



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 113th CONGRESS, SECOND SESSION

Vol. 160

WASHINGTON, WEDNESDAY, MAY 7, 2014

No. 68

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. JOLLY).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,

May 7, 2014.

I hereby appoint the Honorable DAVID JOLLY to act as Speaker pro tempore on this day.

JOHN A. BOEHNER,

Speaker of the House of Representatives.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 7, 2014, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with each party limited to 1 hour and each Member other than the majority and minority leaders and the minority whip limited to 5 minutes, but in no event shall debate continue beyond 11:50 a.m.

MOTHER'S DAY CENTENNIAL ANNIVERSARY

The SPEAKER pro tempore. The Chair recognizes the gentleman from West Virginia (Mr. MCKINLEY) for 5 minutes.

Mr. MCKINLEY. Mr. Speaker, I rise today to honor mothers across America.

Mothers play an incredible role in our lives. We have all seen the sacrifices they make to raise their children and the care and devotion they dedicate to them. We know their commitment.

Mothers have been our greatest advocates. When we were young, they cared

for us when we were sick, supported us in our pursuits, lifted us up when we fell down, and read to us at night. They held our hands when we needed them.

Mothers work 8 to 10 hours a day in the workforce, come home and do the cooking, the laundry, and help with the homework, and then get up the next day and do it all over again.

So when was the last time we actually took a moment to say thank you to our mothers and grandmothers? Do enough people take time to stop and say, Thanks, Mom?

There is one person who did so in a very special way. She was a young lady born in 1864 in a small coal mining town in West Virginia. Her mother had worked during the Civil War to provide nursing care and promote better sanitation, helping save thousands of lives on both sides of the conflict. When she passed away in 1902, this young lady, Anna Jarvis, wanted to celebrate her mother's life and came up with the idea of a national honor for mothers: Mother's Day.

Consequently, in 1908, Anna Jarvis organized the very first official Mother's Day celebration, which took place in the Andrews Methodist Episcopal Church in Grafton, West Virginia. However, Anna wanted more people to honor mothers.

She worked with a department store owner in Philadelphia, and soon thousands of people started attending Mother's Day events at retail stores all across America. Following these successes, Anna resolved to see her holiday added to the national calendar. She argued that the national holidays were biased towards male achievements and that the accomplishments of mothers deserve a day of appreciation.

Anna Jarvis started a letter-writing campaign to newspapers and politicians urging them to adopt a special day honoring motherhood. By 1912, many States, towns, and churches had adopted Mother's Day as an annual event.

Her persistence paid off. In 1914, President Woodrow Wilson signed a measure officially recognizing the second Sunday in May as Mother's Day.

Anna Jarvis, who never married or had children of her own, dedicated her life to establishing a day to honor her mother and all mothers across America.

This Sunday, we will celebrate the 100th anniversary of Mother's Day. This holiday is just a small way to show our gratitude to our mothers and grandmothers. This Sunday, we can stop for a moment to simply say thank you. Because when our mothers are gone, that loss reaches into all of our hearts and touches each of us, for no longer will we hear the sound of their voice, the touch of their hand, or that warm embrace. It causes a huge loss in all of our lives.

We should pause on this one day to say thank you to our mothers, who love us in spite of ourselves.

Mr. Speaker, I ask that this Mother's Day we honor the dedication and vision of Anna Jarvis, as well as all of our mothers.

HONORING THE LIFE OF FORMER CONGRESSMAN JIM OBERSTAR

The SPEAKER pro tempore. The Chair recognizes the gentleman from Oregon (Mr. BLUMENAUER) for 5 minutes.

Mr. BLUMENAUER. Mr. Speaker, today is National Bike to School Day. How fitting is it that Congressman Jim Oberstar's family's request for the remembrance of our beloved Jim is a contribution to the National Safe Routes to School program?

Tens of thousands of children can get to school today more safely and millions will be more safe in the future because of his tireless efforts over two decades on behalf of that program.

Jim Oberstar, I must confess, was like an uncle to me. Together, we spent

This symbol represents the time of day during the House proceedings, e.g., 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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hundreds and hundreds of hours in consultation, planning, touring, and legislating. It was the most effective mentoring possible.

There are those who have been known as “a man of the House,” and Jim Oberstar certainly was “a man of the people’s House.” But even more, he was a man of the T&I Committee, the Public Works Committee.

He rose through the staff ranks to become staff director. Then, succeeding his Congressman, Congressman Blatnik, he became a Member of Congress, and ultimately became its chair. This is something no one else has done, serving as staff director of a committee and then ultimately presiding over it.

As staff, committee member, or chair, or as a member of all the subcommittees, whether in the majority or minority, Jim Oberstar had an outsized influence on the Transportation and Infrastructure Committee for decades. It is safe to say that over the last 50 years no one had more influence than Jim.

For almost 20 years he was the top Democrat, but most feel he was the top member, period. He was totally seeped in policy, the history, and the mechanics of transportation. But it was not just transportation. It was aviation, marine, the waterways, and waterworks of America as well. They were all his areas of expertise.

Jim Oberstar was a partisan—and not necessarily a political partisan, but he was an infrastructure partisan. A true expert. That is why his partnership with Congressman Bud Shuster, although they were of different parties, was so effective. Bud was Jim’s partner for years on the committee, even before either of them assumed their respective top leadership positions.

Infrastructure came first, partisan-second.

One of my most vivid memories was how our Transportation and Infrastructure Committee, under the leadership of Jim Oberstar and Bud Shuster, beat Speaker Gingrich and President Clinton when it mattered on our highway bill in 1997.

Jim was a man of remarkable memory and learning. He spoke a half-dozen languages. He never stopped fighting for what he believed in and what he knew for his district, his State, or for the American people.

He was a man of faith that never wavered. But as much as he loved the job of being Congressman, his people, his bicycle, his first love was his family. I don’t think he ever recovered from the loss of his first wife, Jo, but then he found Jean. They were married 20 years. They were a remarkable team.

Jean is a knowledgeable and experienced transportation professional in her own right. She knew what Jim’s speeches were about. In fact, she could encourage him occasionally, in good humor, to shorten them just a little bit.

Over the years, dozens of members of my staff felt in a sense that they

worked for Jim Oberstar as well, because of his commitment, his skill, and his innate decency. I am hearing of their sense of loss from people around the country.

We all knew that Jim Oberstar had a lot to say. What he said was worth listening to. America is a better place not just because of what he said, but what he did in a remarkable career spanning almost 50 years.

Few people had more lasting impact on this institution of Congress and on America than Jim Oberstar. We are all richer for his life of outstanding service.

TEACHER APPRECIATION WEEK

The SPEAKER pro tempore. The Chair recognizes the gentleman from Pennsylvania (Mr. THOMPSON) for 5 minutes.

Mr. THOMPSON of Pennsylvania. Mr. Speaker, I rise today in deep appreciation for a group of individuals who hold our future in their hands: our Nation’s teachers.

This week is Teacher Appreciation Week, during which we thank the countless men and women who strive every day to ensure that a child’s potential can become reality.

America’s ability to outcompete rival nations is contingent upon the next generation of minds possessing the education but also the confidence to think outside the box. Our future competitiveness is contingent upon our next generation of children having the skills but also creativity, vision, and know-how to build the future.

Each child’s potential is realized through the engagement of families and communities, but also teachers rising to the occasion, which they have done for generations.

So let us take a moment to recognize the compassionate individuals who dedicate their lives and professions to the cultivation of minds and the betterment of our Nation.

During this Teacher Appreciation Week let us not forget those teachers who have helped shape our own lives. They deserve our praise.

END HUNGER NOW

The SPEAKER pro tempore. The Chair recognizes the gentleman from Massachusetts (Mr. MCGOVERN) for 5 minutes.

Mr. MCGOVERN. Mr. Speaker, I have come to this floor once a week during the 113th Congress to talk about hunger—specifically, how we can end hunger now if we simply muster the political will to do so.

Technically identified as food insecure by the Department of Agriculture, there are nearly 50 million hungry people who live in the United States, the richest country in the history of the world. These people don’t earn enough to be able to put food on their table. Simply, they don’t know where their next meal will come from.

Now, let’s be clear. This has not been a particularly kind Congress to those who struggle with hunger. We are seeing nearly \$20 billion cut from our Nation’s preeminent antihunger program, known as SNAP.

SNAP is a lifeline for the 46 million Americans who rely on it to have something to eat each day. Yet this Congress decided that Americans who live at or below the poverty line can simply absorb massive cuts to SNAP.

Sadly, Republicans and some Democrats joined together to cut a benefit that was already meager and didn’t last through the month even before these cuts took effect.

These cuts are bad and hurtful, but just as hurtful is how these Americans were described and depicted on the floor of this House during the debate about cuts to SNAP. During the debate on the farm bill, some Republican Members came to the floor to justify cuts to SNAP as a way to prevent murderers, rapists, and pedophiles from getting a government benefit.

Poor people have been routinely characterized as “those people,” as part of a culture of dependency. They have been described as “lazy.”

Mr. Speaker, I am sick and tired of poor people being demonized. I am sick and tired of their struggle being belittled. We are here to represent all people, including those struggling in poverty.

Unfortunately, insults continue.

For the most part, we try to keep campaign rhetoric out of the debate on the House floor. However, today I want to highlight some rhetoric that is even more vile than even some of the language that was used on the House floor during the SNAP debate.

A few weeks ago, a Republican candidate for United States Senate in South Dakota actually equated SNAP recipients to wild animals. That’s right. We are now at a point where it is apparently okay for political candidates to denigrate our fellow citizens by comparing them to animals.

Dr. Annette Bosworth shared a viral image on her Facebook page that said the following:

The food stamp program is administered by the U.S. Department of Agriculture. They proudly report that they distribute free meals and food stamps to over 46 million people on an annual basis. Meanwhile, the National Park Service, run by the U.S. Department of the Interior, asks us, Please do not feed the animals. Their stated reason for this policy being that . . . the animals will grow dependent on the handouts, and then they will never learn to take care of themselves.

The post continues:

This concludes today’s lesson. Any questions?

□ 1015

What an incredibly offensive thing for anybody to say.

Mr. Speaker, I was taught to love my neighbor. I was taught to care about the people and to strive to make everyone’s life better, and what is being tolerated as political dialogue violates

those teachings and my core beliefs in humanity.

We can all do better. Some of us may need a hand up in order to get by, but that doesn't mean that they are lesser people for it. They deserve our respect, and they deserve our help while they are struggling.

It is hard to be poor, and because of many of the actions that have been taken by this Congress, it is even harder to get out of poverty.

Dr. Bosworth should apologize to the 46 million of her fellow Americans who need SNAP to put food on their tables. She should apologize to the nearly 50 million of her fellow Americans who struggle with hunger and don't know where their next meal will come from, and Republicans should repudiate her disgusting remarks.

I am an optimist. I believe we can end hunger, and I believe we can end poverty in America, if we just make the commitment to do so, but hurtful rhetoric like this simply divides us and does nothing to help us achieve the worthy goal of ending hunger now.

Hunger is a political condition. We have the food, and we have the ability to make certain that nobody in this country goes hungry, but we lack the political will; and demonizing the poor, as so many in this Chamber have done and continue to do so, is a sad commentary on this Congress.

Our government has a special obligation to the most vulnerable. It is time we lived up to that obligation. The war against the poor must stop.

IN SUPPORT OF CHARTER SCHOOLS

The SPEAKER pro tempore. The Chair recognizes the gentleman from North Carolina (Mr. MCHENRY) for 5 minutes.

Mr. MCHENRY. Mr. Speaker, I rise today in support of National Charter Schools Week. In preparation for National Charter Schools Week, I visited a lot of charter schools that are in my district that I had not yet visited, and I took some time to understand what exactly they do that is unique and different from other charter schools.

What I found is that a school, a curriculum, and a student body that was fitting in one place was very different in another charter. What I learned is that diversity actually delivers a better result for those student populations.

There was Pinnacle Classical Academy in Shelby, North Carolina, a charter that utilizes a classical learning model focused on providing their students with the skills they need to succeed in the 21st Century.

Then there was Evergreen Community Charter School in Asheville. Evergreen employs a holistic education model with a goal of teaching their students the importance of environmental stewardship and community service.

Finally, this past week, I visited Mountain Island Charter School in

Mount Holly. Mountain Island has a traditional curriculum focused on building the character of students and instilling a spirit for community within them.

Each one of those three charter schools, as well as the others that are in my district and, I think, across America, have a unique learning environment. What I have found in these schools is that these students flourish in that right environment, and there is a unique environment for every student to find success. One student's successful environment is so different than another.

While each school was different, their similarities highlight the benefits of charters. Each school utilizes a challenging curriculum that encourages not just the students, but their parents as well, to stay involved. That parental involvement is such an important part of the educational process.

After each of these visits, it is clear that our educational system would hugely benefit by expanding access to charter schools. I am proud to cosponsor H.R. 10.

I look forward to voting for it this week, in the hopes of giving all American children greater access to quality charter schools and educational opportunities of their choice and their parents' choice, so that we have a better-educated workforce and a stronger America.

THE AMERICAN PEOPLE NEED A VOTE ON EXTENDED UNEMPLOYMENT INSURANCE

The SPEAKER pro tempore. The Chair recognizes the gentleman from Michigan (Mr. KILDEE) for 5 minutes.

Mr. KILDEE. Mr. Speaker, it has been 1 month since the Senate acted in a bipartisan fashion to pass emergency unemployment extension.

Just hours after the Senate acted, I introduced a bill, H.R. 4415, the same language passed by the Senate. It is fully paid for, would not increase the deficit, unlike the hundreds of billions of dollars in permanent tax breaks that the Republican leadership intends to bring to the floor this week.

A month later, we still have no vote scheduled for extending unemployment insurance for millions of Americans—no vote, despite the fact that over 150 Members of Congress, Democrats and Republicans, have cosponsored H.R. 4415; no vote, despite the fact that 2.6 million Americans have already lost this important benefit and 2.8 million will have lost that benefit by the end of the month, almost 3 million Americans; no vote, with 72,000 individuals, hardworking Americans, every week at risk of losing their unemployment insurance if we don't act.

Helping jobless Americans who are actively looking for work is not only the right thing to do, but we have done this before. We have done this under Democratic administrations and Republican administrations. It is not a

handout. It is simply a lifeline to help those folks who have lost their job stay above ground, above water, before they get their next job.

This should not be a partisan issue; yet, yesterday, the Republican leadership said no to letting some of these jobless Americans testify at a Capitol Hill hearing. We were locked out of the room that we had requested.

2.8 million jobless Americans, they may be invisible to the House Republican leadership, but they will not be silenced.

While they were locked out of the hearing room at the Rayburn House Office Building, I and other Members joined these unemployed Americans yesterday, went to the steps of the Capitol, and listened to them as they told their stories. This is their Capitol; it is not ours. It belongs to them, and their voices deserve to be heard.

I also asked hardworking Americans who are unemployed to tweet and email me their stories. My newsfeed and inbox was flooded with stories of people just trying to get by, struggling to pay their rent, struggling to feed their families as they continue to be denied a vote in the House of Representatives to renew unemployment insurance.

They have continued to be denied their voice in the House of Representatives, and this is the people's House. So what I would like to do with my remaining time is just tell a few of the stories that have come in. Lynette B. says:

We just received our foreclosure letter on our home. I am 49 years old, and this is certainly not where I see myself at this age. I am educated, and I have been applying to no less than three jobs per day, only to not get a reply to most of them, or else I am overqualified.

Jennifer S., this is Jennifer and her family:

I never thought I would be in this position, unemployed and worrying about feeding my two growing boys, 14 and 9. I have had to go to food pantries to keep food on the table. I am behind in my car payment and the utilities since my unemployment benefits stopped December 28.

Laura B. writes:

I need the extension, so I can afford to keep the Internet on to look for jobs and afford the gas to go to interviews. It's very hard out there, and there are so many unemployed people looking for each job, that the chances are slim.

Angela M. writes:

Please help with UI. I have lost almost everything, sold my car, pawned my wedding rings, selling furniture to keep a rented roof over my kids' heads.

Elaine G. writes:

I live with my 27-year-old daughter and sleep on an air mattress. I have no phone. I complete job applications now and ask employers to contact me through email. I expect, any day, that my car will be repossessed, as soon as the finance company is able to locate the car.

Carol C. writes:

Come June 1, I will have to leave my apartment. My car, phone, Internet will be gone.

I have no money for essentials like good toilet paper and soap. How does somebody find a job?

Thank you, Mr. Speaker, for allowing me to raise these voices. These are real Americans. They are real stories.

Some of the questions we face in this Congress are complicated. This one is simple. Take up H.R. 4415, and we can take away the pain that so many Americans—almost 3 million Americans—are facing.

HONORING THE EXTRAORDINARY LIFE OF JONI EARECKSON TADA

The SPEAKER pro tempore. The Chair recognizes the gentleman from Mississippi (Mr. HARPER) for 5 minutes.

Mr. HARPER. Mr. Speaker, I rise today to recognize the extraordinary life of Joni Eareckson Tada.

When Joni was 17 years old, she was just like any other high school graduate. She was thrilled to be on the brink of college, and she was excited to spend a summer swimming in the nearby Chesapeake Bay.

With high school behind her, she was ready to really begin her life. She was not prepared, however, to have her fourth cervical vertebrae crushed in a terrible accident, an accident which would render her a paralyzed quadriplegic and shatter her mobility and independence forever.

Unfortunately, that is exactly what happened. On July 30, 1967, while diving with her sister, Joni misjudged the depth of the water and snapped her neck at the bottom of the water. She lost all movement in her hands and legs and was rushed, motionless, to the hospital.

Joni spent many grueling months there and often thought about killing herself. She thought her life was not worth living, and she didn't want to be a burden on her loved ones.

"There were many nights I would wrench my head back and forth on the pillow, hoping to break my neck up at a higher level. I wanted to die," Joni later said.

There were times she even asked her friends to help her commit suicide. She was desperate to end her life; but despite her intense depression, despite her intense physical suffering, it was during this time that Joni turned to her Christian faith and began to search for new purpose in her tragedy.

She studied her Bible, leaned on her friends and family, and prayed for guidance, until she realized, almost overnight, that while she would never be able to walk again, she could choose to live through her disability. The Lord could use her to inspire and encourage others.

So she resolved, "One night, lying there in the hospital, I said, 'God, if I can't die, please show me how to live.'"

I am glad to say, Mr. Speaker, that she has lived well, is one of the most inspirational figures I know, and has touched so many lives with her incred-

ible story. Let me briefly outline some of her many accomplishments and undertakings.

During a 2-year rehabilitation period after she left the hospital, Joni learned how to hold a paintbrush using her teeth. She labored away at this skill and often struggled, until she mastered the technique. Today, her artwork is prized around the world and is just one of the many ways she has provided inspiration.

In 1979, she founded Joni and Friends, a Christian ministry dedicated to serving the disabled community around the world. It partners with local churches to provide resources and support for thousands of families afflicted by disabilities. In fact, her organization has served families in 47 countries and, in 2006, opened a new facility in the United States.

Just a few weeks ago, I had the pleasure to meet and talk with Joni about her ministry and was privileged to introduce her before she spoke at Belhaven University in Jackson, Mississippi.

□ 1030

The ministry does such incredible work. And let me tell you, I don't think she has any plans of slowing down.

In addition to all this, she has somehow found time to publish over 50 books, many of which are critically acclaimed and rank on bestseller lists. Her radio show, "Joni and Friends," is broadcast in over 1,000 outlets and, in 2002, won the Radio Program of the Year award from the National Religious Broadcasters Association.

Joni has even helped us get things done here in Washington. She has represented the disabled on numerous government committees and was instrumental in the passage of the Americans with Disabilities Act. And she continues to help.

As for awards, her list is very long. She is the recipient of the Victory Award from the National Rehabilitation Hospital, the Golden Word Award from the International Bible Society, and the Courage Award from the Courage Rehabilitation Center. She is a member of the Christian Booksellers Association's Hall of Honor and is a recipient of the William Wilberforce Award.

Joni holds honorary degrees from Westminster Theological Seminary, Biola University, Indiana Wesleyan University, Columbia International University, Lancaster Bible College, Gordon College, and Western Maryland College.

As I said, she is quite the achiever. And how does she really do it? Well, you know, Mr. Speaker, I think something that C.S. Lewis once said helps to answer that. He said:

If you read history, you will find that the people who did most for the present world were precisely those who thought most of the next. It is since people have largely ceased to think of the other world that they have become so ineffective in this world.

I think Joni understands this. Her mind is truly set on another place. Her life has been extraordinary.

So, again, on behalf of the House of Representatives, I would like to recognize and celebrate the life of Joni Eareckson Tada, a courageous woman who truly knows how to live.

THE OLDER AMERICANS ACT

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from Oregon (Ms. BONAMICI) for 5 minutes.

Ms. BONAMICI. Mr. Speaker, May is Older Americans Month, and today I rise to call attention to historic legislation that has for decades served as a lifeline to our country's seniors.

The Older Americans Act is responsible for critical services, like housing, nutrition, and employment assistance. For many seniors, the Older Americans Act is responsible for the delivery of their only warm meal of the day and their only social interaction.

The legislation expired in 2011; and today I am speaking in support of H.R. 4122, the bill I introduced with the gentleman from Texas, Congressman RUBÉN HINOJOSA, to reauthorize the Older Americans Act.

