing on March 5, 2014, the Chairman's final question to Ms. Lerner – which Messrs. Rosenberg and Fisher both reference – appears to reflect nothing more than the Chairman's effort to ascertain for certain Ms. Lerner's position on this issue:

> Ms. Lerner, on Saturday [March 1, 2014], our committee's general counsel sent an email to your attorney saying, "I understand that Ms. Lerner is willing to testify and she is requesting a 1 week delay. In talking . . . to the chairman, wanted to make sure that was right." Your lawyer, in response to that question, gave a one word email response, "yes." Are you still seeking a 1 week delay in order to testify?

Mar. 5, 2014 Hr'g Session at 8 (statement of Chairman Issa). Ms. Lerner responded that, "[o]n the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question." *Id.* (statement of Lois Lerner).

Accordingly, at the time the March 5, 2014 reconvened hearing closed, there was, as a matter of fact, no offer on the table by Ms. Lerner to testify in exchange for a one-week delay (and no basis for confusion on the part of anyone with access to the facts). Her attorney had nixed that idea on March 3, 2014, and Ms. Lerner's final Fifth Amendment assertion confirmed that she was not willing to testify before the Committee – period.

In addition, as a legal matter, a witness before a congressional committee who has been subpoenaed to testify, as Ms. Lerner was, does not get to choose when to comply. While the Committee could have agreed to reschedule Ms. Lerner's testimony, it was not obliged to do so. Indeed, if the law were otherwise, a congressional subpoena would have no force at all because a witness always could promise to testify "tomorrow." *See, e.g.*, *United States v. Bryan*, 339 U.S. 323, 331 (1950) ("A subpoena has never been treated as an invitation to a game of hare and hounds, in which the witness must testify only if cornered at the end of the chase. If that were the case, then, indeed, the great power of testimonial compulsion, so necessary to the effective functioning of courts and legislatures, would be a nullity."); *Eisler v. United States*, 170 F.2d 273, 279 (D.C. Cir. 1948) ("Having been summoned by lawful authority, [the witness] was bound to conform to the procedure of the Committee."); *Comm. on the Judic., U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 99 (D.D.C. 2008) ("The Supreme Court has made it abundantly clear that compliance with a congressional subpoena is a legal requirement."); *United States v. Brewster*, 154 F. Supp. 126, 134 (D.D.C. 1957) ("[A]witness has no right to set his own conditions for testifying or to force the committee to depart from its settled

procedures."), *rev'd on other grounds*, 255 F.2d 899 (D.C. Cir. 1958); *accord United States v. Orman*, 207 F.2d 148, 158 (3d Cir. 1953) ("In general a witness before a congressional committee must abide by the committee's procedures and has no right to vary them or to impose conditions upon his willingness to testify."). Neither Mr. Rosenberg nor Mr. Fisher has cited any case law or other authority to the contrary.

CONCLUSION

For all the reasons stated above, it is this Office's considered opinion that Mr. Rosenberg is wrong in concluding that "the requisite legal foundation for a criminal contempt of Congress prosecution [of Ms. Lerner] . . . ha[s] not been met and that such a proceeding against [her] under 2 U.S.C. [§] 19[2], if attempted, will be dismissed." Rosenberg Mem. at 4.

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For the record
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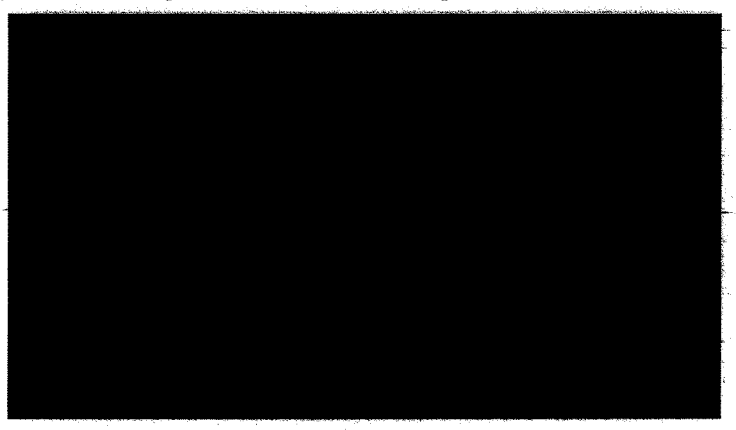
Elijah Cummings: 'Case is solved' on IRS

By Aaron Blake, Updated: June 9, 2013 at 2:34 pm



The ranking Democrat on the committee leading the investigation of the IRS said Sunday that the matter is effectively settled and had some unusually harsh words for committee Chairman Darrell Issa (R-Calif.).

In a letter to Issa, House oversight committee ranking member Elijah Cummings (D-Md.) expressed disappointment with the chairman's handling of the issue, suggesting he had made unsubstantiated allegations and had selectively distributed information that back up his claims, while not releasing other findings.

Thus Mr Issa made claims

"Your actions over the past three years do not reflect a responsible, bipartisan approach to investigations, and the Committee's credibility has been damaged as a result," Cummings wrote.

Cummings then detailed an unreleased interview last week with an anonymous IRS manager

who labeled himself a "conservative Republican." The manager essentially said it was he who started the targeting of the groups and -- contrary to GOP allegations -- said that the White House wasn't involved and that it wasn't politically motivated.

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"I think this interview and these statements go a long way ... showing that the White House was not involved in this," Cummings said on CNN's "State of the Union," adding: "Based upon everything I've seen the case is solved. And if it were me, I would wrap this case up and move on, to be frank with you."

Issa, who has generally had a pleasant relationship with Cummings -- at least publicly -- responded quickly and with equal outrage.

"His extreme and reckless assertions are a signal that his true motivation is stopping needed congressional oversight and he has no genuine interest in working, on a bipartisan basis, to expose the full truth," Issa said in a statement.

Cummings's decision to release a transcript of House Oversight and Government Reform Committee investigators' interview with the IRS manager highlights Democrats' growing frustration with Issa's handling of the matter. Issa has repeatedly declined media requests to release the full transcripts of the interviews his aides conducted, instead disclosing selected excerpts.

Last week, several media outlets reported that front-line IRS employees told congressional investigators that they were simply following orders from Washington in the agency's targeting campaign against groups with names such as "tea party."

Cummings is now fighting back by releasing his excerpts of the interviews and calling for full disclosure.

Josh Hicks and Juliet Eilperin contributed to this report.

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Response Mr. Koskinen
Commissioner
Internal Revenue Service

Questions from Representative Turner
Committee on Oversight and Government Reform

Hearing on:
"Examining the IRS Response to the Targeting Scandal"

I have authored legislation, H.R. 1950, the Taxpayer Nondiscrimination and Protection Act, which would make it a crime for employees of the Internal Revenue Service (IRS) to target Americans on the basis of their political beliefs. As you may know, current law caps the maximum penalty for such conduct at termination, unless the interference is done by a member of the President's Cabinet – in which case the maximum penalty is criminal.

1. **As the Commissioner of the IRS, do you believe that H.R. 1950, if enacted, would serve as a valuable tool in your management and leadership of the agency?**

Response:

I have said since I began as Commissioner that it is critically important that every taxpayer in the United States understands and is confident that, when they interact with the IRS, we will deal with them in an evenhanded and straightforward manner no matter what their political beliefs, their organizational affiliation or whom they supported in the last election. I believe that the current legal framework allows me to properly manage and lead the IRS.

2. **Do you believe that the Commissioner of the IRS should be subject to the same penalties as members of the President's Cabinet for interference in audits and investigations conducted by the IRS, as set forth in 26 U.S.C. §7217?**

Response:

No. Making the Commissioner of the IRS subject to 26 U.S.C. § 7217 would have an adverse impact on the Commissioner's ability to fulfill his statutory responsibilities under 26 U.S.C. § 7803. As described by Congress in section 7803(a)(2), the Commissioner shall "administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws." Accordingly, the authority of the IRS to conduct audits and investigations rests initially with the Commissioner, and the Commissioner is responsible for overseeing, among other things, those audits and investigations, which

are necessarily included in tax administration and the execution of internal revenue laws.

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