Congress first passed the Older Americans Act in 1965 as one of President Lyndon Johnson's Great Society programs. Its goal is to ensure that our seniors age with dignity, maintain independence for as long as possible, and do not grow old in poverty.

Over the years, the OAA has been reauthorized and improved upon to meet the needs of the changing population. As Americans live longer, our policy needs to keep pace.

Our legislation includes stronger elder abuse protections, modernized senior centers, improved transportation services, and other programs that promote seniors' independence.

One of the titles in the Older Americans Act provides important employment support to the country's seniors, something they need now more than ever. The Senior Community Service Employment Program provides job training and job placement for low-income seniors. Many of the people who use this important program were laid off during the recession, only to see their position disappear altogether during the recovery. Now they find that they lack the necessary skills to fill the new jobs that have been created, and they must compete with a younger, inexperienced workforce willing to accept wages lower than their earning potential.

This important program, known as SCSEP, provides specialized training for these mature workers. By partnering with local nonprofits and State agencies, SCSEP helps older Americans develop new skills and then pairs them with employers.

I recently met with several SCSEP participants at the Forest Grove, Oregon, senior center in my district, and I heard firsthand how the program

helps people get back on their feet. Programs like this are exactly what many of the long-term unemployed need. And while we continue to debate extending the emergency unemployment program, SCSEP is addressing the problem head-on for many of our constituents by offering a solution that is good for employees, businesses, and the economy as a whole.

Mr. Speaker, the Older Americans Act was developed so our country's seniors could age with dignity. Today it continues to provide support to older Americans who are eager to work and live independent lives as they age. The Senate has advanced its own bipartisan Older Americans Act bill, and I am hopeful my colleagues will follow suit and support H.R. 4122.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed without amendment a bill of the House of the following title:

H.R. 4192. An act to amend the Act entitled "An Act to regulate the height of buildings in the District of Columbia" to clarify the rules of the District of Columbia regarding human occupancy of penthouses above the top story of the building upon which the penthouse is placed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until noon today.

Accordingly (at 10 o'clock and 34 minutes a.m.), the House stood in recess.

□ 1200

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at noon.

PRAYER

Reverend Don Williams, Maine State Police, Augusta, Maine, offered the following prayer:

I thank You, God, for giving me the opportunity to represent You and the Maine State Police and the people of the great State of Maine. I pray that I represent them well, as should be the desire of this great body as they represent their States.

My dearest Heavenly Father, I come to You today on behalf of this body of Representatives from our great and wonderful United States. As they represent their people, I ask that You give them wisdom and understanding from above.

God, we all need Your wisdom. I thank You for these men and women who have given of themselves to represent their people and make decisions that will affect all the people of this great and wonderful Nation.

God, please give them the character and integrity to rule this Nation. Give them strength to stand true to their beliefs and the courage to stand for what is true and right. Help us to be faithful to Your Word. Lord, I ask for Your blessing to return to our great and wonderful Nation.

In thy Holy Name, I pray.
Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Texas (Mr. WILLIAMS) come forward and lead the House in the Pledge of Allegiance.

Mr. WILLIAMS led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

WELCOMING REVEREND DON WILLIAMS

The SPEAKER. Without objection, the gentleman from Maine (Mr. MICHAUD) is recognized for 1 minute.

There was no objection.

Mr. MICHAUD. Mr. Speaker, I rise today to welcome Chaplain Donald Williams as today's guest chaplain.

Chaplain Williams is originally from Springfield, Missouri, but he came to Maine in 1985, where he served as pastor of the Fellowship Baptist Church.

Chaplain Williams has sworn in as deputy sheriff and chaplain for the Kennebec County Sheriff's Office in 1987. In addition to serving as chaplain for the Maine State Police and Augusta Police Department, he is involved with the Maine Law Enforcement Chaplain Corps and the State's Criminal Justice Academy.

Chaplain Williams has gone above and beyond in serving the spiritual needs of Maine's police force for over 20 years. His remarkable service was reflected in his nomination for the 2010 National Sheriff's Association Chaplain of the Year award.

He is a true asset to our State and our country. I am proud to stand with him here today.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. DUNCAN of Tennessee). The Chair will entertain up to 15 further requests for 1-minute speeches on each side of the aisle.

ICANN

(Mr. WILLIAMS asked and was given permission to address the House for 1 minute.)

Mr. WILLIAMS. Mr. Speaker, the President recently announced that the U.S. Commerce Department would end its Internet agreement with ICANN, a nonprofit organization who has overseen our databases since 1998.

President Obama's plans could lead to international control and come at a time when nations all over the world are looking for any technological advantage they can gain over the United States.

Both Republicans and Democrats alike agree that the Obama administration's decision to cut ties with ICANN could lead to an uncertain future that hinders free speech and threatens national security.

The United States has always been the most protective country of free speech in the entire world. As other countries and international organizations advocate for a more globalized Web, the trampling of our First Amendment rights and greater censorship will be at an even higher risk.

It is imperative that we closely monitor this situation moving forward to ensure that free speech in any medium is never censored.

In God we trust.

FACES OF THE UNEMPLOYED

(Mr. CICILLINE asked and was given permission to address the House for 1 minute.)

Mr. CICILLINE. Mr. Speaker, last week, I unveiled the "Faces of the Unemployed," an effort to help put a human face on the unemployment crisis.

Yesterday, out-of-work Americans from all over the country came to Congress to tell their story, and they were shut out of the Capitol Building. They were not allowed to share their experiences inside the building that belongs to them and in front of the people they sent to Congress.

Mr. Speaker, you may have stopped them from sharing their stories inside the Capitol yesterday, but with the "Faces of the Unemployed," their faces and stories will be in the Halls of Congress every single day until you bring this bill to the floor for a vote.

There are 2.5 million Americans without this safety net today, and that number could reach nearly 5 million if Congress does not act to extend unemployment benefits before the end of this year. These are real Americans, many of whom have worked their whole lives until recently and now can't afford basic necessities. They spent all their savings. Some have become homeless, and others are on the verge of losing everything.

Every one of these people deserves a vote, Mr. Speaker. I urge you to bring the Senate bill to the floor for an immediate vote so that we can extend unemployment benefits and help millions of Americans.

CELEBRATING ST. CHARLES' 180TH ANNIVERSARY

(Mr. HULTGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HULTGREN. Mr. Speaker, I rise today to celebrate the city of St. Charles' 180th anniversary this May.

Known as the "Pride of the Fox," St. Charles has earned its reputation, boasting beautiful parks, innovative schools, and unique architecture.

Formerly known as Charleston, the city was incorporated 3 years before the city of Chicago. In 2011, St. Charles was named the number one city nationwide in which to raise a family by Family Circle magazine.

From RiverFest to the nationally acclaimed Scarecrow Festival, from Hotel Baker to high schools that graduate an average of 95 percent of seniors each year, St. Charles has been an ideal center of commerce, family, fun, and rest. The city leads by example in Illinois, and I am proud to celebrate its many years of prosperity.

As we celebrate this 180th anniversary, I would also like to give special recognition to someone's 18th anniversary—of birth, that is. My daughter Kylie, who is my princess, turns 18 today. I wish I could be with you today, Kylie, but happy birthday.

TEACHER APPRECIATION WEEK

(Mr. HIGGINS asked and was given permission to address the House for 1 minute.)

Mr. HIGGINS. Mr. Speaker, I rise today to recognize Teacher Appreciation Week.

We know that a good education is critical for today's youth to have a successful future. We owe our thanks to the teachers who dedicate themselves to providing this.

The need for education begins early, setting children on a positive path for learning at a young age. And, as students get older, it is essential to provide them with the skills, especially math and science education, that will give them the ability to compete in a globalized economy.

Mr. Speaker, Congress should use this week to recommit ourselves to fund and support programs that improve education for our children. Education is the most powerful tool we have to fight poverty in our neighborhoods, improve opportunities for our youth, build stronger communities, and create a more successful tomorrow.

SUPPORTING THE SELECT COMMITTEE ON BENGHAZI

(Mr. MARCHANT asked and was given permission to address the House for 1 minute.)

Mr. MARCHANT. Mr. Speaker, I rise today to support the establishment of the select committee on Benghazi.

Constituents in my district demand to know what really happened on Sep-

tember 11, 2012, in Libya. Almost 2 years have passed, and Congress continues to get stonewalled by the administration. The most serious of these offenses is that the terrorists who are responsible for this action have not yet been brought to justice.

The creation of a House select committee is a serious matter. We owe this to the families and loved ones that were lost. This is the best way forward to uncover what actually happened. Under the leadership of Congressman TREY GOWDY, I am confident we will get to the bottom of this.

I urge all of my colleagues to join me in supporting the creation of the select committee on Benghazi.

BRING THEM HOME

(Ms. HAHN asked and was given permission to address the House for 1 minute.)

Ms. HAHN. Mr. Speaker, my colleague from New York just recently talked about education and why it is so important and what a great tool it is to fight poverty and provide for the future of our young people, which is why what I am going to say is even more serious.

In the middle of the night on April 15, hundreds of girls were abducted from their beds in a school in Nigeria. The militant terrorist group Boko Haram is now planning to sell these young women into sex slavery for just \$12 a girl.

I have just gotten back from the Nigerian Embassy. My colleagues and I met with Nigerian officials for updates on this ongoing tragedy and to stand in unity behind strengthened efforts to bring these girls back home to their families.

As a mother and a grandmother, I cannot imagine the pain the parents of these girls are experiencing. Many of these parents are terrified to speak to the media for fear of what might happen to their daughters.

I appreciate our President's new commitment to help the Nigerian Government bring these girls home. These girls were pursuing their education, despite threats from a terrorist group bent on preventing the education of women.

We cannot stand idly by while fear and violence oppress the freedom and dreams of women around the world.

MEDIA IDENTIFY AS DEMOCRATS

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, there are lots of reasons why the national media leans liberal. Surely, reporters' political party affiliation explains some of their bias.

A new study of the media by two Indiana University professors found that among journalists who choose a side, Democrats outnumber Republicans by

four to one. Maybe that explains why the liberal national media have largely ignored the IRS and Benghazi scandals, dismissed climate change skeptics, and sugarcoated ObamaCare.

It shouldn't surprise us that journalists have removed from their code of ethics the requirement that their "news reports should be free of opinion or bias and represent all sides of the issue."

Isn't it incredible that it has been removed from the journalists' code of ethics?

The media should give the American people the facts, not tell them what to think.

STOP THE GAMES

(Mr. ELLISON asked and was given permission to address the House for 1 minute.)

Mr. ELLISON. Mr. Speaker, while the Democrats are working hard to address the needs of working Americans, over 2.5 million having been left out in the cold since the Republicans refused to bring up a bill, which is paid for, to extend unemployment insurance. Republicans are busy with yet another partisan, political exploitation of the tragedy in Benghazi.

Yesterday, citizens had to go to the steps of the Capitol to talk about how they have lost their jobs and their unemployment insurance, and now they are at their wits' end and at the end of the family's budget. They need a responsive government to step up. Yet Republicans are announcing a select committee on Benghazi, despite already having had 13 hearings, 25,000 pages of document requests, and 50 briefings.

This is an exploitation of a serious tragedy. We know what happened. But, you know what? It is politics.

Unfortunately, the American people need a responsive government to help them, like the 2.5 million people who are desperately in need of the opportunity for their government to step forward to help them with this unemployment crisis.

We can do more. We have got to do it now. Stop the games.

□ 1215

MOLDOVA

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, with Russian-backed militants creating chaos in Ukraine, neighboring Moldova has put their forces on high alert.

Moldova and Ukraine share a similar problem of breakaway states within their borders. In fact, there is evidence that Russian forces located in the Transnistria region of Moldova have been involved in the recent violence seen in Odessa, Ukraine.

Moldova, just like Ukraine, wishes for a better relationship with their European neighbors, but could see its attempts to cement friendships undermined by pro-Russian provocateurs.

We should make it clear that any effort to undermine Moldova's sovereignty will not be tolerated. Last week, I introduced a bipartisan resolution that calls on this House to support Moldovan independence and oppose aggression by the Russian Federation.

It is clear that Vladimir Putin will take advantage of any sign of weakness. We need to display strength on behalf of our friends in the region, engage them, and support their right to defend the independent Republic of Moldova from aggressive actions.

INTRODUCING THE PLANNING ACTIVELY FOR CANCER TREATMENT ACT

(Mrs. CAPPS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CAPPS. Mr. Speaker, I rise to draw attention to the serious gaps in our cancer care system, a system the Institute of Medicine has deemed in crisis.

For too many cancer patients, the process of a cancer diagnosis and treatment is overwhelming. Patients must navigate treatment provided by multiple providers, with little help to coordinate the treatments, the side effects, and the psychosocial impacts.

While some providers involve their patients actively in their cancer care, we need to make it the standard, not the exception. That is why I have introduced the Planning Actively for Cancer Treatment, or PACT, Act with my Republican colleague, Representative BOUSTANY from Louisiana.

The PACT Act would provide a personalized roadmap to cancer care developed by the patient and provider. These plans have been shown to improve patient outcomes, increase patient satisfaction, and reduce unnecessary utilization of scarce health care facilities.

That is why cancer patient research and provider groups like the Lymphoma Research Foundation and the National Coalition for Cancer Survivorship, they all support this bill.

With the PACT Act, we have an opportunity to make cancer patients better, along with the health care systems that care for them.

I urge my colleagues to cosponsor this important bill.

BLATANT MISMANAGEMENT OF THE VA

(Mr. FARENTHOLD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FARENTHOLD. Mr. Speaker, I am outraged over reports involving the care of our veterans and the blatant mismanagement at the VA.

We have made promises to our Nation's veterans, and, yet, wounded veterans are waiting months and even years, with some even dying due to backlogs at the VA.

I found out yesterday a veteran in my district died from excessive delays because he was unable to get necessary heart surgery. Delays at the VA hospital in Phoenix may have led to additional deaths.

Reportedly, VA officials have ordered hospital workers to shield this information in order to hide incredibly long waits. Workers at a VA clinic in Fort Collins, Colorado, were supposedly told to falsify appointment records to escape retribution for not meeting agency-imposed goals. If they didn't do that, they were going to end up on a bad boys list.

Mr. Speaker, if true, these reports demonstrate a serious problem within the VA. The brave Americans who served our country did not wait months or years to answer the call to protect our freedom. They deserve the best care that we can give them in a timely manner.

Unfortunately, under current leadership at the VA, that seems impossible. If Secretary Shinseki can't get this done, President Obama needs to find somebody who can.

ENSURING THAT ALL VETERANS AND THEIR SPOUSES HAVE ACCESS TO EARNED BENEFITS

(Ms. TITUS asked and was given permission to address the House for 1 minute.)

Ms. TITUS. Mr. Speaker, last week, during the VA approps debate, I spoke about Madelynn Taylor, a veteran being denied the right to be interred with her spouse, Jean, in the Idaho State Veterans Cemetery because they are lesbians.

Idaho does not recognize their marriage and is denying the couple the honor and dignity earned through Madelynn's service in the U.S. Navy. Clearly, LGBT veterans continue to face discrimination.

Nearly a year after the landmark decision striking down DOMA, the VA still does not have a clear policy to ensure all veterans and their spouses have access to their earned benefits.

In response to the situation, Idaho resident and 27-year Army veteran, Colonel Barry Johnson, offered Madelynn and Jean his plot at the State cemetery stating:

Madelynn loves her country. She wants her partner by her side, and she wants to eternally rest among veterans in the State she made home.

She deserves that. We need more people like the colonel here in Congress, willing to speak up on behalf of all our veterans and their families who deserve to receive the benefits that they have earned.

CONGRATULATING HEBREW ACADEMY JUMP TEAM

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to congratulate the team from Hebrew Academy in South Florida for winning this year's National Council of Synagogue Youth JUMP competition.

Schools across the country were charged with creating events related to Israel advocacy, Jewish values, Holocaust remembrance, and bullying prevention. Through this competition, students develop and build critical aspects of leadership that can be applied throughout their lives.

For their team's winning project, the Hebrew Academy JUMP team created an Israel awareness day, developed a bullying awareness week and discussion groups about cliques and bullying, and created a remembrance project that engaged Holocaust survivors to have their stories integrated in their school's Holocaust curriculum.

I congratulate these impressive students on what they have accomplished for our community and for their victory in the national competition.

At this time, Mr. Speaker, I would like to submit into the RECORD the names of the exceptional Hebrew Academy JUMP team members.

They are students Jackie Olemberg, Alix Klein, Ariela Stein, Jacob Mitrani, Ariela Isrealov, Merah Frank, Adina Bronstein, Shane Hershkowitz, Madison Emas, Danny Bister; and faculty Rabbi Avi Fried.

CONDEMNING THE ABDUCTION OF THE NIGERIAN SCHOOL GIRLS

(Ms. WILSON of Florida asked and was given permission to address the House for 1 minute.)

Ms. WILSON of Florida. Mr. Speaker, last night, I introduced a bipartisan resolution condemning the abduction of Nigerian school girls by the terrorist group Boko Haram, which has claimed responsibility.

Leadership of the U.S. House Foreign Affairs Committee and the Subcommittee on Africa joined me and co-sponsored House Resolution 573.

Mr. Speaker, I am personally deeply disturbed by this atrocity, and it shines a light on the terror that so many girls face around the world every day in attaining the basic right of an education.

We must do everything in our power to ensure the safe return of these precious children and strengthen efforts to protect them from those who conduct violent attacks.

I support Secretary Kerry's decision to send a security team to Nigeria. It will take the efforts of the Nigerian Government, the United States Government, and the international community to rescue the missing young

girls. These young women could be our daughters, our sisters, our nieces.

Mr. Speaker, the terror is still continuing as I stand and address this House. We must end this nightmare for these girls and for girls all over the world.

RESOLUTION RELATING TO THE CONSIDERATION OF HOUSE REPORT 113-415 AND AN ACCOMPANYING RESOLUTION, AND PROVIDING FOR CONSIDERATION OF H. RES. 565, APPOINTMENT OF SPECIAL COUNSEL TO INVESTIGATE INTERNAL REVENUE SERVICE

Mr. NUGENT. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 568 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 568

Resolved, That if House Report 113-415 is called up by direction of the Committee on Oversight and Government Reform: (a) all points of order against the report are waived and the report shall be considered as read; and

(b)(1) an accompanying resolution offered by direction of the Committee on Oversight and Government Reform shall be considered as read and shall not be subject to a point of order; and

(2) the previous question shall be considered as ordered on such resolution to adoption without intervening motion or demand for division of the question except: (i) 50 minutes of debate equally divided and controlled by the chair and ranking minority member of the Committee on Oversight and Government Reform or their respective designees; (ii) after conclusion of debate one motion to refer if offered by Representative Cummings of Maryland or his designee which shall be separately debatable for 10 minutes equally divided and controlled by the proponent and an opponent; and (iii) one motion to recommit with or without instructions.

SEC. 2. Upon adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the resolution (H. Res. 565) calling on Attorney General Eric H. Holder, Jr., to appoint a special counsel to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution to adoption without intervening motion or demand for division of the question except 40 minutes of debate equally divided and controlled by the chair and ranking minority member of the Committee on the Judiciary.

The SPEAKER pro tempore. The gentleman from Florida is recognized for 1 hour.

Mr. NUGENT. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mr. NUGENT. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. NUGENT. Mr. Speaker, I rise in support of this rule, H. Res. 568.

House Resolution 568 provides for consideration of two important resolutions. Both resolutions are critical to getting to the bottom of the IRS' targeting of conservative nonprofit groups, and they are critical to holding this government accountable.

The groups who are discriminated against deserve to know the full truth and so do the American people. To this day, Mr. Speaker, no one has been held accountable for the actions of the IRS.

I wish that the underlying resolutions weren't necessary; but, once again, the self-proclaimed "most transparent administration in history" hasn't been helping much in providing the answers to the American people that they so rightly deserve.

For example, one of the underlying resolutions, H. Res. 565, calls for the Attorney General to appoint a special counsel to investigate the targeting that took place.

Again, it is frustrating that this House even needs to take this step, Mr. Speaker; but as we have come to find out, the Justice Department chose a Democratic political supporter to lead their investigation into the IRS' actions. This attorney donated over \$6,000 to President Obama's election campaigns, and if that is not a conflict of interest, I don't know what it is.

That is extremely disappointing to me because this administration had the opportunity to give Americans assurances that they wouldn't stand for the IRS' conduct, they wouldn't allow an agency to be a tool to punish people for their political beliefs and would work diligently to root out this behavior and hold the appropriate people accountable.

Instead, the administration severely undermined the credibility of the investigation at every turn. We need impartiality and objectiveness from this administration; and, Mr. Speaker, we just didn't get it.

We have hit a wall, Mr. Speaker. It is time we had a special counsel to look into the issue so we can fully understand the depths of the targeting.

What we do know, Mr. Speaker, is that all signs point to Lois Lerner as a central figure in this scandal. Ms. Lerner has been unwilling to answer questions before the Oversight and Government Reform Committee, despite giving testimony to two other bodies.

Her actions to this point beg the question: What is she trying to hide?

Ms. Lerner has roughly a year—she has had a year to work with the committee and ample time to comply with this subpoena. Unfortunately, she has refused to do so.

When called to testify before the committee, Lois Lerner simultaneously asserted her innocence, while

depriving the American people of the opportunity to get their questions answered.

Ms. Lerner made 17 separate factual assertions before invoking her Fifth Amendment right—17, Mr. Speaker.

In the words of my colleague from South Carolina, that is a lot of talking for someone who wants to remain silent.

□ 1230

Some people believe—me being one of them—that you can't do that. You can't make selective assertions and still invoke your Fifth Amendment right.

Mr. Speaker, I believe that Mrs. Lerner's conduct shows contempt for this body. I certainly do. I truly believe that. But that is what we are here today for, to have a debate, to see what the majority of this body believes.

This rule allows for the debate to happen and a vote to happen. It allows Congress to do its job, providing oversight of the executive branch.

If the contempt vote passes, it will place the issue into Federal court. It will be up to them to decide if we are accurate or off base. Let the court decide that. That is the appropriate step, because that is where the dispute between these two branches is supposed to reside. The judicial branch is the arbitrator between the executive branch and the legislative branch when it comes to issues like this. That is how a three-branch system works. We should let the process take place.

I support this rule, and I urge my colleagues to do the same.

With that, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I want to thank the gentleman from Florida (Mr. NUGENT) for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

(Mr. MCGOVERN asked and was given permission to revise and extend his remarks.)

Mr. MCGOVERN. Mr. Speaker, welcome to witch-hunt week here in the United States House of Representatives. Our economy is slowly recovering, slower than any of us would like. Millions of unemployed Americans have been left behind because their unemployment benefits have expired. Our immigration system is broken. Millions of Americans are living in poverty because they don't earn enough to make ends meet. And we have a pay equity issue where women, on average, earn less than men for doing the same job. I mean, climate change is a real issue and is getting worse.

So what is the response from the House Republican leadership? A jobs bill? No. A fully funded transportation bill? No. An extension of long-term unemployment benefits? No. Comprehensive immigration reform? No. An increase in the minimum wage? No way. A pay equity bill? No. A sensible energy policy? No. Of course not, not from this leadership.

You know, when it comes to jobs or improving the economy, my Republican friends have no ideas. And here is the deal: they are afraid the American people are going to figure this out. And so what do they do? They create distractions and diversions, more investigations, more investigations.

Mr. Speaker, instead of tackling the issues that actually matter to people, House Republicans are once again playing to cheap seats with hyperpartisan political witch-hunts.

Now, this rule before us today contains two bills. One would hold Lois Lerner, the former Director of the IRS Exempt Organizations in contempt of Congress; the other would appoint a special counsel to investigate the targeting of nonprofit groups by the IRS. And that is just today. The House Republican leadership will be doubling down on the crazy later this week by creating a select committee to exploit the tragedy of Benghazi. It is shameful.

This is ridiculous. The IRS clearly overstepped in the way they identified and targeted nonprofit groups. That is not an issue for debate. But an issue of this magnitude and importance, potential abuse by the Internal Revenue Service, deserves to be handled in a bipartisan and professional manner. That standard has not been achieved during these investigations.

I say “these investigations,” plural, because multiple committees have spent nearly a year looking into this. From nearly the beginning, Republicans have operated on their own and not in a bipartisan and professional manner. To date, 39 witnesses have been interviewed, more than 530,000 pages of documents have been reviewed, and the IRS has spent at least \$14 million of taxpayer money cooperating with all of these requests and investigations.

And what do we have to show for all this work? We have had a circus in the Committee on Oversight and Government Reform—a circus. We have seen Ms. Lerner assert her Fifth Amendment rights, and we have seen Chairman ISSA literally cut the mic while Ranking Member CUMMINGS was speaking. In all my years as a Member of Congress and as a staff member, I have never seen such behavior in a committee before, ever.

And during this investigation, we have seen over 30 legal experts come together and state that Chairman ISSA’s contempt proceedings—one of the bills that we are considering here today—are constitutionally deficient. In other words, more than 30 legal experts—both Democrats and Republicans, and also including former House counsels—believe that the courts would throw this contempt resolution out of court. Now, of course, Chairman ISSA is entitled to his own opinion, but we cannot just ignore the legal opinions of more than 30 legal experts, including two former House counsels.

Ranking Member CUMMINGS had a great idea, a sensible idea, and I can’t

quite understand why my friends on the other side haven’t accepted it. He said let’s hold a hearing with many of these legal experts and get to the bottom of why they feel Chairman ISSA’s actions are deficient. But Chairman ISSA nixed that quickly and said no way, no hearings.

This is the Oversight Committee. This is the committee that is supposed to be nonpartisan, when you think about it. I mean, the investigations are supposed to have some credibility. But Chairman ISSA nixed that. In fact, he is refusing to hold such a hearing.

And actually, it just baffles me. If Chairman ISSA firmly believes that this contempt resolution has merit and has legal standing, then what is the harm in holding a hearing and considering these legal experts’ opinions?

The truth is that Chairman ISSA and the Republican leadership really do not care about doing this fairly, and they never have. This is an exercise in political theater, designed for the conservative media closed information loop.

Mr. Speaker, speaking truth to power is important. Investigating abuses of power is even more important. But abusing the process in the name of investigating abuse is wrong. We have been down this road before. We have seen this kind of witch-hunt steamroll through this very Capitol. But not even Joseph McCarthy was able to strip away an American citizen’s constitutional rights under the Fifth Amendment, as Chairman ISSA is trying to do.

The Congressional Research Service found that the last time Congress tried to hold witnesses in contempt after they asserted their Fifth Amendment right not to testify was in the 1950s and 1960s in Senator Joseph McCarthy’s committee, the House un-American Activities Committee, and others. In nearly every case, the juries refused to convict or Federal courts overturned those convictions. This exercise that we are engaged in today is nearly identical to the actions of Senator McCarthy. It was wrong then; it is wrong now.

This is sad because it demeans this House of Representatives. It may be red meat for the extreme right wing, but for too many Americans, it adds to the cynicism that this is a place where trivial issues get debated passionately and important ones not at all.

Mr. Speaker, the IRS is a powerful agency. The Tax Code, itself, can be either daunting or beneficial, depending on where you sit. The IRS and the Code can be used to help people, like through the EITC, the child tax credit, and the R&D tax credits; or it could be used punitively, as it was during the Nixon administration.

The IRS, under the Obama administration, must be held to a high standard. We must keep politics out of the way the IRS is run and the way it operates. In fact, the hearings, depositions, and investigations held to date actually show that there was no White House involvement in this case—none.

The problem here is that the narrative that my Republican friends have doesn’t fit the facts and they are frustrated, so they want to kick the ball down to the court and have more committees, more investigations, more special counsels. Maybe they will find something. In addition, these hearings that were held, these depositions and investigations show that the targeting of nonprofit groups by the IRS was not limited to conservative groups.

Unfortunately, this whole process is so political that my friends, the Republicans on the Oversight Committee, intentionally limited the scope of what they are focused on to just conservative groups. It doesn’t matter what happened to progressive groups. The truth is that both liberal and conservative groups were targeted. That is a fact that is conveniently left out of the arguments and accusations posed by my friends on the Republican side.

Mr. Speaker, I understand what the Republicans are trying to do here. It is crystal clear. They do not want to talk about the issues that matter to people. From the economy to the environment to immigration, they don’t want to talk about those issues because a majority of the American people disagree with them. They don’t want to talk about those issues because they have no ideas, nothing, nothing to offer. They don’t even want to talk about ObamaCare anymore now that 8 million Americans have health coverage. They don’t know what to do now, so they are coming up with these desperate attempts to try to create distractions. So this is what they are left with: sad little scraps of political nonsense that they keep trying to peddle as leadership.

Mr. Speaker, this rule and resolution are colossal wastes of time. They do nothing. They do nothing at all to try to ensure that the IRS is above politics. They do nothing at all to try to achieve any kind of justice or truth.

I urge my colleagues to vote “no” and to get on with the business of actually solving real problems that affect real Americans.

I reserve the balance of my time.

Mr. NUGENT. Mr. Speaker, it is amazing that those on the other side of the aisle would say this is trivial. This impacted American citizens. And I won’t disagree that it may have impacted those on the left; but, to a greater extent, it impacted those on the right. And to Americans, one of the most powerful organizations there is in America is the IRS. They can instill fear into your heart when you get that letter. So when you have one that does something that is so outrageous as what they have done, it is not trivial, at least not to the people I represent.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. KELLY).

Mr. KELLY of Pennsylvania. Mr. Speaker, I thank the gentleman from Florida for yielding.

I am reminded of a passage in the Bible that you can see a speck of sawdust in your neighbor's eye but not the plank in your own.

We are talking about a resolution. Isn't it amazing that we have to go to a resolution to restore to the American people their faith and trust that they are quickly losing in the government because we will not finish the job. We will continue to backpedal. We will run around the edges, and we will try to put the spotlight someplace else.

This is not gender specific. This is not party specific. This has nothing to do with anything other than honesty and truth. To sit here and bloviate about something that doesn't really exist—oh, they are trying to move the spotlight somewhere else.

Well, I would invite all of you to go back to what it is when we came in here and took a pledge. It is not just a pledge, and it is not just a responsibility. It is an obligation to get to the truth. When we have to have a resolution asking the chief law enforcement officer of the country to appoint a special committee, how far have we fallen in the eyes of the people we represent?

Is there an issue here? Yes, there is. Are there things that have to be settled? Yes, there are.

A year ago, on May 10, I was 65. This Saturday, I will be 66. I have learned more about myself in the last year than the American people have learned about what the IRS had done to them. This covers all Americans. This is not a Republican issue. This is not a Democrat issue, a Libertarian, or an Independent issue.

Whenever we get to the point where absolutely defending the people we represent becomes secondary to a political agenda, then we have fallen far from where we were supposed to be. In this great House, so much has been decided on policy for the American people. Isn't it time to restore their faith and confidence in this model? And why we would sit back and scratch our heads and say: I don't know why our approval rating is so low. Maybe if we just answered the questions and answered them truthfully and were truly transparent, the American people wouldn't cast doubts on who it is that they elected to represent them.

I applaud this issue, and I applaud this resolution. Be it resolved that we will restore to the American people the trust and faith and confidence they have to have in their form of government.

Please, to talk about political maneuvering? We are making balloon animals and are trying to tell people: This is what you need to look at. Don't worry that we have taken away your personal freedoms and your personal liberties. That is not the issue. You see, the issue is, this November, we have got to get reelected.

So let's make it about something else. Let's turn it on gender. Let's turn it on pay inequality. Let's turn it on everything that we can possibly do and

turn the light away from what the problem is, and that is the loss of faith and confidence by the people of this great country in the most remarkable model the world has ever known and who everybody would love to emulate but they can't.

It falls on our shoulders, not as Republicans or Democrats, but as representatives of the people of this great country, to get the answers that they deserve. Let's stop the fooling around about things that don't really pertain to this, and let's get them the answer.

And again, we have to have a resolution asking the chief law enforcement officer of the United States to do his job? That is pathetic.

□ 1245

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

I have great respect for the gentleman from Pennsylvania, but I think he has kind of highlighted kind of the differences between the two parties here. He mentioned that we are trying to focus attention on gender inequalities and other issues. We are.

I think there is something wrong when women in this country make 77 cents on every dollar a man makes. I think that is outrageous. I think women ought to be paid the same as men to do the same job. So, yeah, that is an issue, and that is something we should talk about. And it is not just a women's issue, by the way; it is a family issue.

The Senate sent us over an immigration bill that would reduce the deficit by \$900 billion over the next 20 years—\$900 billion. They did it in a bipartisan way. We can't even get a vote here. We can't even get a vote here in the House of Representatives.

There are millions of our fellow citizens who are unemployed and whose unemployment benefits have run out. We can't even get a vote to extend unemployment benefits for these people—maybe because they don't have a super-PAC, maybe because those aren't their natural constituencies. I don't know what the reason is. But those are important issues. And, quite frankly, yes, that is what the American people want us to be talking about—things that matter to them.

The problem with what we are doing here today, this is so blatantly politically motivated, even in terms of the scope of the investigation, that it just is laughable. It is laughable.

Listening to the debate in the Rules Committee last night amongst those on the Oversight Committee, the back and forth, and realizing how broken that committee is, how partisan that committee has become because of the leadership in this House, it is really sad.

No one here is defending the IRS. No one here is defending Lois Lerner. But what we don't want to do is trample on the Constitution, and we don't want to unnecessarily politicize these proceedings, which is what is happening right now.

Mr. Speaker, at this time, I would like to yield 4 minutes to the gentleman from Virginia (Mr. CONNOLLY).

Mr. CONNOLLY. Mr. Speaker, I thank my good friend, Mr. MCGOVERN from Massachusetts, a distinguished member of the Rules Committee, with whom I spent 5 hours last night. I wish my friend Mr. KELLY were still here on the floor because he reminds us we take an oath when we become a Member of Congress and at the beginning of every new Congress to defend and protect the Constitution of the United States. We don't take an oath to look at the best polling for our respective parties and pursue—no matter what—the issues that rile up our base.

At the Republican retreat earlier this year, two issues polled real well with their base: Benghazi and the IRS. Sadly, cynically, we are here today—irrespective of the constitutional rights of an American citizen who happened to be an IRS employee—bending and genuflecting at the altar of that polling data to fire up that base.

We are not here defending the Constitution, because if we were, we would be invoking our own history. There was a sad period known as the McCarthy era in this very body where constitutional rights of citizens—Federal employees and non-Federal employees—were trampled upon. The Fifth Amendment right is one of only 10 enumerated in the Constitution, and for a reason, because staying in the memories of our early colonists were the star-chambers that had occurred in Great Britain, the parent country, and even here. And they wanted to protect all citizens—innocent and guilty alike—from self-entrapment, from their own words being used against them in legal proceedings unfairly. They felt so passionate about it that it was one of only 10 enumerated rights in the Bill of Rights.

In the McCarthy era, there were some famous cases, U.S. v. Quinn being one of them, and another one, Hoag, in which the Supreme Court of the United States and District Courts of the United States found that an individual did not waive his or her Fifth Amendment rights simply because they had a prefatory statement proclaiming their innocence. As a matter of fact, in the Hoag case, Ms. Hoag actually participated at times in answering other questions, having already invoked her Fifth Amendment.

The standard is very high. If you have made it crystal clear that you intend to invoke your Fifth Amendment, it takes a lot to construe that has been waived. We Members of Congress who take that oath to the Constitution should err on the side of protection of constitutional rights, not simple waiver. But, of course, if our agenda isn't getting at the truth, if it is pandering to those two issues that polled so well with our base, Benghazi and IRS, then constitutional rights are incidental to the enterprise, and, sadly, that is what we are considering here today.

I don't think you have to be a Democrat or a Republican, a liberal or a conservative, to be concerned about protecting the constitutional rights of every citizen even for—and maybe especially for—non-heroic figures such as the woman we are dealing with today, Lois Lerner. Because when you trample on her rights, you have risked every American's rights. What is next? Who is next at the docket? While we are at it, when we are trampling the Fifth Amendment, what about the First? What about that sacred Second? What about the Fourth? What about any of those rights enumerated in the Bill of Rights?

This is not a noble enterprise we are about today, Mr. Speaker, and I urge this House to reject this rule and to reject the underlying contempt citation as not worthy of this body and not consistent with the oath each and every one of us takes.

Mr. NUGENT. Mr. Speaker, it is just interesting to hear the argument on the other side. I have spent 37, 38 years protecting people's rights. That is what I did. As a sheriff, we did things and lived within the law. We answered questions truthfully. That is all we are asking.

This is terrible that we have to get to this point, but at the end of the day, we are not taking her rights away. We are going to the court and asking the court, Are we right in our assumption in regards to what the House counsel had told us? Are we right? If we are not, they are going to tell us we are not.

So, she has due process. This whole thing about we are taking her due process away is just ludicrous. It doesn't make sense.

Mr. Speaker, I continue to reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I just remind the gentleman that 32 legal experts have said that my friends are wrong. I would like to yield to Mr. CONNOLLY to clarify that.

Mr. CONNOLLY. I thank my friend. Thirty-two legal experts have the other point of view. And, furthermore, I just say to my friend, if the answer to the House of Representatives is that if you want your constitutional rights to be protected, hire a lawyer, we will see you in court, that is not the oath we took.

It starts and stops here. What is the constitutional protection of citizens here on the floor of the House of Representatives? To simply say go hire a lawyer is a terrible message in terms of constitutional rights protection to the citizens of this country.

Mr. MCGOVERN. I reserve the balance of my time, Mr. Speaker.

Mr. NUGENT. Well, Mr. Speaker, I am not an attorney. That is what they say on commercials when somebody wants to give some legal advice: I am not an attorney.

What I will tell you from my past experience is that I can get attorneys' opinions on either side of an issue.

That is what they get paid to do. Whether they are paid or unpaid, they all have an opinion. It doesn't mean their opinion is the right opinion. It just means that they have an opinion.

With that, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Just so everybody is clear here, we are not just talking about any attorney. We are talking about legal scholars. Quite frankly, the overwhelming opinion is that my friends are overreaching here, and, again, it makes a mockery of this House and especially at a time when we ought to be doing the people's work.

Millions of our fellow citizens who are unemployed can't even get a vote on the House floor to extend unemployment benefits. These are the people we are supposed to represent. We are telling them, forget it, you are on your own. We have all these excuses why we can't bring that to the floor.

The minimum wage, we have people working full-time in this country who are stuck in poverty. My friends went after people on SNAP, the program that they like to target, a program that provides food to hungry people, and they say everybody ought to get a job. Well, the majority of able-bodied people on that program work, and they earn so little because wages are so low that they still are entitled to some benefit. If you work in this country, you ought not to be in poverty.

So, Mr. Speaker, on both this issue of unemployment and the minimum wage and on the issue of immigration, those are the things we ought to be debating here today. That is what the American people—that would be solving problems, not creating partisan political theater.

So, Mr. Speaker, I am going to ask people to defeat the previous question. If they do, I will offer an amendment to the rule to bring up legislation that would restore unemployment insurance and provide much-needed relief to countless families across this country.

To discuss our proposal, I would like to yield 2½ minutes to the gentleman from Michigan (Mr. KILDEE).

Mr. KILDEE. Mr. Speaker, I thank my friend from Massachusetts for yielding.

Mr. Speaker, I urge my colleagues to defeat the previous question so that we can immediately bring up H.R. 4415, which would restore unemployment benefits to 2.8 million Americans, people who have lost their job and are simply trying to find their next job and want to prevent their families from losing everything they have worked for in that period.

I heard the gentleman on the other side say that folks on this side are trying to change the subject to something else. You have got almost 3 million Americans who stand to lose everything they have worked for, everything that they have built over their lifetime, and this Congress has the power

to act. We could do it today. The Senate passed an unemployment extension. The President will sign it.

On the other side, we heard that we don't want to take up UI because it is not paid for. So, we have a bill that the Senate passed in a bipartisan fashion that is paid for. It does not increase the deficit. You have got the bill you want. You have got the bill you asked for. It would save almost 3 million people from losing everything they have fought for.

Do we bring that to the floor? No vote on unemployment extension. We can talk about everything else, we can bring political messaging bills to the floor, but for the 2.8 million people who are losing everything, no vote for them, not in the House of Representatives today.

For the 72,000 people every week that are losing their unemployment benefits—hardworking Americans—some on the other side say they want to be unemployed. Yesterday, we had a group of unemployed citizens. We intended to have a hearing. We couldn't get a room. The Republican leadership wouldn't allow it. We went to the steps of the Capitol, and we heard these stories.

I suggest we take a look at the people in your own district, in your own districts back home who are unemployed, trying to find their next job, have lost their unemployment benefits, and look them in the face and tell them that the political messaging bills that are coming to this House are more important than preserving the life that these people have worked hard to create for themselves and their kids.

Some of the issues that we deal with in this House are really complex questions. Some of them are not so complicated. This is one that is simple: 2.8 million people could be helped only if this Congress will act.

Set aside this nonsense. Bring up H.R. 4415, and let's get back to the business of the American people.

Mr. NUGENT. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. TERRY).

Mr. TERRY. Mr. Speaker, I rise in support of the rule. Now, I think tyranny is worth discussing because when we look at what we are here to do today, it is to declare Lerner in contempt.

There is nothing more uniquely un-American than abusing the public's trust to target fellow countrymen based on their political beliefs. This is something—when you target your political enemies—that Lerner did and the IRS did, and you reward by expediting the President's own political operation. So you punish your enemies and you reward your friends—this is Soviet-style governance.

I would think everyone on both sides of the aisle would be very, very vociferous in opposition to what the IRS was doing to the American public. We only hear criticism now from the other side of our proceeding. My friends on

the other side of the dais have, no doubt, viewed this as a partisan witch-hunt. But let there be no mistake: we would not be here today if Ms. Lerner had not conducted her own partisan witch-hunt.

□ 1300

What Lois Lerner did is completely un-American, and it undermines the very fundamentals of the principles of what this country is founded upon; and if we don't hold Lois Lerner accountable for her actions—and this is about accountability in the government—then we are sending a message to future administrations that this type of Nixonian behavior is acceptable. Let's not send that message.

Mr. MCGOVERN. Mr. Speaker, wow, when we talk about tyranny, I should remind the gentleman that you have two bills coming to the floor under a closed rule—absolutely closed. Nobody can offer any amendments. It is your way or the highway. They are absolutely closed.

When you talk about tyranny, we can't get a vote on the House floor on unemployment compensation. We can't get a vote on minimum wage. We can't get a vote on pay equities. We can't get a vote on immigration reform.

I don't know what the gentleman is talking about. I mean, it is our side, those of us on this side that can't get our voices heard. Last session, you had one of the most closed Congresses in our history, after you promised a wide-open, transparent process. You have just shut everything down.

Even the scope of what this bill is focused on is closed in a very partisan way to focus only on abuses that deal with potential rightwing groups, conservative groups, but you totally cut out any abuse that might have happened to a liberal group or a progressive group, so I don't know what the gentleman is talking about.

This is a closed process. We talk about democracy and that we need to promote democracy around the world. We need a little democracy here in the House of Representatives. We don't have any.

Let me just say one other thing here, Mr. Speaker. We had 39 experts—39 witnesses that were interviewed by the committee, 39. Not one single one indicated there was any link between the White House and the IRS mess, not one.

I mean, if there had been a few, I guess we could have a debate here about whether we need to go further, but not one. So here is the problem: their narrative doesn't fit the facts, and they are upset about it.

I get it. You were hoping for some juicy conspiracy that doesn't exist, so you have to create more investigations, more investigations, all the while, we are neglecting our work, our duty to the people of this country.

Yes, let's make sure that the IRS is above politics. I am all with you on that. I don't want them tagging any-

body for political reasons, and I am committed to that, and so is everybody on this side, but that is not what we are doing here.

This is witch-hunt week. Make no mistake about it because we are doing this today, and then we are doing Benghazi tomorrow. That is the theme of the week, and what a tragedy, what a tragedy when so much more needs to be done.

Mr. Speaker, I yield 1 minute to the gentleman from Colorado (Mr. POLIS), who is on the Rules Committee.

Mr. POLIS. Mr. Speaker, I concur with the gentleman from Massachusetts and appreciate his passion for his remarks.

This process is closed. Look, we have something that shouldn't be a controversial bill, extending the R&D tax credit, helping make American companies more competitive; and it has a cost, \$155 billion, so let's talk about how we pay for that cost, so we can provide the certainty that our companies need to hire more people and grow.

We have an idea. I was proud to offer an amendment with Mr. CÁRDENAS and Mr. GARCIA. It had a bipartisan pay-for. It passed the Senate with more than two-thirds majority. We have a bipartisan bill, H.R. 15, in the House. We were able to use that to pay for this tax cut, over \$200 billion.

Not only does our proposal, immigration reform, fully pay for the R&D tax credit, but it also reduces our deficit by \$50 billion, and guess what, we were denied a vote on our amendment. There weren't even any ideas from the other side about how to pay for it.

If they voted it down, they voted it, but let's have a discussion. If you don't like our way of paying for it, find another. No Member of this House is even allowed to propose a way of paying for things under this rule. It is a guaranteed recipe for Republican tax-and-spend deficit policies.

Mr. NUGENT. Mr. Speaker, I do have to go back to the comments that my good friend from Massachusetts mentioned. Now, I wasn't here in 2008, but if you look back at the history, the Democrats controlled this body and the Rules Committee in 2008.

When Congress considered a contempt resolution in 2008, the rules opted to hereby the resolution, preventing Members from even debating it or holding a vote on the measure on the floor. They just said: here we are, we are bringing it to the floor for debate and a vote.

It is pretty open to me.

Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee (Mr. DUNCAN).

Mr. DUNCAN of Tennessee. Mr. Speaker, I thank the gentleman from Florida for yielding. I can't cover all of the issues that are being raised here today, but I do want to say this: I spent 7½ years as a criminal court judge in Tennessee before coming to Congress trying felony criminal cases, and so I have interest in this question about

the waiving of Fifth Amendment rights.

Let me just mention what some others have said about this. Alan Dershowitz of Harvard said Lois Lerner's statement of innocence opened a "legal Pandora's box. You can't simply make statements about a subject and then plead the Fifth. Once you open the door to an area of inquiry, you have waived your Fifth Amendment right; you've waived your self-incrimination right on that subject matter."

Paul Rothstein, a well-respected law professor at Georgetown University—and both of these gentlemen are very, very liberal politically. Professor Rothstein said of Lois Lerner, that she "has run a very grave risk of having waived her right to refuse to testify on the details of things she has already generally talked about. She voluntarily talked about a lot of the same things that lawmakers wanted to ask her about in her opening statement. In that situation, when you voluntarily open up the subject they want to inquire into and it is all in the same proceeding, that would be a waiver."

Cleta Mitchell, a lawyer who specializes in ethics laws stated, "Lois Lerner came before the House Oversight and Government Reform Committee. She gave an opening statement in which she said, 'I'm not guilty, I haven't done anything wrong.' The second way in which she waived her Fifth Amendment privilege was when she voluntarily, willingly, agreed to meet with the Department of Justice lawyers. To me, this is a pretty clear case of how she has waived her Fifth Amendment rights not to testify and not to answer questions. She just is being selective, and the one place she will not answer questions is with anyone that she thinks might ask her hard questions."

Hans von Spakovsky of The Heritage Foundation, another legal expert, said, "Under the applicable rules of the Federal courts in the District of Columbia, the interview she gave to prosecutors meant that she waived her right to assert the Fifth Amendment."

The SPEAKER pro tempore (Mr. HULTGREN). The time of the gentleman has expired.

Mr. NUGENT. I yield 30 seconds to the gentleman.

Mr. DUNCAN of Tennessee. If we allow somebody to come in and say they are not guilty—repeatedly say they haven't done anything wrong, if we allow people to say that and do that in these types of proceedings and then plead the Fifth, we are making a mockery of the justice system and making a mockery of the Fifth Amendment privilege in this country.

Last, I would just say this: there has been some mention about some liberal groups being targeted. There were over 200 conservative groups audited and targeted and investigated in this investigation. I think there were three that might have been classified as liberal.

It was so obvious what was intended by the IRS activities in this situation,

and so I support this rule and support the underlying resolution.

Mr. MCGOVERN. Mr. Speaker, I respect the comments of my friend, but I think the talk he just gave supports one of the points that we have been trying to make here, and that is we have 39 legal experts, former House counsels, who basically say that what my friends are doing here today are trampling on Ms. Lerner's constitutional rights.

It would seem to me that, if you wanted this whole circus to be a little bit more legitimate, that you would have agreed to what Chairman CUMMINGS had asked for, which was a hearing to bring in legal experts to actually talk about the merits of this before kind of rushing to the floor with this purely partisan bill.

The second thing I would say to my friend from Tennessee is, when you talk about the number of liberal groups targeted, one of the reasons why we are not talking about liberal groups being targeted here is because the majority kind of stacked the deck.

They formed the rules. They only want to focus on conservative groups, so that is why there is even more evidence of the fact that this is a purely partisan exercise.

I just want to say, so my colleagues are clear, not one witness—not one single witness interviewed by the committee identified any evidence that political bias motivated the use of the inappropriate selection criteria.

The inspector general, Russell George, was asked at a May 17, 2013, hearing before the Ways and Means Committee, "Did you find any evidence of political motivation in the selection of the tax exemption applications?"

In response, the inspector general testified, "We did not, sir."

Oversight Committee staff asked all 39 witnesses whether they were aware of any political bias in the creation or use of inappropriate criteria. Not one identified even a single instance of political motivation or bias.

Look, there needs to be reforms to the IRS. We need to make sure that the IRS is above politics, but bringing this political circus, this witch-hunt, to the floor purely because it polls well amongst your base is ludicrous.

It is ludicrous because we should be focused on extending unemployment benefits for people who have lost their unemployment compensation. We should be raising the minimum wage. We should be passing immigration reform.

We should be dealing with the pay equity bill, so that women get paid the same amount as men do for working the same job.

It is also a family issue. We ought to be focused on getting this economy going; but instead, because my friends on the other side of the aisle don't have a clue on what to do, they are asking to look over here, let's do a distraction, let's do a diversion. I think this is outrageous.

I reserve the balance of my time.

Mr. NUGENT. Mr. Speaker, I love the comments about McCarthyism as it relates to this particular issue, but really, McCarthyism is the IRS. The IRS is targeting American citizens who have done nothing wrong, who merely wanted to express their freedom of expression that is guaranteed by the Constitution. That is all they wanted to do.

We hear that there is a bunch of liberal groups that were caught up. I don't believe so. The record will reflect that there was less than half a dozen, while there were conservative groups of over 200 that were targeted. I think that is pretty compelling, and those are the facts. It is not just my thought. It is the facts.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, let me just say this because facts are important, Inspector General J. Russell George testified before the Oversight Committee that his audit did not look at the IRS be-on-the-lookout list with regard to progressive groups. That is what the inspector general testified, so let's stop this partisanship.

I would say to my colleagues, if my friends want to do this correctly, if they want to do this in a way that has some credibility, they ought to do this in a nonpartisan way.

It is really quite shameful that the Oversight Committee has become so polarized and so politicized and that this whole issue is being brought before us in this way that really, quite frankly, I think is beneath this House.

We ought to do a proper oversight, but not purely because it polls well or do it in a way that plays well with a political base. We ought to do it in the right way.

The IRS should not be involved with politics, period. Whether it is going after conservative groups or liberal groups, that is absolutely unacceptable, and we ought to make sure that doesn't happen, but that is not what we are doing here.

What we are doing here is a witch-hunt. This is the first witch-hunt bill of the week. We have several that we are going to be doing this week, and I think our time could be better spent on helping the American people get back to work.

I reserve the balance of my time.

Mr. NUGENT. Mr. Speaker, I yield 30 seconds to the gentleman from California (Mr. ISSA).

Mr. ISSA. Mr. Speaker, the minority is entitled to opinions, but not facts that just aren't so.

Our committee issued an extensive committee report, a staff report as to the targeting of conservatives. The minority offered no response, so the gentleman not on the committee might say something that just isn't so.

The targeting by the IRS was conservative groups. They were the ones that got the special treatment. They were the ones that were asked inappro-

priate questions. They were the ones that Lois Lerner said she did nothing wrong about, but she did.

□ 1315

Mr. MCGOVERN. How much time do I have left?

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MCGOVERN) has 2½ minutes remaining. The gentleman from Florida (Mr. NUGENT) has 14½ minutes remaining.

Mr. MCGOVERN. I yield myself 30 seconds.

Mr. Speaker, the Committee on Ways and Means Democrats found out that there was extensive scrutiny of liberal progressive groups, groups that had names "Progressive," "Occupy," and "Acorn" in their name. That is the Ways and Means Committee. That just goes to show how partisan this process has become, how politicized it has become. This is beneath this House.

If you do oversight, it ought to be nonpartisan. This has turned into a circus. This has turned into a witch-hunt. Enough of this. Let's start doing the people's work.

I reserve the balance of my time.

Mr. NUGENT. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. ISSA).

Mr. ISSA. Mr. Speaker, again, BOLOs were issued, be on the lookout, if you will, for conservative groups. Conservative groups were systematically denied, for more than 2 years, their approvals. Conservative groups were asked inappropriate and personal questions, things like where do you pray, things like what are your political views, and please show us your donor list, even though that was inappropriate.

The fact that the minority will allude to word searches to see how many of some application was out there is not about the inappropriate targeting and systematically withholding and mistreating of groups. That is what happened. That is what evidence is beginning to show Lois Lerner was at the heart of.

We are here today about contempt for somebody pleading a number of cases of what was right or what they did or didn't do, followed by taking the Fifth, then followed by answering questions having once waived and, thus, essentially waiving her rights.

Now, you can, after the fact, get 39 people to say one thing and somebody else can get 39 to say another. Today, we are trying to move contempt to the court system where an impartial judge can evaluate whether or not Lois Lerner should be ordered back to testify so the American people can know the truth about why she did what she did. What she did was target conservative groups. That is not in doubt. I don't want people using words like "circus" in order to confuse people.

Conservatives were targeted; that is clear. Lois Lerner has things to answer. She only answers the part she wants to, including before the Justice

Department but not before the U.S. Congress.

Mr. MCGOVERN. Mr. Speaker, may I ask the gentleman from Florida whether he has any additional speakers or whether the chairman will want to say any more.

Mr. NUGENT. I do not have any additional speakers, but go right ahead.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

This is a circus, and it is really sad that we are here on the floor debating this.

Just for the record, witnesses testified that progressive groups got a multitiered review and that liberal groups like Emerge went through a 2-year process before getting denied.

The other thing you ought to know is that the IRS has begun a path to reform. It has implemented all the inspector general's recommendations, including going above and beyond by eliminating BOLOs altogether.

Mr. Speaker, if this were done in a fair and professional manner, we wouldn't be having this controversy today, but the exact opposite happened in the Committee on Oversight. It was a joke. We all saw it on TV. Enough of this. Enough of this. Let's start doing the people's work.

Mr. Speaker, I ask unanimous consent to insert the text of the amendment that I will offer into the record along with extraneous materials immediately prior to the vote on the previous question.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MCGOVERN. This is on extending unemployment compensation benefits. It might be nice to do something that might help somebody around here, that might help the American people, instead of doing this witch-hunt, this week of investigations, this week of distraction, when our economy needs our attention, when people need jobs, when people's unemployment needs to be extended.

Mr. Speaker, I urge all my colleagues to vote "no" and defeat the previous question. I urge a "no" vote on this rule, which is a closed rule, two closed rules. Again, when we do oversight, it ought to be nonpartisan. This has become a partisan joke.

With that, I yield back the balance of my time.

Mr. NUGENT. Mr. Speaker, I yield myself as much time as I may consume.

We have heard a lot today. It should concern the American people of what we have heard in regards to the allegations and the operations within the IRS.

You know, I regret, I really do regret that somehow this turned into a partisan shouting match. Both sides—both sides—are involved in this. I regret it because we have lost sight of the real issue: The IRS constituted a serious violation of public trust.

Mr. Speaker, this goes back to when I was sheriff, and I would sit there and have parents come in and complain about schoolteachers and the police officers that arrested their son or daughter for a violation of law, and they were more concerned about what were perceived as issues—in regards to how they were handled—versus the actual conduct of their child. This is the same thing.

We are blowing smoke all over the place trying to obscure the fact that the IRS—under the direction, we believe, of Lois Lerner, the involvement of her—violated Americans' rights across the board. Talk about McCarthyism. They have done it. They have the power to do it. They have the power to come in. If you remember the questions asked, they asked people about what they believed and what were their conversations, who they talked with. Was it an invasion of privacy? I think so.

The American people—and you have heard this from other speakers today—really need to have their faith restored that this government operates in a very open way, that people can trust government again.

No one should have to worry. No one—Republican, Democrat, Libertarian, or otherwise—should ever have to worry about their political speech having them singled out by the IRS. No one should have to worry about that. No one group should have to worry about the government worrying about their speech and having the ability to counter it in a way that brings officialness to it. How do you do that?

This is true, though, whether you are Republican, Democrat, conservative, liberal, or anything else. The point is we should be alarmed. This is what we are talking about today. We should be alarmed about the conduct of the IRS under the direction of Lois Lerner. We should be worried about that in the future, because that is the biggest single threat to America today is how our own government treats its people, Mr. Speaker. A Federal Government agency used its weight to bully Americans. That is not what America is all about, Mr. Speaker.

Make no mistake, though, that is exactly what happened. The IRS bullied people. We had someone last night testify about constituents in their district that wanted to promote an organization and do something, and they were bullied by the IRS until they finally said: You know what, I give up. I can't take it. I worry about what is going to happen because I know the IRS has the ability to do other things on my personal tax return and call it into question.

This is an extreme disservice to the American public. They really do deserve better. If we are ever going to right this wrong, we have got to find out what happened. We have to understand all the facts. And so my friends across the aisle really don't want to hear the facts. They talk about every-

thing else under the Sun, but they really don't want to talk about what happened.

You know, my good friend talked about this being trivial, doubling down on crazy. Well, I guess that you are talking about my constituents, because my constituents have that concern. They do have the concern because of what they have seen and what has been reported in the media by both the left and right media in regards to the overstepping of Federal investigation—the IRS—on groups.

I heard this called a circus. Well, that is what we are trying to get away from. We are trying to get away from this partisanship, and let's do what we are supposed to do. By appointing a special counsel, we are hoping to take politics out of it, because politics are on both sides of this issue. So to do that, you would appoint someone, a special counsel, to investigate. Let's take away the partisanship.

It is also important that people are held accountable for their actions. Ms. Lerner defied a lawfully issued subpoena, and there ought to be repercussions for that; otherwise, this is just for show. We really have no oversight ability if people just come and say: Oh, I am not going to tell you.

That is not how it works. That is not how it is supposed to work.

This rule brings this question to the floor, not like the Democrats did in 2008. This rule brings everybody to the floor where they can have an open debate and question and vote on what they think is right.

So I urge my colleagues to support this rule and the underlying legislation. We have the ability to get answers, because whether it is a Republican administration or a Democratic administration, the American people need to know that their government is going to be held accountable if they overreach. If they trample on my rights as a citizen, we should have the ability to know who is doing it and why, and there should be some redress.

Today it is really about we don't care. That is what we are hearing. There are all kinds of other issues, but we don't care about this. It doesn't matter that we sent numerous bills over to the Senate—we talk about job creation—that were passed bipartisanship here. The Senate has refused to take any action on that, has refused to bring it up, discuss it, debate it, amend it, and send it back. They have done nothing.

So we have the ability today to get politics out of it. Let a D.C. court make a decision. Let's do the right thing.

I urge all my colleagues to support this rule.

The material previously referred to by Mr. MCGOVERN is as follows:

AN AMENDMENT TO H. RES. 568 OFFERED BY MR. MCGOVERN OF MASSACHUSETTS

Amendment in nature of substitute:

Strike all after the resolved clause and insert:

That immediately upon adoption of this resolution the Speaker shall, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 4415) to provide for the extension of certain unemployment benefits, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided among and controlled by the chair and ranking minority member of the Committee on Ways and Means, the chair and ranking minority member of the Committee on Transportation and Infrastructure, and the chair and ranking minority member of the Committee on Education and the Workforce. After general debate the bill shall be considered for amendment under the five-minute rule. All points of order against provisions in the bill are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. If the Committee of the Whole rises and reports that it has come to no resolution on the bill, then on the next legislative day the House shall, immediately after the third daily order of business under clause 1 of rule XIV, resolve into the Committee of the Whole for further consideration of the bill.

SEC. 2. Clause 1(c) of rule XIX shall not apply to the consideration of H.R. 4415.

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Republican majority agenda and a vote to allow the Democratic minority to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives (VI, 308-311), describes the vote on the previous question on the rule as "a motion to direct or control the consideration of the subject before the House being made by the Member in charge." To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that "the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition" in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R-Illinois) said: "The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition."

The Republican majority may say "the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution . . . [and] has no substantive legislative or policy implications whatsoever." But that is not what they have always said. Listen to the Republican Leadership Manual on the Legislative Process in the United States House of Representatives, (6th edition, page 135). Here's how the Republicans describe the previous

question vote in their own manual: "Although it is generally not possible to amend the rule because the majority Member controlling the time will not yield for the purpose of offering an amendment, the same result may be achieved by voting down the previous question on the rule . . . When the motion for the previous question is defeated, control of the time passes to the Member who led the opposition to ordering the previous question. That Member, because he then controls the time, may offer an amendment to the rule, or yield for the purpose of amendment."

In Deschler's Procedure in the U.S. House of Representatives, the subchapter titled "Amending Special Rules" states: "a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate." (Chapter 21, section 21.2) Section 21.3 continues: "Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon."

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Republican majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. NUGENT. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCGOVERN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

PROVIDING FOR CONSIDERATION OF H.R. 4438, AMERICAN RESEARCH AND COMPETITIVENESS ACT OF 2014

Mr. COLE. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 569 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 569

Resolved, That upon adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4438) to amend the Internal Revenue Code of 1986 to simplify and make permanent the research credit. All points of order against consideration of the bill are waived. The amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the bill shall be considered as adopted. The bill, as amended, shall be considered as read. All points of order against provisions in the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, and on any amendment thereto to final passage without intervening motion except: (1) 90 minutes of de-

bate equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means; and (2) one motion to recommit with or without instructions.

POINT OF ORDER

Mr. DANNY K. DAVIS of Illinois. Mr. Speaker, I raise a point of order against H. Res. 569 because the resolution violates section 426(a) of the Congressional Budget Act. The resolution contains a waiver of all points of order against consideration of the bill, which includes a waiver of section 425 of the Congressional Budget Act, which causes a violation of section 426(a).

The SPEAKER pro tempore. The gentleman from Illinois makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

The gentleman has met the threshold burden under the rule, and the gentleman from Illinois and a Member opposed each will control 10 minutes of debate on the question of consideration. Following debate, the Chair will put the question as the statutory means of disposing of the point of order.

The Chair recognizes the gentleman from Illinois.

□ 1330

Mr. DANNY K. DAVIS of Illinois. Mr. Speaker, I raise this point of order not only out of concern for unfunded mandates, but to highlight the failure of Republican House leadership to protect the long-term unemployed, low-income citizens, and others who have lost their jobs through no fault of their own.

I raise this point of order because the bill before us would add \$156 billion to the deficit to provide permanent tax breaks for businesses while doing nothing for the 2.6 million Americans living with the constant nightmare of having no job, no food, no money, no lights, no gas, no college tuition money, and no unemployment check.

H.R. 4438 is 15 times the cost of helping the 2.6 million Americans who are looking for jobs that have been shipped overseas, jobs that have been downsized or outsourced, or jobs that simply do not exist. Please tell me, Mr. Speaker: What are they supposed to do?

H.R. 4438 would give \$156 billion in tax breaks for businesses but do nothing for the 72,000 additional Americans who lose benefits each and every week. An estimated 74,000 Illinoisans lost benefits on December 28, 2013, with 38,000 of these citizens living in Cook County alone. Forty-two thousand Illinoisans exhausted their benefits in the first 3 months of 2014. H.R. 4438 completely fails these Americans, many of whom stood on the Capitol steps yesterday pleading with Republican leadership to do the right thing. But the heartless response has been and continues to be refusal to help hard-working Americans struggling to provide food, shelter, clothing, and medical care for their families.

Now is not the time to cut, deny, or delay unemployment benefits. Failure to continue emergency unemployment benefits threatens the continuation of our economic recovery, costing over 200,000 greatly-needed jobs. The expiration has already drained almost \$5 billion from our national economy in the first quarter of this year. In Illinois alone, this loss of Federal aid means the loss in purchasing power of \$23 million each week—money that could be used to support local businesses, buy gasoline, pay utility bills, provide co-payments at doctors' offices, clinics, hospitals; purchase groceries, and pay children's graduation fees. Every \$1 in unemployment insurance generates \$1.63 in economic activity. I say let us practice good economy, let's be reasonable, and let's have a heart. In my State of Illinois, the unemployment rate remains 8.6 percent, and in much of my district it is more than 20 percent. Finding a job is not easy, but people are still trying.

Government leaders have a responsibility to protect our citizens and our country, especially during times of national crisis. Instead of helping Americans who already are hardest hit by the economic crisis—including older Americans, low-income Americans, veterans, and members of minority groups—Republicans prioritize \$156 billion in unpaid-for business tax breaks and tell the American people that it is all about fiscal responsibility and deficit reduction.

Mr. Speaker, extending unemployment assistance is a true demonstration of leadership and our national commitment to all Americans, not just the most secure. Refusal to help these citizens is an unacceptable, abject, and mean-spirited approach to leadership.

I urge that we reject this rule and the underlying bill by voting "no" on this motion until the Republican leadership puts people first and provides unemployment insurance to the 2.6 million Americans struggling to keep their lights on and gas in their automobiles, to pay rent and mortgages, and to feed their families. I urge that we vote "no" on this rule and to the bill.

I yield back the balance of my time.

Mr. COLE. Mr. Speaker, I claim the time in opposition to the point of order in favor of consideration of the resolution.

The SPEAKER pro tempore. The gentleman from Oklahoma is recognized for 10 minutes.

Mr. COLE. Mr. Speaker, the question before the House is should we now proceed and consider House Resolution 569. While the resolution waives all points of order against consideration of the bill, the Committee on Rules is not aware of any violation. In my view, Mr. Speaker, the point of order is merely a dilatory tactic.

In fact, the Joint Committee on Taxation states that "the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act."

This legislation makes permanent a simplified research credit that will help open the door for economic growth and give businesses the certainty they need to thrive. This measure has been routinely extended and supported by both parties for many years. In order to allow the House to continue its scheduled business for the day, I urge members to vote "yes" on the question of consideration of the resolution.

I yield back the balance of my time. The SPEAKER pro tempore. All time for debate has expired.

The question is, Will the House now consider the resolution?

The question of consideration was decided in the affirmative.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. The gentleman from Oklahoma is recognized for 1 hour.

Mr. COLE. Mr. Speaker for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), my friend, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mr. COLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. COLE. Mr. Speaker, on Tuesday, the Rules Committee met and reported a rule for consideration of H.R. 4438, a bill that would permanently extend and enhance the research and development tax credit.

The resolution provides a closed rule for consideration of H.R. 4438 and provides for 90 minutes of debate equally divided between the chairman and ranking member of the Committee on Ways and Means. In addition, the rule provides for a motion to recommit.

Mr. Speaker, dozens of so-called temporary tax extensions expired at the end of 2013. Some of them, like the one we will consider under this rule, have long been bipartisan and long been renewed annually.

As a small business owner myself, one of the things that a business craves is certainty, certainty that you can plan around. Providing a certain tax structure is important to businesses.

Take, for example, the R&D tax credit for which this resolution provides consideration. The R&D tax credit has been repeatedly extended since 1981. If it doesn't make you think it is permanent, I don't know what does.

Too often, we here in Washington tell businesses "trust us," that we can promise to extend X, Y, or Z tax provisions indefinitely. But they can't take that to the bank. They can't take our word that we will be able to deliver on promises that we make. The only thing

they can rely on is the law itself. If our tax laws expire every year, it injects an uncertainty into the business environment that inhibits economic growth.

We all know that encouraging research and development makes good economic sense. Ernst & Young did a study that found that the R&D credit increases wages in both the short and long term. Additionally, the legislation we will consider also increases research-oriented employment in both the short and the long term.

Many of my friends on the other side talk about raising the minimum wage and about increasing jobs. Those are certainly worthy matters to discuss. Permanent extension of the R&D tax credit does just that. That is why both sides have routinely extended this tax credit in good times and in bad. It is time to make it part of the permanent Tax Code.

Mr. Speaker, others have criticized this legislation because it only deals with a small portion of the expired tax provisions. However, to them I would say two things:

First, just as we have had to examine and pare back the discretionary side of the budget, we need to examine the tax side of the budget. There are over 200 tax expenditures, or spending on the tax side of the ledger, that, if all extended, will cost us more than \$12 trillion over the next 10 years. We need to take a serious look at which credit should be extended.

And secondly, this provision is the first of many that will be considered by this House. While the Senate has been content to move in a "comprehensive manner" on issues like immigration and even tax extenders, the House has taken a more deliberate approach.

The Ways and Means Committee has marked up seven different extenders affecting a variety of industries that I hope the House will consider in the coming weeks. This will allow us to have a vehicle to take to conference with the Senate to provide individuals and businesses with the certainty that they so desperately crave.

Mr. Speaker, I want to commend Chairman CAMP for beginning this process in earnest and look forward to consideration of additional measures at the appropriate time. Many of my colleagues on both sides of the aisle have supported the extension of the R&D credit because they have seen the value of making this provision permanent.

I urge support of the rule and the underlying legislation, and I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

I thank the gentleman from Oklahoma for yielding me the customary 30 minutes.

While I support research and development incentives and consider encouraging American businesses to research, innovate, build, and make it in America some of Congress' most important

duties, I rise today in opposition to this rule and the underlying bill.

Four months ago, my friends on the other side of the aisle allowed emergency unemployment insurance for more than 1.3 million Americans to expire.

During the farm bill negotiations, my friends on the other side of the aisle insisted on cutting \$8.6 billion from nutrition assistance programs.

Last week, Republicans on the Ways and Means Committee insisted on removing a \$12 million provision that would help foster children who are victims of sex trafficking. I find that ironic because this happens to be Foster Care Month.

They also fought tooth and nail to derail disaster assistance to the victims of Hurricane Sandy, and almost succeeded.

Furthermore, they have triggered a government shutdown and sequestration cuts that have drastically cut non-defense discretionary spending by \$294 billion.

And the reason offered for all these austerity measures still hamstringing recovery? Why can't the Republicans pass a bill to create jobs by improving our crumbling infrastructure? Well, deficit reduction, I guess, is the answer.

Yet, this bill, a favorite of Big Business without question, will add \$156 billion to the deficit.

Tax policy in general, and then extenders package specifically, is about prioritizing the needs of our country.

Dozens of temporary tax provisions that expired at the end of 2013 and several others scheduled to expire at the end of this year have been skipped over.

They have passed up the chance to renew the work opportunity tax credit, which helps veterans get work, and the new markets tax credit, which helps vitalize communities.

They have chosen to ignore renewable energy tax credits and tax credits to help working parents pay for child care.

They have decided that it is not important to extend deductions for teachers' out-of-pocket expenses, qualified tuition and related expenses, mortgage insurance premiums, and State and local sales tax, a deduction which is critical for our constituents in Florida.

□ 1345

My friends on the other side of the aisle would allow charitable provisions, including the enhanced deduction for contributions of food inventory and provisions allowing for tax-free distributions from retirement accounts for charitable purposes to expire rather than renew them.

This bill today and the other extenders—there were six of them that were marked up by the Ways and Means Committee—are the six extenders favored by Big Business.

That is why these will be the first and will likely be the only of the ex-

tenders—and there are 50-plus of them overall—that the House will vote on. That is why these are the measures my friends want to make permanent.

While I agree particularly that the one that is being discussed should be made permanent, they have no problem increasing the deficit, so long as it is a policy that is a priority for them and for Big Business.

I reserve the balance of my time.

Mr. COLE. Mr. Speaker, I yield myself such time as I may consume.

I want to begin, actually, by agreeing on a couple of points with my friend from Florida.

Sandy, if you will recall—and I know you do. I actually voted with you. I believe that relief should have been rendered. I am glad we did that, and it was done in a bipartisan fashion; so certainly, where I am concerned, my friend knows that I have been consistent on that point.

I also want to agree that there are a lot of extenders in this package that ought to be considered. As my friend knows, I actually raised one of those last night in an amendment at the Rules Committee—and it was withdrawn—simply to make the very point that he is making, that we shouldn't only focus on a few, but that all of these need to be considered, and each of them ought to have an opportunity to be looked at and discussed.

I think Ways and Means owes us a pathway, if you will. I have no objection to what they are doing here today, but I do think we all need to understand what is going to be considered.

In my view, all of these, since we have routinely extended them in the past, probably ought to be considered in one fashion or another. I suspect, frankly, they will be because, once we arrive in the conference committee, the Senate will probably have passed that in total, and there will be some sort of discussion there. Again, my friend's point is an important one with which I agree, in that we ought to look at these things.

The reason we are beginning with this one—and with a series of five or six others is—number one, these are ones that both parties have generally agreed upon in the past. This is not a controversial measure. When they were in the majority in 2008 and in 2010, my friends extended this particular tax credit, along with many others, so we don't think it is controversial in the partisan sense.

Secondly, we think these are the types of tax cuts that broadly contribute to growth, and that is something I know both sides want. We want a growing economy, we want the jobs that that generates, and frankly, we want the additional tax revenue that a growing economy yields.

We have made some very tough decisions over the last few years, sometimes on a bipartisan basis, about reducing this deficit. When this majority came in, the deficit was running at about \$1.4 trillion a year. This year, it

will come in at something like \$540 billion.

That is actually a very rapid decline. Along the way, some of those decisions have been pretty tough decisions—bipartisan, some of them. We, on our side, like to focus on the cuts we have made, and as my friend has pointed out, we have cut out literally hundreds of billions of dollars of discretionary spending.

None of that has been easy—again, sometimes on a bipartisan basis. Eventually, it had to pass a Democratic Senate and be signed by a Democratic President, so in a sense, those reductions had been bipartisan.

We have also generated revenue. The fiscal cliff bill, which I supported, preserved most of the Bush tax cuts, but it did generate revenue. Those things working together have helped bring the deficit down, but we are never going to get the deficit where I know both sides want it to be, if we don't have an economy that is growing and moving, creating jobs, innovating, is at the cutting edge, and is competitive with our international peers. This legislation is an attempt to do just that.

It is also an attempt, in my view, by Ways and Means and by Chairman CAMP to begin the process of looking at these tax extenders one by one. While all of them have some constituency in this body and while many of them have overwhelming bipartisan constituencies, there is no question that not every single one of them would pass muster if it were looked at individually, so I applaud Chairman CAMP and his committee for what they are doing.

I think we are trying to proceed in the right direction here. I don't have any illusions that this will be the final legislation. It will simply get us into conference with the Senate; and, hopefully, there will be more discussion there, but I think we are doing the right thing and are proceeding in the right way.

With that, Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Michigan (Mr. LEVIN), my friend, who is the ranking member of the House Ways and Means Committee.

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, this is really not about the R&D tax credit. I have favored it. I continue to favor it. Democrats, indeed, are in favor of tax incentives. Sometimes, we are criticized for that, but that is not the issue here.

It is whether we make this permanent without paying for it. It is fiscally irresponsible to do so, and it endangers key programs that matter for all Americans, and that is why the veto message from the President.

Why fiscally irresponsible? It is unpaid for, costing, over 10 years, \$156 billion. As you said, the gentleman from

Oklahoma, it is part of a package, the total of which would be \$310 billion; and if you add the others referred to, the package could be \$500 billion, more or less—a huge sum—unpaid for. The \$310 billion that is represented by this package is more than one half of the projected deficit this year.

So it is not only fiscally irresponsible, it is also hypocritical. It violates the Republican budget itself that requires extenders to be paid for, if permanent, with other revenue measures.

Here is what the chairman of the Budget Committee said last month:

Our debt has grown more than twice the size of our economy. You can't have a prosperous society with that kind of debt.

Mr. BRADY, who, I guess, will be speaking on this, said last month:

Americans have had it with Washington's fiscal irresponsibility, and I don't blame them. While families across the Nation continue to tighten their belts due to rising costs and shrinking paychecks, Washington continues to spend more than it takes in.

In 2009, the chairman of the Ways and Means Committee said:

The path to our economic recovery starts with fiscal responsibility in Washington.

Interestingly enough, the tax reform draft presented by the chairman makes R&D and some of the other extenders permanent, but without impacting the deficit. It is revenue neutral—it is paid for—and now, you come here and not pay for it.

This doesn't even include other key extenders, like the new markets; like the work opportunity tax credit as you referred to, Mr. HASTINGS, on veterans; renewable energy.

It leaves in jeopardy some key provisions that expire in 2017—the EITC, 27 million people affected; the child tax credit, 24 million; the American opportunity tax credit—education—12 million. The \$310 billion is three times the amount spent on education, job training, social services in a full year. Non-defense discretionary is now just about 3 percent of GDP, as low as it has been in decades.

Any permanent R&D has to be done comprehensively, not piecemeal and unpaid for. To do it this way is fiscally irresponsible. I think it is hypocritical and is programatically dangerous.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. HASTINGS of Florida. I yield the gentleman an additional 30 seconds.

Mr. LEVIN. So I oppose this rule, and I hope everybody who is thinking of voting "yes," including on the Republican side, will think back on what they have said before about the deficit.

I hope we Democrats will think we are for this incentive R&D. It needs to be done comprehensively, not piecemeal—threatening so many of the programs that benefit so many Americans.

Mr. COLE. Mr. Speaker, I yield myself such time as I may consume.

I want to agree with my friend about his concern on the deficit. I know it is genuine. Frankly, I appreciate the fact that our friends on the other side of

the aisle are concerned about the deficit.

I will remind them, when we took the majority in this Chamber in January of 2011, the deficit was about \$1.4 trillion. It is about \$540 billion today. So to suggest that this majority has not been serious about lowering the deficit and has not made really tough decisions—sometimes with my friends on the other side of the aisle, sometimes not—I think is to misstate the facts.

We are concerned about the deficit. If renewing this R&D credit is irresponsible without an offset, I will point out to my friends that you did it in 2008 and in 2010 when you were in the majority, so I don't think you are being consistent here in terms of this particular measure.

Finally, I want to make the point that the real key to getting out of this situation in the long term is threefold. First, obviously restraining domestic discretionary spending, we have done that, and it has been hard to do. Second, I think getting entitlement reform, we haven't done that. Hopefully, someday, we will.

Third—and maybe most importantly—is getting the economy growing again, moving in a way that creates jobs first and foremost, that provides a higher standard of living for our people, but that, yes, generates extra revenue to the government. There is nothing like a growing economy to help shrink the deficit.

This is a measure that both sides in the past have agreed actually stimulates economic growth; creates jobs; and, therefore, generates additional revenue. I think that we ought to approve the rule and that we ought to consider this thoughtful consideration of our Tax Code on a piece by piece, item by item basis and move ahead.

With that, Madam Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Madam Speaker, I yield 4 minutes to the distinguished gentleman from Texas (Mr. DOGGETT), my good friend.

Mr. DOGGETT. Madam Speaker, I support a permanent research and development credit to incentivize research for new products.

For decades, there has never really been any question about whether we should incentivize research. The question has been how—how to pay for that incentive and how to ensure that it actually encourages more jobs and more economic development with desirable research that would not otherwise happen without the credit.

Until today, Republicans who claimed to be for fiscal responsibility before they were against it have not been so brash as to demand that we finance this entire research credit on a permanent basis and similar legislation by borrowing more money.

A Government Accountability Office investigation of this credit concluded that a few corporations snatched most of the credit and that "a substantial portion of credit dollars is a windfall,

earned for spending what they would have spent anyway, instead of being used to support potentially beneficial new research."

This credit is just another type of special treatment that a few giant multinationals can count on to lower their already low tax rates.

Last month, The Wall Street Journal reported the complaints of one giant. It said that, without this credit, its tax rate would climb effectively from 16 percent all the way to 18 percent.

Another corporation complained that its rate would go from 13 percent to 19 percent. Most of the small businesses that I represent in my part of Texas would be delighted to have a rate at that level. They pay substantially more.

□ 1400

Multinationals can use this taxpayer subsidy to finance research that produces patents and copyrights and the like that are then owned by offshore tax haven subsidiaries that pay little or no taxes.

One company investigated by Senator LEVIN in the Senate last year did 95 percent of its research and development right here in America, but then it shifted \$74 billion of its earnings to an Irish subsidiary.

Apparently, the most effective multinational research anywhere in the world has focused on how to avoid paying for their fair share of financing our national security.

These are companies that ship both jobs and profits overseas. They are not about making it in America. They are about taking it from America. And that shifts the burden to small businesses and individuals.

Nor is all of this taxpayer-subsidized research beneficial to the public. For example, some of the research that was done for the electronic cigarettes, the latest fad to addict our children to nicotine, qualified for this tax subsidy.

Meanwhile, the House Republican budget undermines vital private research that is funded through the National Institutes of Health for Alzheimer's, for cancer, for Parkinson's, and for other dread diseases. They say we cannot afford to do what is necessary in research for those.

They also cut research for efforts to ensure that taxpayers get their money's worth from our investment in public services. Without adequate research, you cannot determine whether an initiative that is proposed justifies Federal dollars or is truly evidence-based.

I think we should reject today's proposal in favor of a research credit that actually incentivizes necessary research made in America and which is paid for, in part, by comprehensive reform of the credit itself.

As for comprehensive reform, from day one of this Congress, H.R. 1 was reserved for the much-ballyhooed Republican comprehensive tax reform. And yet we are well through this Congress

and it still says, “Reserved for Speaker.”

That is because the Republicans couldn't agree on which tax loophole to close to maintain a revenue-neutral—a not borrowing more money—and as a result of not being able to do what they said they would do—

The SPEAKER pro tempore (Mrs. BLACK). The time of the gentleman has expired.

Mr. HASTINGS of Florida. I yield the gentleman an additional 1 minute.

Mr. DOGGETT. Because they told us January of last year they would be here with a simpler, fairer, lower tax rate, but they can't agree on how to pay for it because they are dominated by lobby groups that want to protect the very complexities and loopholes that plague this tax system—because they couldn't do that and have not done that, they are now back, as the gentleman says, with the first of not one or two but of many provisions to make them permanent, and pay for it with either borrowed money or mandatory cuts.

I think that is a serious mistake.

Today's bill represents only the first installment of more tax breaks to come that are not paid for or are paid for with mandatory cuts. Surely, we don't need more research today to know that that is the wrong way to go, it is the irresponsible way to go, and it ought to be rejected.

Mr. COLE. Madam Speaker, I yield myself such time as I may consume.

I hate to keep repeating myself, but I think I will.

My friends passed this tax credit themselves when they were in the majority in 2008 and 2010. So while I appreciate this newfound concern about deficits on their side of the aisle, I remind them that since we have been in the majority, the deficit has actually declined—and declined pretty dramatically—from \$1.4 trillion, which is what they handed over to us, to about \$540 billion today.

I would be the first to agree that is far too high, but the movement has been in the right direction.

So to suggest that somehow this side of the aisle has been fiscally reckless or irresponsible, I think simply doesn't bear up to scrutiny.

Second, I remind my friends again this has been a bipartisan tax measure over the years. It has been routinely renewed, whether it was a Democratic Congress or Republican Congress, since 1981. It is as close as you ever get to be permanently in the Tax Code without actually being there.

But we still have that level of uncertainty that is associated every time that we have a discussion over the extension. We are simply removing, I think, that uncertainty, and we are doing what all sides have done regularly, which is recognize this is an important component of our Code and that we think it generates a great deal in terms of valuable research and generates economic growth and jobs.

I would agree with my friend that we are going to have to do different things to actually get the deficit down to where we want to go.

I serve on the Appropriations Committee, not on Ways and Means, and I will tell you we have really made dramatic cuts in the discretionary budget, some of which I think are actually too extensive. We have done that in an effort to try and, again, restore fiscal sanity.

I have cooperated with my friends on things like the fiscal cliff that have generated revenue. So it hasn't just all been cuts.

I do agree with my friends that Ways and Means needs to do two things: it is responsible for taxes and it is responsible for entitlements.

We all know that entitlement spending is the largest single driver of the deficit, by far. I would hope our friends, on a bipartisan basis, would sit down and start looking at entitlements on the Ways and Means Committee.

In terms of taxes, I think that is exactly what they are trying to do in this measure; that is, begin to look at this piece by piece and pick out the things that are worth keeping.

This credit, without question, both sides for over 30 years looked at and said, This is worth keeping. This is valuable. It generates jobs. It generates growth.

If my friends on Ways and Means want to look at this and tinker and change it around the edges, they are the tax experts. I trust them to bring us something here that is good. But remember, this bill is going to conference. There is a United States Senate that probably has a different view than us. It is going to sit down and negotiate with us. Then the bill has to go to the President.

So I look on this as a step in the right direction, not as a final destination point, let alone as some sort of dramatic departure from what we have been doing around here. It is actually pretty consistent with what we have been doing in terms of the policy.

What we are doing is making important correctives, turning what has been temporary into something that is permanent. And we are doing it piece by piece. Because, again, not all of these extenders, quite frankly, should be extended, but we ought to look at them one at a time and make that decision. I really think that is all we are about, Madam Speaker.

With that, I would again hope that we pass the rule and the underlying legislation.

I reserve the balance of my time.

Mr. HASTINGS of Florida. Madam Speaker, the American people will be better served if we addressed our broken immigration system, which has become a huge drag on our country's economic growth.

If we defeat the previous question, I will offer an amendment to the rule to bring up H.R. 15, the Border Security, Economic Opportunity, and Immigra-

tion Modernization Act, so the House can finally vote on something that will move this country forward.

To discuss our proposal, I am pleased to yield 2 minutes to the distinguished gentleman from California (Mr. CARDENAS).

Mr. CARDENAS. I thank my distinguished colleague from Florida.

Today, we are debating research and development in the United States. However, what we are actually doing is creating more funding for research and development while ignoring hundreds of thousands of the best and brightest researchers in our Nation—students who will come out of our research universities and immediately get sent home to another country. They will build economies overseas while we fall behind here in the United States. This is because of our broken immigration system.

Yesterday, I offered a very relevant amendment in the Rules Committee to complete the underlying bill. This amendment would pay for the tax credits and pass comprehensive immigration reform at the same time. By doing this, we would massively improve research and development in this country, unleashing the talents of our students, turning them into job-creating workers right here in the United States, which will support our U.S. economy.

Everyone agrees that we must support innovation through research and development. However, we must make sure that our businesses have the researchers to do that job.

Last month, we saw the annual H-1B visa cap reached in only 5 days.

Again, our outdated immigration laws put American innovation on hold. Imagine how the U.S. economy would grow and how many Americans jobs would be created if we didn't send away more than half of the Ph.D.'s graduating with STEM degrees right here in our U.S. universities simply because they were foreign born.

This amendment is the best way to pay for these tax credits and to expand research and development by creating jobs, raising revenue, and supercharging our local U.S. economy.

We must pass comprehensive immigration reform to continue leading the world in research. Because of a failure to consider this valid—and valuable—offset, I urge a “no” vote on the rule.

Mr. COLE. Madam Speaker, I yield myself such time as I may consume.

I want to disagree with my good friend from Florida on one thing, and I think it is probably just a phrase, but I want to put an important corrective in the RECORD.

My friend said we could finally vote on something that would be worthwhile. I would actually suggest that we voted on a number of things that have been worthwhile.

Frankly, this would have been in December, but the Ryan-Murray budget agreement, I think, was very worthwhile. I think that the omnibus spending bill that finally put us back into

some semblance of regular order in the appropriations process was worthwhile.

I think the farm bill that was passed as both a safety net program for many of our needy families in our country, as well as an important economic tool that my friend Mr. LUCAS got through on a bipartisan basis, was, again, very worthwhile.

I think the flood insurance bill that this Congress has passed on a bipartisan basis was, again, very worthwhile.

I think the fact that we have dealt with the doc fix, as there has actually been in Ways and Means an agreement as to what we should do—not an agreement on how to fund it, but we bought a year's worth of time so our health care providers that do such a great job helping and seniors and our needy people on both Medicare and Medicaid are going to be continued to be reimbursed—I think that is a good job.

I think this Congress doing the Gabriella Miller Kids First Research bill, taking money out of political conventions and putting it toward pediatric research, that is a pretty good job.

I think the fact that a couple of appropriations bills have actually crossed this floor on a bipartisan basis and are ready to go to conference earlier than any time since 1974 is a pretty good job.

So while we disagree—and I wouldn't say this is the most productive Congress in modern American history—to suggest that it is not doing its job and moving along legislation expeditiously is something I do have at least a different view on.

I want to agree with my friend from California on H-1B visas. I actually think he is correct about that. As I understand it, there has been action on that issue in the Judiciary Committee. It actually passed out of committee. When it comes to the floor is sort of not in my lane, but I do hope we do deal with that.

And no question, the whole immigration issue that my friend brings up is an important one. I appreciate him doing that. I thanked him for doing that last night. I thank him for doing it again today.

I don't think this is probably the vehicle for a comprehensive bill. I think it would probably meet more resistance. But talking about it and pointing out the importance of dealing with some of these issues I think is extremely helpful.

It doesn't change the basic fact, though, Madam Speaker. What we are dealing with here is pretty simple, but pretty important, though. Let's do something that in the past we have agreed on on a bipartisan basis. Let's focus on research and development so America is always at the cutting edge of technology and job creation and give our entrepreneurs and our businesses this very important tool and a sense of certainty that it is going to be there.

Again, this is something we have been doing since 1981. It is not new. It

has been bipartisan. I think making it permanent, letting businesses know that we can actually work together, is the right thing to do.

Then we ought to proceed, as the Ways and Means Committee is proceeding, systematically and look at all these other extenders, some of which will make it, some of which won't. We will undoubtedly have a vigorous debate about that.

It won't always be a partisan debate. I suspect on some of these things I will be with my friends on their side of the aisle and vice versa because things like the Indian Lands Tax Credit I don't consider partisan. It gets very good Democratic and Republican support all the time.

So, again, let's work together. I think that is what Ways and Means is trying to do. They are advancing a product systematically and appropriately.

I think we have the right rule for it. I think we have a good piece of legislation. I suspect and certainly hope there will be a strong bipartisan vote on the underlying legislation.

With that, I reserve the balance of my time.

□ 1415

Mr. HASTINGS of Florida. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, I am going to take my good friend's point where I made the statement that we would have an opportunity to finally vote on something worthwhile and take that "finally" out and replace it with "something more worthwhile" than some of the things that he pointed out that I certainly agree with, in many particulars, were certainly measures that were important to us.

I can't resist adding to Mr. CÁRDENAS' appeal with reference to H.R. 15 and point out that 40 percent of the Fortune 500 companies were founded by an immigrant or a child of an immigrant. Twenty-eight percent of all companies founded in the United States, in just the year 2011, had immigrant founders.

Seventy-six percent of the patents at the top 10 U.S. patent-producing universities had at least one foreign-born inventor. Immigrant-owned businesses generated more than \$775 billion in revenue for the economy in 2011.

I could go on and on. I shall not. It is important, I believe, that if not this vehicle, some vehicle become the one that allows us to deal with things like the H-1B visa. For example, when we put the cap on it in the last tranche, we achieved that cap in 5 days.

Availability of H-1B numbers is a growing problem for the U.S. STEM competitiveness again. It is something that we need to deal with, must deal with.

Now, I turn, finally, to the research credit measure that we are dealing with. It is an important provision that should be extended. Since its enact-

ment in mid-1981, as has been pointed out by my colleagues, Congress has extended the provision 15 times and significantly modified it five times.

However, it is not just what we do that matters; it is how we do it that also matters. This will be the 57th closed rule, which means most Members will not even get a chance to make changes to the bill.

This bill violates the revenue floor of the Ryan budget that Republicans passed only 3 weeks ago, meaning the Rules Committee will have to give yet another special waiver.

Republicans have waived their own CutGo rule 15 times since taking over the House. Republicans insist that comprehensive tax reform be deficit neutral, but won't hold these permanent changes to the same standard. In fact, they are using these measures to hide the cost of comprehensive tax reform.

They aren't just moving the goalposts. They are changing the game as it is being played.

Madam Speaker, there is something inconsistent between what my friends say and what they do, and I find that very disturbing. Hiding behind a mantra of austerity only when it is convenient is, in my view, irresponsible and opportunistic, at best.

Madam Speaker, I ask unanimous consent to insert the text of the amendment in the RECORD, along with extraneous material, immediately prior to the vote on the previous question.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. HASTINGS of Florida. Madam Speaker, I urge my colleagues to vote "no" and defeat the previous question. I urge a "no" vote on the rule.

I am very pleased at this time to yield back the balance of my time.

Mr. COLE. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, I want to thank my friend from Florida. It is always a pleasure to appear with him.

I do want to make a point that, with respect to all tax provisions, they almost always do come to this floor under a closed rule because, quite frankly, they have to be scored, i.e., we have to figure out how much the amendments cost and what have you.

So it is very seldom we have an open rule on anything that deals with tax policy, and I think we are following customary procedure here.

I also, again, want to make the basic point that this is legislation that, honestly, I think, over the years, most of the time, both sides of the aisle have agreed upon.

There is no objection to research and tax credits. Both sides have decided it is good policy, that it helps American companies be competitive. It helps us stay at the head of the pack, in terms of innovation and technical development in this country.

This is probably one of the least controversial provisions in the Tax Code, so I think moving it and making it permanent, removing all uncertainty and confusion, is probably, well, in my view, certainly a good thing for our economy. I hope, after the rule vote, that we can come together on that.

Madam Speaker, in closing, I would like to encourage my colleagues to move the process forward. This approach is important because it allows the House to consider individual tax provisions on their own merits and not hidden by a larger deal.

This credit is good for economic growth. It both creates jobs and increases wages. It is important that we not lose sight of that in the midst of this debate, so I would urge my colleagues to support this rule and the underlying legislation.

The material previously referred to by Mr. HASTINGS of Florida is as follows:

AN AMENDMENT TO H. RES. 569 OFFERED BY
MR. HASTINGS OF FLORIDA

At the end of the resolution, add the following new sections:

SEC. 2. Immediately upon adoption of this resolution the Speaker shall, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 15) to provide for comprehensive immigration reform and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. All points of order against provisions in the bill are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. If the Committee of the Whole rises and reports that it has come to no resolution on the bill, then on the next legislative day the House shall, immediately after the third daily order of business under clause 1 of rule XIV, resolve into the Committee of the Whole for further consideration of the bill.

SEC. 3. Clause 1(c) of rule XIX shall not apply to the consideration of H.R. 15.

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT
REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Republican majority agenda and a vote to allow the Democratic minority to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives (VI, 308-311), describes the vote on the previous question on the rule as "a motion to direct or control the consideration of the subject before the House being made by the Member in charge." To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that

"the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition" in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R-Illinois) said: "The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition."

The Republican majority may say "the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution . . . [and] has no substantive legislative or policy implications whatsoever." But that is not what they have always said. Listen to the Republican Leadership Manual on the Legislative Process in the United States House of Representatives, (6th edition, page 135). Here's how the Republicans describe the previous question vote in their own manual: "Although it is generally not possible to amend the rule because the majority Member controlling the time will not yield for the purpose of offering an amendment, the same result may be achieved by voting down the previous question on the rule . . . When the motion for the previous question is defeated, control of the time passes to the Member who led the opposition to ordering the previous question. That Member, because he then controls the time, may offer an amendment to the rule, or yield for the purpose of amendment."

In Deschler's Procedure in the U.S. House of Representatives, the subchapter titled "Amending Special Rules" states: "a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate." (Chapter 21, section 21.2) Section 21.3 continues: "Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon."

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Republican majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. COLE. Madam Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HASTINGS of Florida. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair

will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

COMMISSION TO STUDY THE POTENTIAL CREATION OF A NATIONAL WOMEN'S HISTORY MUSEUM ACT

Mrs. LUMMIS. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 863) to establish the Commission to Study the Potential Creation of a National Women's History Museum, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 863

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commission to Study the Potential Creation of a National Women's History Museum Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term "Commission" means the Commission to Study the Potential Creation of a National Women's History Museum established by section 3(a).

(2) MUSEUM.—The term "Museum" means the National Women's History Museum.

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) IN GENERAL.—There is established the Commission to Study the Potential Creation of a National Women's History Museum.

(b) MEMBERSHIP.—The Commission shall be composed of 8 members, of whom—

(1) 2 members shall be appointed by the majority leader of the Senate;

(2) 2 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(c) QUALIFICATIONS.—Members of the Commission shall be appointed to the Commission from among individuals, or representatives of institutions or entities, who possess—

(1)(A) a demonstrated commitment to the research, study, or promotion of women's history, art, political or economic status, or culture; and

(B)(i) expertise in museum administration;

(ii) expertise in fundraising for nonprofit or cultural institutions;

(iii) experience in the study and teaching of women's history;

(iv) experience in studying the issue of the representation of women in art, life, history, and culture at the Smithsonian Institution; or

(v) extensive experience in public or elected service;

(2) experience in the administration of, or the planning for, the establishment of, museums; or

(3) experience in the planning, design, or construction of museum facilities.

(d) PROHIBITION.—No employee of the Federal Government may serve as a member of the Commission.

(e) DEADLINE FOR INITIAL APPOINTMENT.—The initial members of the Commission shall

be appointed not later than the date that is 90 days after the date of enactment of this Act.

(f) VACANCIES.—A vacancy in the Commission—

(1) shall not affect the powers of the Commission; and

(2) shall be filled in the same manner as the original appointment was made.

(g) CHAIRPERSON.—The Commission shall, by majority vote of all of the members, select 1 member of the Commission to serve as the Chairperson of the Commission.

SEC. 4. DUTIES OF THE COMMISSION.

(a) REPORTS.—

(1) PLAN OF ACTION.—The Commission shall submit to the President and Congress a report containing the recommendations of the Commission with respect to a plan of action for the establishment and maintenance of a National Women's History Museum in Washington, DC.

(2) REPORT ON ISSUES.—The Commission shall submit to the President and Congress a report that addresses the following issues:

(A) The availability and cost of collections to be acquired and housed in the Museum.

(B) The impact of the Museum on regional women history-related museums.

(C) Potential locations for the Museum in Washington, DC, and its environs.

(D) Whether the Museum should be part of the Smithsonian Institution.

(E) The governance and organizational structure from which the Museum should operate.

(F) Best practices for engaging women in the development and design of the Museum.

(G) The cost of constructing, operating, and maintaining the Museum.

(3) DEADLINE.—The reports required under paragraphs (1) and (2) shall be submitted not later than the date that is 18 months after the date of the first meeting of the Commission.

(b) FUNDRAISING PLAN.—

(1) IN GENERAL.—The Commission shall develop a fundraising plan to support the establishment, operation, and maintenance of the Museum through contributions from the public.

(2) CONSIDERATIONS.—In developing the fundraising plan under paragraph (1), the Commission shall consider—

(A) the role of the National Women's History Museum (a nonprofit, educational organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that was incorporated in 1996 in Washington, DC, and dedicated for the purpose of establishing a women's history museum) in raising funds for the construction of the Museum; and

(B) issues relating to funding the operations and maintenance of the Museum in perpetuity without reliance on appropriations of Federal funds.

(3) INDEPENDENT REVIEW.—The Commission shall obtain an independent review of the viability of the plan developed under paragraph (1) and such review shall include an analysis as to whether the plan is likely to achieve the level of resources necessary to fund the construction of the Museum and the operations and maintenance of the Museum in perpetuity without reliance on appropriations of Federal funds.

(4) SUBMISSION.—The Commission shall submit the plan developed under paragraph (1) and the review conducted under paragraph (3) to the Committees on Transportation and Infrastructure, House Administration, Natural Resources, and Appropriations of the House of Representatives and the Committees on Rules and Administration, Energy and Natural Resources, and Appropriations of the Senate.

(c) LEGISLATION TO CARRY OUT PLAN OF ACTION.—Based on the recommendations con-

tained in the report submitted under paragraphs (1) and (2) of subsection (a), the Commission shall submit for consideration to the Committees on Transportation and Infrastructure, House Administration, Natural Resources, and Appropriations of the House of Representatives and the Committees on Rules and Administration, Energy and Natural Resources, and Appropriations of the Senate recommendations for a legislative plan of action to establish and construct the Museum.

(d) NATIONAL CONFERENCE.—Not later than 18 months after the date on which the initial members of the Commission are appointed under section 3, the Commission may, in carrying out the duties of the Commission under this section, convene a national conference relating to the Museum, to be comprised of individuals committed to the advancement of the life, art, history, and culture of women.

SEC. 5. DIRECTOR AND STAFF OF COMMISSION.

(a) DIRECTOR AND STAFF.—

(1) IN GENERAL.—The Commission may employ and compensate an executive director and any other additional personnel that are necessary to enable the Commission to perform the duties of the Commission.

(2) RATES OF PAY.—Rates of pay for persons employed under paragraph (1) shall be consistent with the rates of pay allowed for employees of a temporary organization under section 3161 of title 5, United States Code.

(b) NOT FEDERAL EMPLOYMENT.—Any individual employed under this Act shall not be considered a Federal employee for the purpose of any law governing Federal employment.

(c) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—Subject to paragraph (2), on request of the Commission, the head of a Federal agency may provide technical assistance to the Commission.

(2) PROHIBITION.—No Federal employees may be detailed to the Commission.

SEC. 6. ADMINISTRATIVE PROVISIONS.

(a) COMPENSATION.—

(1) IN GENERAL.—A member of the Commission—

(A) shall not be considered to be a Federal employee for any purpose by reason of service on the Commission; and

(B) shall serve without pay.

(2) TRAVEL EXPENSES.—A member of the Commission shall be allowed a per diem allowance for travel expenses, at rates consistent with those authorized under subchapter I of chapter 57 of title 5, United States Code.

(b) GIFTS, BEQUESTS, DEVISES.—The Commission may solicit, accept, use, and dispose of gifts, bequests, or devises of money, services, or real or personal property for the purpose of aiding or facilitating the work of the Commission.

(c) FEDERAL ADVISORY COMMITTEE ACT.—The Commission shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 7. TERMINATION.

The Commission shall terminate on the date that is 30 days after the date on which the final versions of the reports required under section 4(a) are submitted.

SEC. 8. FUNDING.

(a) IN GENERAL.—The Commission shall be solely responsible for acceptance of contributions for, and payment of the expenses of, the Commission.

(b) PROHIBITION.—No Federal funds may be obligated to carry out this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Wyoming (Mrs. LUMMIS) and the gentlewoman from New York (Mrs. CARO-

LYN B. MALONEY) each will control 20 minutes.

The Chair recognizes the gentlewoman from Wyoming.

GENERAL LEAVE

Mrs. LUMMIS. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Wyoming?

There was no objection.

Mrs. LUMMIS. Madam Speaker, I yield myself such time as I may consume.

H.R. 863 establishes a commission to study the potential creation of a National Women's History Museum.

The commission will prepare a report with key findings that include an evaluation of potential locations for the museum in Washington, D.C.; guidance on whether it should be part of the Smithsonian Institution; and cost estimates for constructing, operating, and maintaining the facility.

In terms of fiscal responsibility, H.R. 863 requires an independent review of the report to analyze the ability of the museum to operate without taxpayer funding.

With the information generated by the report, Congress will be able to evaluate the proposed museum. This legislation does not authorize the museum to be built or authorize spending of taxpayer dollars of any kind.

Madam Speaker, I reserve the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Madam Speaker, I yield myself as much time as I may consume.

Madam Speaker, the National Women's History Museum has a rightful place in our Nation's Capital, and it is very appropriate that we are considering this legislation the week of Mothers' Day.

I believe we should all be able to agree that, when our children and their children visit our Nation's Capital, they should be inspired by the stories of the men and women who helped shape this country. Sadly, today, that is not the case.

Women's contributions to our country are largely missing from our national museums, memorials, statues, and textbooks. The bill before us today seeks to finally change that.

It would be the first National Women's History Museum in Washington and the first in the United States of Americas and, I believe, the first in the entire world that would chronicle the important contributions of American women to America.

H.R. 863 would create a bipartisan, eight-person commission to develop a plan and recommendations for a National Women's History Museum in our Nation's Capital.

The commission, which would be funded entirely with private donations, would have 18 months to submit its

recommendations to Congress and the President.

Congress will then have to consider these recommendations, and a second bill would be needed to support the establishment of a women's museum, so the bill before us enables a commission to study this and for Congress, then, to react to their proposals.

Now, I would like to stress that this has been a very strong, bipartisan effort. I am proud to have worked on this bill with Congresswoman MARSHA BLACKBURN, who has been a wonderful partner and has done so much to get us where we are today. She has been outstanding.

Delegate ELEANOR HOLMES NORTON has been a great champion of this effort for years, along with Congresswoman CYNTHIA LUMMIS and many, many other Members from both parties whose support has been absolutely essential.

I would like to thank Speaker BOEHNER, Democratic Leader PELOSI, Majority Leader CANTOR, and Democratic Whip STENY HOYER for their support as well.

Thank you to the leadership and members of the House Administration and Natural Resources Committee for ushering this legislation through their committees with unanimous support, Congressmen BRADY and MILLER and Congressmen DEFAZIO and HASTINGS.

We are all working on this together because we believe that ensuring our country's full story is told, not just half of it, is part of our patriotic responsibility that rises above party lines, and we are working hard to make sure that this is a bill that can be supported by Members of both parties.

As I mentioned, no public funds would be used to support this commission, and the commission is required to consider a plan for the museum to be constructed and operated by private funds only. No taxpayer dollars will be involved.

Most importantly, neither this bill nor the commission it would create would set the content of this museum. That part will come later, after Congress acts on the commission's recommendations and the museum is finally established.

One could imagine a museum featuring original women thinkers ranging from Ayn Rand, who authored "Atlas Shrugged," to Mary Whiton Calkins. Ms. Rand, I suspect you may know about her, but you may not have heard of Ms. Calkins.

She was born in 1863 and studied at Harvard, under the influential American philosopher, William James, who believed her Ph.D. to be the most brilliant examination for a Ph.D. that he had ever seen; but Mary was not granted a degree because, at that time, Harvard had a policy against conferring degrees on women.

Despite the setback, she went on to become a charter member of the American Philosophical Association and the first woman president of the American Psychological Association.

□ 1430

But most people have never heard of her or her accomplishments because when the story of America has been told, the story of many remarkable women has all too often been left out.

Currently in the Nation's Capital and near The Mall or on The Mall, there is an Air and Space Museum, a Spy Museum, a Textile Museum, a National Postal Museum, even a Crime and Punishment Museum and a media museum. These are all wonderful, enriching institutions that are destinations for millions of visitors every year. But there is no museum in the country that shows the full scope of the history of the amazing, brilliant, courageous, innovative, and sometimes defiant women who have helped to shape our history and make this country what it is.

Even though women make up 50 percent of the population, a survey of 18 history textbooks found that only 10 percent of the individuals identified in the texts were women; less than 5 percent of the 2,400 National Historic Landmarks chronicle the achievements of women; and of the 210 statues in the United States Capitol, only nine are of female leaders.

As an example, while nearly every high school student learns about the midnight ride of Paul Revere, how many of them learn about Sybil Ludington? She is the 16-year-old whose midnight ride to send word to her father's troops that the British were coming was longer than Paul Revere's, just as important, and, in many ways, was even more remarkable. But her ride has been long forgotten.

On display in our Capitol Rotunda is a statue of three courageous women who fought so hard for women to gain the right to vote. And it is my hope that in 2020, on the 100th anniversary of women gaining the right to vote, that we will open the doors to this important museum.

I urge the passage of this long overdue legislation, and I reserve the balance of my time.

Mrs. LUMMIS. Madam Speaker, I yield 5 minutes to the gentlewoman from Minnesota (Mrs. BACHMANN).

Mrs. BACHMANN. I thank my wonderful colleague from the State of Wyoming.

Madam Speaker, I would like to stipulate, first of all, that all Republican women are pro-women and that all Republican men that serve in this Congress are pro-women, as are the Democrat women and the Democrat men in this Congress.

A "no" vote on the current legislation, which I advocate for, very simply, is a vote to stand up for the pro-life movement, a vote to stand up for traditional marriage, and a vote to stand up for the traditional family.

There already are 20 women's museums in the United States, including one affiliated with the Smithsonian Museum and including one right next to the United States Capitol. So why would we be building another?

I rise today in opposition to this bill because I believe, ultimately, this museum that would be built on The National Mall, on Federal land, will enshrine the radical feminist movement that stands against the pro-life movement, the pro-family movement, and the pro-traditional marriage movement.

The idea of celebrating women is admirable. It is shared by everyone in this Chamber. No one disputes that. And a few of the museum's proposed exhibits are worthy. No one disputes that.

I, for one, am honored to be featured in an online exhibit about motherhood that highlights our 23 foster children and our five biological children.

However, I am deeply concerned that any worthy exhibits are clearly the exception and not the rule. A cursory view of the overall content already listed on the Web site shows an overwhelming bias toward women who embrace liberal ideology, radical feminism, and it fails to paint an accurate picture of the lives and actions of American women throughout our history.

The most troubling example is the museum's glowing review of the woman who embraced the eugenics movement in the United States, Margaret Sanger. She is an abortion trailblazer, and she is the founder of Planned Parenthood, which this body has sought to defund. Yet the museum glosses over Margaret Sanger's avid support for sterilization of women and abortion and for the elimination of chosen ethnic groups, particularly African Americans, and classes of people. I find Margaret Sanger's views highly offensive, yet she is featured over and over again as a woman to extoll on this Web site and, ultimately, in this museum. Adding in a conservative woman to balance out Sanger's inclusion does not alleviate the fact that the museum tries to whitewash her abhorrent views and props Margaret Sanger up as a role model for our daughters and for our granddaughters.

The list of troubling examples goes on, including the fact they leave out the pro-life views of the early suffragettes.

But let's face it, we wouldn't be here today if it weren't the museum's ultimate goal to get a place on The Federal Mall, for land, and for Federal funding. If you look at their authorizing legislation, you will see that it was a template for this legislation: begin with a commission, then congressional approval, and finally Federal funding. For 16 years, this group has tried to raise financial support, and the museum has only been able to raise enough to cover the current operating expenses and salaries of those trying to get this museum. Nothing has gone toward the \$400 million for its building.

As it is currently written, the legislation lacks the necessary safeguards to ensure that the proposed museum will not become an ideological shrine

to abortion, that will eventually receive Federal funding and a prominent spot on The National Mall.

I thank the leading pro-life groups, like Concerned Women for America, Eagle Forum, Family Research Council, Susan B. Anthony List, and Heritage Action, among others, who have been outspoken on standing up for the right to life for all Americans in an accurate portrayal of American women.

Since these concerns have not been adequately addressed, I urge my colleagues to join me in voting against H.R. 863.

Mrs. CAROLYN B. MALONEY of New York. Madam Speaker, this bill, as we all know, if you read it, will not cost taxpayers one single dime. It will not cost taxpayers one single cent. It didn't cost it in the past, it doesn't today, and it will not in the future use any Federal funding. It is written into the legislation.

And the commission is not at all about determining the content of the museum. That part would come much later if the recommendations were approved by this body. The content would be determined in the future by professional curators that would chronicle the history of this great country and the great women that are a part of it. The commission would have 18 months to prepare and submit their recommendations to Congress, and then Congress, this body, would have the final say. So if Congress decides favorably, then, and only then, would a second bill be needed to support the museum and move forward.

So to vote "no" on this bill would basically be voting "no" on a cost-free, no-strings-attached conversation by a bipartisan panel on the important contributions of women to this country.

I now yield such time as she may consume to the distinguished gentlewoman from the District of Columbia, ELEANOR HOLMES NORTON, and I thank her for her extraordinary leadership on this issue and so many, many other issues.

Ms. NORTON. Madam Speaker, I thank my friend, the gentlewoman from New York. Her persistence has been indomitable; and without that persistence, we certainly would not be on the floor today.

But I also want to thank the Majority leadership who have permitted this bill to come forward on suspension, and I particularly thank the gentlewoman from Wyoming for her leadership.

The remarks of the gentlewoman from Minnesota were unfortunate. You would think you were voting on a museum. My colleagues, this is not a bill for a museum. This is a bill for a commission to study whether there should be a museum and under what circumstances. It is unfortunate, indeed, to criticize a bill for a study, the outcome of which we have no idea, except for the following:

The appointees to this commission will come from the leadership of this House and the minority in this House

and from the leadership in the Senate and the minority in the Senate. It seems to me it would be very difficult for this bill to be converted into not a study of whether the history of women in the United States should be commemorated but a study of current women's issues that are highly controversial. To have a museum featuring controversial issues of the day flies in the face of what women's history has been about. That is for this House. That is not for a museum.

There is no neglect of the issues that the gentlewoman was concerned about—pro-life issues, traditional family—where we find Democrats and Republicans on both sides of those issues. You get lots of discussion on that. But, Madam Speaker, there is almost no discussion about the history of women in our country.

There are lots of things we could disagree about, but I think that almost no one will disagree that the time has come to at least study whether there should be an institution, a museum, not about women in America—and I stress, this is not a women's museum. It is about the history of women in America. The gentlewoman from New York has spoken about how distinguished that history has been. But it should come as no surprise that women were not writing the history books, and so women, like many others in our country, have not exactly been included. Yet we are half of the population.

Wherever you stand on women's issues, I am sure there is consensus in this House that half of the population should not go unmentioned in the textbooks of our country, should not be unseen in the memorials and in the museums of our country, and certainly should be in the Nation's Capital. If there is to be a museum—and we don't know what the commission will find—I would surely hope it would be in the Nation's Capital, where, for the first time, women's history, historical figures who are women, would be acknowledged and perhaps commemorated.

I do want to say one thing about what these commissions do. If we who desire a women's museum made any mistake, it was being so enthusiastic that we went straightforward to try to set up a museum, saw no reason why there wouldn't be unanimous consent, virtually, to have a museum about women's history in our country. That was a mistake. We should have gone the same route that many before us have gone: set up a commission to see whether you ought to have a museum at all; do it in an entirely bipartisan way so as to make sure that if you authorize a museum, it can't possibly be controversial.

And that is what we have here, a fail-safe method of assuring that if you vote for this commission, you are voting for a study, and nothing more than a study. If you don't like this study, you will surely have another chance to

say "no." Women, Democratic and Republican, deserve a bipartisan commission to give our country, if they can agree, a nonpartisan museum in the Nation's Capital.

And I thank the gentlelady from New York particularly for her hard work. This is hard work that began when the President's Commission on the Celebration of Women called for a women's museum in Washington. I remind the House that the House has voted for this museum. The Senate has voted for the museum. All that has been lacking is Senate and House votes for the museum at the same time.

□ 1445

Today we are not voting for a museum. We ask you to vote only for a commission to study whether there should be a museum. We got so far last time as to actually find land for this museum. All of that is pulled back to put before the House today: Do you believe that the history of women in the United States of America is important enough to appoint a commission to study that history?

I thank the gentlelady.

Mrs. CAROLYN B. MALONEY of New York. Madam Speaker, I want to underscore that no taxpayer money will be used now or in the future. In fact, there is a National Women's History Museum organization with a 501(c)(3) that is headed by Joan Wages, and they have already raised well over \$10 million privately to support the commission and the commission's work.

Madam Speaker, I reserve the balance of my time.

Mrs. LUMMIS. Madam Speaker, at this time, I would like to yield 7 minutes to the gentlelady from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Madam Speaker, I thank the gentlelady from Wyoming for her superb work on this issue and for her guidance as this bill moved through the Natural Resources Committee. It is amazing. We had two committees of jurisdiction that oversaw this legislation, House Admin, chaired by Congresswoman CANDICE MILLER, and Natural Resources, with Congressman DOC HASTINGS.

This legislation came through each of these committees on a unanimous vote—a unanimous vote, something deemed impossible in Washington—but everybody agrees that it is time that we come together and that we have an appropriate, bipartisan approach to addressing the collecting and the enshrining of what women have done in the fight and the cause of freedom.

Now, Madam Speaker, I do want to highlight just a couple of things. There has been so much misinformation distributed about the bill. This is a 10-page bill—I should say nine pages and about three lines. I think that Congresswoman MALONEY, who has worked so diligently on this effort, will say, and as she and I discussed this morning, we basically have come forward and agreed on a new approach for all

museums that could possibly want to be considered. That approach is Congress, not a Presidential commission, but Congress having the ability to determine, in a bipartisan way, who serves on the commissions to review these museums and do a feasibility study, which is something those of us in business always do before we embark on any project. It is appropriate that the Federal Government do that, also. This is a fiscally conservative approach to addressing the cost of a museum.

Now, the duties of the commission my colleagues are going to find on page 4, and you will see there are several things that will be covered in this feasibility study: the availability and cost of collections, the impact of the museum on women's regional, history-related museums, potential locations in D.C., whether or not the museum should ever be part of the Smithsonian, the governance and organizational structure, best practices for engaging women in the development and design of the museum, and the cost and construction of operating and maintaining. In other words, they have got to have an endowment. They have to be able to pay their operational costs and their upfront costs—all of it—with private funds—never, ever with one penny of taxpayer money into this project.

Now, after 18 months of work, the commission will report back to Congress, an independent review will be done of their work, and then there will be a determination by Congress on whether or not to proceed with this project. That is the point at which there will be a vote on whether or not to carry forth with a museum.

But I would highlight with my friends this is about chronicling the history that women have participated in, the freedom and opportunity of this country and the fullness of opportunity in this country. We talk so much about how we work with other nations and especially some of these nations that have struggled in Eastern Europe and in the Middle East, and we show what freedom can do for hope and opportunity for women and children.

Wouldn't it be great if we had a museum that told that story? Like the story of the suffragists—Seneca Falls—that convention which—by the way it was Republican and conservative women and the Quakers who called together the Seneca Falls convention to start looking at the issue of suffrage. You probably are also interested to know Frederick Douglass was the one gentleman invited to speak at that convention on suffrage, then, of course, the suffragists who led the fight, Susan B. Anthony, Elizabeth Cady Stanton, Lucretia Mott, and Anne Dallas Dudley—strong Republican women. It is time for that story to be told.

The ratification of the 19th Amendment with women receiving the right to vote took place in Nashville, Tennessee, my State, at our State capitol, where I have had the opportunity, and the Speaker has also had the opportunity, to serve.

We know that it is important to tell that story of what women have done in the cause of freedom. That is why we have come together to agree on the structure, to work to put a commission in place that will do the necessary due diligence, that will put the safeguards in place, and will guarantee that in perpetuity—forever—there will not be Federal taxpayer money that is spent on this.

Madam Speaker, working to highlight what women have accomplished is a worthy goal, and it is something that in a bipartisan manner we should be able to come together and to agree on. This is a goal, and Washington, D.C., is an appropriate place that we can recognize this history, we can chronicle this history, and for future generations, our children, our grandchildren, and for other nations as they come to see us, they can see how women find victory through freedom, opportunity, and the doors that open and what it allows them to experience in their lives.

I thank the chairman from Wyoming for yielding the time.

Mrs. CAROLYN B. MALONEY of New York. Madam Speaker, I want to thank the gentlewoman from the great State of Tennessee for her statement on the floor today and her hard work in passing this bill.

My good friend, Mrs. BACHMANN, said there were 20 other women's museums. Well, there is not one comprehensive women's museum that chronicles the achievements and the contributions of women. There are many niche museums. There is a museum in Seneca Falls that pays tribute to the founding mothers of the first women's rights convention, the abolitionist movement, and the right for women to gain the right to vote. There are museums in the Capital for women artists. There is part of the Smithsonian that focuses on the first ladies and the gowns that they wore in their inaugural. There are niche museums out West for the pioneering great women who led the effort in the West. But there is not one comprehensive museum, and I find it astonishing in the United States that chronicles the many outstanding women contributions. If you Google all the women that have won the Nobel, it is astonishing, but there is no place that displays this.

So, I think it is long overdue to have a national women's history museum. Quite frankly, I can't even find one in the entire world that chronicles women's contributions.

I would now like to yield 1 minute to the gentlelady from the great State of New York, Congresswoman MENG, my distinguished colleague, which she has requested, but she can have more if she wants it.

Ms. MENG. Madam Speaker, I also want to thank my colleagues, Congresswomen CAROLYN MALONEY and MARSHA BLACKBURN, for championing this important issue.

Madam Speaker, I rise in support of H.R. 863 to establish the commission to

study the potential creation of a national women's history museum. This bipartisan legislation is a small step to ensuring women's stories are shared, celebrated, and inspire future generations of Americans. Unfortunately, women's stories and accomplishments have consistently been forgotten, or presented only as a footnote.

Despite the great strides women have made in America, we are still underrepresented in essential sectors, such as business, government, and the critical fields of science, technology, engineering and mathematics. Research has demonstrated that one of the factors limiting success for women and minorities is the lack of both celebrated specific role models and overall restricted representation.

In other words, simply having a museum showcasing women's accomplishments as an integral part of our history—whether it is individuals who broke barriers, social movements led by women, or the demonstration that women were not necessarily defined by men in their lives—will ultimately lead to more young women and minorities striving to break the glass ceiling and create a more equitable society for us all.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mrs. CAROLYN B. MALONEY of New York. I yield the gentlewoman an additional 30 seconds.

Ms. MENG. The National Women's History Museum already hosts online exhibits, but a building complete with permanent access to resources would allow for further research and increased access for our citizens.

This legislation allows for the creation of a commission to study the feasibility of creating a permanent museum, and prohibits Federal funds from being used for this project. I encourage my colleagues to support this long overdue legislation.

Mrs. LUMMIS. Madam Speaker, I reserve the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Madam Speaker, I yield 1 minute to the gentlelady from the great State of Maryland, DONNA EDWARDS, the distinguished leader who is also the chair of the bipartisan Women's Caucus here in Congress.

Ms. EDWARDS. Madam Speaker, I want to thank the gentlewomen from New York, from Tennessee, and from Wyoming for your leadership and for doing what women do in this Congress, which is work together toward a common good. So I thank you very much for your leadership.

Madam Speaker, I rise today in support of H.R. 863, the National Women's History Commission Act. It is a bill that would establish a commission to study the potential creation of the National Women's History Museum right here in Washington, D.C., and, as has been stated before, not at any cost to the taxpayer.

It would showcase the contributions that women have made throughout our

history, both in this country and around the world, contributions that have historically been underrepresented, to say the least, in books, museums, and other records of our Nation's great story.

There are institutions, for example, in Maryland, the Maryland Women's Heritage Center in Baltimore, that are really leading the pushback in our State against the void of women's representation in our historical records. The Baltimore Heritage Center serves as a museum, an information resource center, and a gathering place for events focused on impacting girls and women. When I visited the Heritage Center, number one, they said to me, are you supporting the National Women's History Commission Act?

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mrs. CAROLYN B. MALONEY of New York. I yield the gentlelady an additional 30 seconds.

Ms. EDWARDS. This will complement those histories and tell the story of women at the Goddard Space Flight Center, women who are in science, technology, engineering, and math; women who are engineers, explorers and innovators. So, I want to thank the gentlewomen for their work on this effort, and I urge my colleagues to support the commission bill, to study the process—there is no cost to the taxpayer—and to see into law, finally, telling the stories of women all across this country.

Mrs. LUMMIS. Madam Speaker, I reserve the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Madam Speaker, may I inquire how much time remains?

The SPEAKER pro tempore. The gentlewoman from New York has 2 minutes remaining.

Mrs. CAROLYN B. MALONEY of New York. Madam Speaker, I would like to just point out and build on what my good friend and colleague, MARSHA BLACKBURN, said. It was Seneca Falls in New York that was the birthplace of the suffrage movement to grant women the right to vote.

In 1920, when the 19th Amendment granting that right to vote was at last in the process of being ratified by the States, it was the State of Tennessee that put that effort over the top. Now Tennessee and New York have come together again, and we are working very hard to create a women's museum that will talk about this great achievement and many others in all fields that have empowered this country and moved this country forward—not only achievements by individual women, but I would say collective achievements by women and their hard work, such as the effort by women to create pasteurization of milk, the immunization of children, increased health care, improved health care, and improved education. These are all efforts that collectively women have worked together on.

So I ask my colleagues today to vote "yes" on this bill and to vote for allow-

ing an idea to be examined and to come forward before this committee again, and let's see how it can work.

□ 1500

A "yes" vote will cost this country nothing, and it could mean everything to our young people, to our girls and our boys and our children and their children to be able to come to their Nation's Capital and to learn many things, including the many important contributions of half the population, women.

I would like to remind my colleagues that this is Mother's Day week, and I cannot think of a better present to our mothers than to recognize the contributions that they have made to the American family and to this country.

I yield back the balance of my time.

Mrs. LUMMIS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I want to congratulate the women who have participated in this debate today. These are dynamic American leaders. I want to thank each and every one of them, including the gentlelady from Minnesota, who expressed the views of those who have concerned about this bill. They were well articulated.

She is someone with whom I am proud to serve in Congress and was very proud to see in the dais, participating in lively, strident debates when she ran for President, seeking the Republican nomination in the last Presidential election. These are all very formidable, important women—gentlewomen, one and all.

I rise in support of the study and in support of the passage of this bill. I come from the Equality State, the State of Wyoming, the first government in the world to continuously grant women the right to vote, so I come by my point of view honestly.

I am very excited about the opportunity to study and to report back to this Congress the notion of having a museum of the history of American women. The contributions to our society of American women are so extraordinary and are sometimes underrepresented.

I particularly look forward to touting the opportunity to show the history of American women of the West, people like Cattle Kate. She was a criminal, a scoundrel, a cattle thief. She was the first woman hanged in Wyoming. She is a historical figure.

Sacagawea, who led the Lewis and Clark expedition across this great, vast country; Annie Oakley, who was portrayed as a model of the American West and freedom in Buffalo Bill Cody's Wild West show; and particularly, I would like to see Dale Evans recognized in this museum.

Let me tell you something about Dale Evans you may not know. Dale Evans was an actress, a songwriter, a mother, and she was the wife of Roy Rogers. They were the king of the cowboys and the queen of the cowgirls.

Dale Evans and Roy Rogers had a special-needs child among their many children.

Back in Hollywood in the late 1940s and 1950s, there was a cultural condition in this country that was particularly prevalent in Hollywood, and that was people didn't want to see special-needs children in public. People didn't want to face the fact that not everyone in this country is born exactly the same.

Roy and Dale took their special-needs child with them everywhere they went, and they were ostracized, and they ceased to be invited to people's homes because they didn't want to see that child. It was a gutsy thing to do.

Roy Rogers and Dale Evans changed the way Americans viewed special-needs children. Now, when we see special-needs people in our society, it puts a smile on our faces. They are so integrated into our every day, and they are important members of our society.

When that child died, Dale Evans wrote the song "Happy Trails" to that child. She wrote, "Happy trails to you, until we meet again," and in my heart, I believe they will meet again, Madam Speaker.

I think those are the kinds of women that we want to see portrayed in American history, and I am highly supportive of this study. I look forward to robust participation by Republican and Democrats and look forward to receiving the study, not knowing how it is going to turn out, but with great hope and expectation for something terrific, at least on paper, so we can determine at that point whether to move forward.

Mr. Speaker, I commend to this body's attention H.R. 863.

I yield back the balance of my time.

Ms. LOFGREN. Mr. Speaker, I rise to speak in support of H.R. 863 to commission a study on the potential creation of a National Women's History Museum.

As you know Mr. Speaker, women make up over half of our population, and yet we know their stories are often underrepresented—and underappreciated—in our history.

Here in the Capitol, for example, we have over 200 statues, but only 12 depict women. As Ms. Magazine recently noted, "The nation's capital includes museums for the postal service, textiles and spies, but lacks a museum to recognize the rich history and accomplishments of women in the U.S."

Mr. Speaker, the stories of women tell the story of our nation's history, and they deserve to be enshrined for future generations to learn and celebrate. I'm so pleased that my colleagues CAROLYN MALONEY and MARSHA BLACKBURN have introduced this important legislation to start the process of creating a museum where the achievements and lives of women are chronicled and celebrated.

I urge my colleagues to support this bill.

Mrs. BEATTY. Mr. Speaker, I rise in support of the National Women's History Commission Act, HR. 863, introduced by my esteemed colleague from New York, Congresswoman CAROLYN MALONEY.

Representative MALONEY has worked diligently to get this important bill to the floor, and I thank her for her tremendous efforts.

H.R. 863 would establish a commission to report recommendations to the President and Congress concerning the establishment of a National Women's History Museum in Washington, DC.

The National Women's History Museum Commission would be at no additional cost to the taxpayer, as the commission is entirely paid for without the use of federal funds.

The Museum's mission would be to educate, inspire, empower, and shape the future by integrating women's distinctive history into the culture of the United States.

All too often, women's history is largely missing from textbooks, memorials, and museum exhibits.

Of the 210 statues in the United States Capitol, only nine are of female leaders.

Less than five percent of the 2,400 national historic landmarks chronicle women's achievement.

The museums and memorials in our nation's Capital demonstrate what we value.

This bill would provide women, who comprise 53% of our population, a long overdue home on our National Mall honoring their many contributions that are the very backbone of our country.

This effort is about bringing together women and remembering those women that came before us, who persevered and changed the course of history, and on whose shoulders we stand today.

These unique experiences, perspectives, and historic accomplishments deserve recognition in our nation's capital.

It is time for the women of our nation to be recognized with this landmark.

H.R. 863 is a critical step in advancing the National Women's History Museum by providing us with a blueprint of steps to take in order to finally tell the story of more than half of our country's population.

Let us honor our nation's foremothers and inspire present and future generations of women leaders.

I urge all Members of the House to vote in favor of this bill.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today in support of H.R. 863, the National Women's History Museum Commission Act. Legislation to establish such a museum passed by voice vote in the 113th Congress but the privately-funded museum lacks a home.

While women's accomplishments have helped to build this country, historical contributions are missing from museums, textbooks, and memorials. This legislation would allow for a commission to study the creation and make proposals for the building of the National Women's History Museum. At no cost to the taxpayer and without using any federal funds, the museum would help to tell the inspiring stories of the important women that came before us.

Celebrating and recognizing women in history is necessary at a time when roughly ten percent of historical references are related to women. The legislation on the floor is not only bipartisan, it has the support of many male and female Members of Congress.

Please join me in supporting H.R. 863, the National Women's History Museum Commission Act by passing the legislation today.

Mr. BRADY of Pennsylvania. Mr. Speaker, I urge passage of H.R. 863, a bill to establish the Commission to Study the Potential Cre-

ation of a National Women's History Museum, sponsored by Rep. CAROLYN MALONEY of New York. While Natural Resources is the primary committee, the legislation was referred to the Committee on House Administration as an additional referral because H.R. 863 suggests that the Commission study whether or not such a museum, if created, should be part of the Smithsonian Institution. Our committee discussed that issue at a hearing before we filed our report in the House.

I want to draw attention to an issue which was not addressed in amendments to this legislation by either committee—the proper structure of the Commission. The bill would create an 8-member commission, but previous commissions of this type to study whether museums should become part of the Smithsonian proposed a larger group, 23 members. The larger number seems more practical for ensuring a variety of opinions and providing sufficient personnel to be available to do the Commission's work. There is likely to be significant interest by well-qualified persons to serve on the commission. Additionally, the bill only provides for appointments by the bipartisan, bicameral congressional leadership of each chamber of Congress, but not by the president. The recent commissions to study the National Museum of African American History and Culture, which is now under construction on the Mall, and the National Museum of the American Latino, which is now awaiting a hearing in the House Administration Committee, had presidential appointees. I believe this is a prerequisite for creating a truly national museum. When this legislation reaches the Senate, I hope that the other body will make appropriate adjustments to achieve this goal.

I include the Additional Views submitted by the Democratic members of the Committee on House Administration as part of our committee report, H. Rept. 113 09411, Part 1, filed in the House on April 10, 2014:

ADDITIONAL VIEWS

We strongly support the "Commission to Study the Potential Creation of a National Women's History Museum Act of 2013", to recognize the role and achievements of the women of America. H.R. 863, the bill introduced by Rep. Carolyn Maloney of New York to authorize the commission, was ordered reported unanimously by the Committee on House Administration on April 2, 2014. The primary committee to which the legislation was referred, Natural Resources, is expected to report the legislation shortly.

The principal interest of our Committee is in whether such a museum should become part of the Smithsonian Institution. The commission created by H.R. 863 is directed to study pros and cons of a potential Smithsonian affiliation, and that issue was also discussed during testimony at our earlier hearing on this legislation. A Smithsonian museum would be subject to direction by that Institution's Board of Regents and its governance and management structure. Two other recent national commissions were authorized by Congress and both recommended that the Smithsonian structure be used for the museums they were studying: the National Museum of African American History and Culture, currently under construction on the National Mall and scheduled to open in less than two years; and the National Museum of the American Latino, whose commission's report submitted in 2011 is likely to receive a hearing soon in the Committee on House Administration.

An alternative recommendation by the commission might be for a National Wom-

en's History Museum to exist as an independent entity, with its own governing board. In either case, whether as a Smithsonian museum or independent, H.R. 863 anticipates that the museum will receive private donations but no government funding.

In reporting H.R. 863, our Committee took no position on the governance issue, but we have ample experience in evaluating the Smithsonian's capabilities in building and managing the large number of museums currently under its control, and so we kept that option in the bill. The commission should exercise its best judgment in determining what would work best for this specific museum within the expected budgetary constraints, and Congress would review those recommendations in formulating later legislation to actually create a museum.

One issue of concern to us relates to the size and composition of the eight-member congressionally-appointed commission proposed to be established in H.R. 863, and the absence of any presidential appointees. In order to have a true national museum, participation by the president is important in order to give the commission the status and credibility, as well as the variety of members, necessary to perform its tasks and to help raise the necessary private funds when that time comes. Both the African American Museum commission and the American Latino Museum commission had seven presidential appointees out of 23 members, with the majority appointed by the congressional leadership.

There are no partisan issues concerning this legislation. The commission needs to be seen as the national commitment that it is, rather than be limited as a creature of the legislative branch.

An amendment had been drafted by the Democratic staff, which the House parliamentarian confirmed was within the jurisdiction of the House Administration Committee to take up, to establish presidential appointees in H.R. 863. Ranking Member Brady alluded to the issue in his opening statement. But the amendment was withheld during our markup at Chairman Miller's request. The Committee on Natural Resources may consider the issue in their role as the primary committee, at their own markup, and we will continue to focus attention on the issue during preparation of a final text of the bill for action on the House floor.

ROBERT A. BRADY.
ZOE LOFGREN.
JUAN VARGAS.

The SPEAKER pro tempore (Mr. WOMACK). The question is on the motion offered by the gentlewoman from Wyoming (Mrs. LUMMIS) that the House suspend the rules and pass the bill, H.R. 863, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mrs. BACHMANN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

AUTHORIZING USE OF EMANCIPATION HALL TO CELEBRATE BIRTHDAY OF KING KAMEHAMEHA I

Mrs. MILLER of Michigan. Mr. Speaker, I move to suspend the rules

and agree to the concurrent resolution (H. Con. Res. 83) authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to celebrate the birthday of King Kamehameha I.

The Clerk read the title of the concurrent resolution.

The text of the concurrent resolution is as follows:

H. CON. RES. 83

Resolved by the House of Representatives (the Senate concurring),

SECTION 1. USE OF EMANCIPATION HALL FOR EVENT TO CELEBRATE BIRTHDAY OF KING KAMEHAMEHA I.

(a) AUTHORIZATION.—Emancipation Hall in the Capitol Visitor Center is authorized to be used for an event on June 8, 2014, to celebrate the birthday of King Kamehameha I.

(b) PREPARATIONS.—Physical preparations for the conduct of the ceremony described in subsection (a) shall be carried out in accordance with such conditions as may be prescribed by the Architect of the Capitol.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Michigan (Mrs. MILLER) and the gentlewoman from Hawaii (Ms. GABBARD) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mrs. MILLER of Michigan. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks on the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

Mrs. MILLER of Michigan. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of House Concurrent Resolution 83, which authorizes the use of Emancipation Hall on June 8 to celebrate the birthday of King Kamehameha, a legendary figure in the State of Hawaii.

Commemorating the life and legacy of King Kamehameha is an opportunity for the Hawaiian people to celebrate their very, very rich history and culture, not just amongst themselves, but with the entire world.

Such a celebration is fitting to take place in our Nation's Capitol, where Hawaiians and non-Hawaiians alike can learn about this extraordinary ruler.

On June 11, the people of Hawaii will celebrate the annual Kamehameha Day, commemorating the life of Kamehameha the Great who, between 1795 and 1810, unified the islands into the Kingdom of Hawaii. The resolution before us today will authorize the use of this space for the celebration of his life and great accomplishments.

History, Mr. Speaker, documents King Kamehameha as a fierce warrior who fought for unity and independence. Many people of his time and for centuries later have placed a high regard on King Kamehameha for ruling with fairness and compassion. He also opened up Hawaii to the rest of the world through his leadership and en-

couragement of trade and peaceful activity.

He is actually remembered for his law, which is known as the Law of the Splintered Paddle, which specifically protects civilians in wartime and is a model for human rights around the world today.

So it is more than fitting that the statute of King Kamehameha, which was added to the National Statuary Hall collection by Hawaii in 1969, is now prominently displayed in Emancipation Hall in the Capitol Visitor Center.

I thank the gentlewoman from Hawaii (Ms. GABBARD) for introducing this concurrent resolution, and I urge my colleagues to support it.

I reserve the balance of my time

Ms. GABBARD. Mr. Speaker, aloha. I rise in strong support of H. Con. Res. 83, and I yield myself such time as I may consume.

First, I thank the gentlewoman from Michigan (Mrs. MILLER), who I had the pleasure and honor of serving with on the House Homeland Security Committee, for her strong support of this resolution and her recognition of the legacy and the history of King Kamehameha in Hawaii and the lessons that we have all learned and that continue to remain relevant to the people's work that we do here every day.

Your support and recognition of this means a lot to me personally, but also to the people of my great home State of Hawaii, and I also have to mention that my mother is from your home State of Michigan, so I appreciate your home as well.

I rise today in support of H. Con. Res. 83, authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to celebrate the birthday of King Kamehameha I.

Kamehameha was also known as Kamehameha the Great. He was a skilled and intelligent military leader, monarch, and statesman. He established his reputation and dynasty by uniting all of Hawaii under one rule, thereby bringing and ensuring peace to the islands and protection to his people during a time of Western colonialism.

He was born in a small town called North Kohala in my district on the island of Hawaii around 1758, descending from the royal families of Hawaii and Maui.

As a young man, he distinguished himself as a talented warrior and military strategist. By 1795, Kamehameha had conquered the islands of Maui, Lanai, Kahoolawe, Molokai, and Oahu. He later acquired Kauai and Niihau through a treaty in 1810, uniting all of Hawaii under his control and creating a kingdom recognized and respected around the world.

As king, Kamehameha focused on governing Hawaii in a manner that perpetuated the native Hawaiian culture while also integrating foreign influences. He appointed governors for each island, made laws for the protection of all, planted taro, built houses and irri-

gation ditches, restored heiau, and promoted international trade.

Prominent European Otto von Kotzebue wrote:

The king is a man of great wisdom and tries to give his people anything he considers useful. He wishes to increase the happiness and not the wants of his people.

These words are as relevant back then as they are today.

One of Kamehameha's enduring legacies is the Kanawai Mamalahoe, or Law of the Splintered Paddle, which serves as a model for human rights policies on noncombatants during wartime.

It was created as a result of a military expedition in which Kamehameha was violently struck by a fisherman trying to protect his family. Chastened by this experience, Kamehameha declared:

Let every elderly person, woman, and child lie by the roadside in safety.

This law, which provided for the safety of civilians, is estimated to have saved thousands of lives during Kamehameha's military campaigns. It became the very first written law of the Kingdom of Hawaii and remains in the Hawaii State Constitution to this very day.

In 1871, Kamehameha Day was established to celebrate and honor one of Hawaii's greatest leaders. Today, it is observed as a State holiday, attracting tourists from around the world, filled with parades and lei draping at the statues that exist in his honor.

One of these statutes is very proudly displayed here in Emancipation Hall in the Capitol Visitor Center. Kamehameha is depicted with a spear in his left hand, as a reminder that he brought wars to an end. His right hand is extended with open palm as a gesture of the aloha spirit.

For the last 43 years, we have celebrated Kamehameha Day here in our Nation's Capital. I urge my colleagues to support H. Con. Res. 83 to authorize the use of Emancipation Hall as we continue this tradition in celebrating the birthday of King Kamehameha I.

□ 1515

Mr. Speaker, just in closing, I urge all of my colleagues to support H. Con. Res. 83 so that we can continue this tradition and remember and honor and apply the legacy and history of one of Hawaii's greatest leaders.

I yield back the balance of my time.

Mrs. MILLER of Michigan. Mr. Speaker, I would just close by again thanking my colleague from Hawaii (Ms. GABBARD) for introducing this resolution. It was our great privilege to serve together on the House Homeland Security Committee. I was somewhat sorry, but glad at the same time, for her to now be a member of the House Armed Services Committee.

I also want to thank her for her service to our country in the military before she came to Congress. It was interesting for me listening to your comments about this great king and this

great leader of the great people of Hawaii.

And so certainly, Mr. Speaker, I would urge all of our colleagues to support the concurrent resolution as well, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Michigan (Mrs. MILLER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 83.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the House by Mr. Pate, one of his secretaries.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clauses 8 and 9 of rule XX, proceedings will resume on questions previously postponed.

Votes will be taken in the following order:

Ordering the previous question on House Resolution 568, by the yeas and nays;

Adopting House Resolution 568, if ordered;

Ordering the previous question on House Resolution 569, by the yeas and nays;

Adopting House Resolution 569, if ordered; and

Suspending the rules and passing H.R. 863.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

RELATING TO THE CONSIDERATION OF HOUSE REPORT 113-415 AND AN ACCOMPANYING RESOLUTION, AND PROVIDING FOR CONSIDERATION OF H. RES. 565, APPOINTMENT OF SPECIAL COUNSEL TO INVESTIGATE INTERNAL REVENUE SERVICE

The SPEAKER pro tempore. The unfinished business is the vote on ordering the previous question on the resolution (H. Res. 568) relating to the consideration of House Report 113-415 and an accompanying resolution, and providing for consideration of the resolution (H. Res. 565) calling on Attorney General Eric H. Holder, Jr., to appoint a special counsel to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The vote was taken by electronic device, and there were—yeas 223, nays 192, not voting 16, as follows:

[Roll No. 197]

YEAS—223

- | | | |
|---------------|-----------------|---------------|
| Aderholt | Griffith (VA) | Pittenger |
| Amash | Grimm | Pitts |
| Amodei | Guthrie | Poe (TX) |
| Bachmann | Hall | Pompeo |
| Bachus | Hanna | Posey |
| Barletta | Harper | Price (GA) |
| Barr | Harris | Reed |
| Barton | Hartzler | Reichert |
| Benishak | Hastings (WA) | Renacci |
| Bentivolio | Heck (NV) | Ribble |
| Bilirakis | Hensarling | Rice (SC) |
| Bishop (UT) | Herrera Beutler | Rigell |
| Black | Holding | Roby |
| Blackburn | Hudson | Roe (TN) |
| Boustany | Huelskamp | Rogers (AL) |
| Brady (TX) | Huizenga (MI) | Rogers (KY) |
| Bridenstine | Hultgren | Rogers (MI) |
| Brooks (AL) | Hunter | Rohrabacher |
| Brooks (IN) | Hurt | Rokita |
| Broun (GA) | Issa | Rooney |
| Buchanan | Jenkins | Ros-Lehtinen |
| Bucshon | Johnson (OH) | Roskam |
| Burgess | Johnson, Sam | Ross |
| Byrne | Jolly | Rothfus |
| Calvert | Jones | Royce |
| Camp | Jordan | Runyan |
| Campbell | Kelly (PA) | Ryan (WI) |
| Cantor | King (IA) | Salmon |
| Capito | King (LA) | Sanford |
| Carter | King (NY) | Scalise |
| Cassidy | Kinzinger (IL) | Schock |
| Chabot | Kline | Schweikert |
| Chaffetz | Labrador | Scott, Austin |
| Coffman | LaMalfa | Sensenbrenner |
| Cole | Lamborn | Sessions |
| Collins (GA) | Lance | Shimkus |
| Collins (NY) | Lankford | Shuster |
| Conaway | Latham | Simpson |
| Cook | Latta | Smith (MO) |
| Cotton | LoBiondo | Smith (NE) |
| Cramer | Long | Smith (NJ) |
| Crenshaw | Lucas | Smith (TX) |
| Culberson | Luetkemeyer | Southerland |
| Daines | Lummis | Stewart |
| Denham | Marchant | Stivers |
| Dent | Marino | Stockman |
| DeSantis | Massie | Stutzman |
| DesJarlais | McAllister | Terry |
| Diaz-Balart | McCarthy (CA) | Thompson (PA) |
| Duncan (SC) | McCaul | Thornberry |
| Duncan (TN) | McClintock | Tiberi |
| Ellmers | McHenry | Tipton |
| Farenthold | McKeon | Turner |
| Fincher | McKinley | Upton |
| Fitzpatrick | McMorris | Valadao |
| Fleischmann | Rodgers | Wagner |
| Fleming | Meadows | Walberg |
| Flores | Meehan | Walden |
| Forbes | Messer | Walorski |
| Fortenberry | Mica | Weber (TX) |
| Fox | Miller (FL) | Webster (FL) |
| Franks (AZ) | Miller (MI) | Wenstrup |
| Frelinghuysen | Mullin | Westmoreland |
| Gardner | Mulvaney | Whitfield |
| Garrett | Murphy (PA) | Williams |
| Gerlach | Neugebauer | Wilson (SC) |
| Gibbs | Noem | Wittman |
| Gibson | Nugent | Wolf |
| Gohmert | Nunes | Womack |
| Goodlatte | Nunnelee | Woodall |
| Gosar | Olson | Yoder |
| Gowdy | Palazzo | Yoho |
| Granger | Paulsen | Young (AK) |
| Graves (GA) | Pearce | Young (IN) |
| Graves (MO) | Perry | |
| | Petri | |

NAYS—192

- | | | |
|-------------|---------------|-------------|
| Barber | Brown (FL) | Castro (TX) |
| Barrow (GA) | Brownley (CA) | Chu |
| Beatty | Bustos | Cicilline |
| Becerra | Butterfield | Clarke (NY) |
| Bera (CA) | Capps | Clay |
| Bishop (GA) | Capuano | Cleaver |
| Bishop (NY) | Cárdenas | Clyburn |
| Blumenauer | Carney | Cohen |
| Bonamici | Carson (IN) | Connolly |
| Brady (PA) | Cartwright | Conyers |
| Braley (IA) | Castor (FL) | Cooper |

- | | | |
|----------------|----------------|------------------|
| Costa | Kelly (IL) | Peterson |
| Courtney | Kennedy | Pingree (ME) |
| Crowley | Kildee | Pocan |
| Cuellar | Kilmer | Polis |
| Cummings | Kind | Price (NC) |
| Davis (CA) | Kirkpatrick | Quigley |
| Davis, Danny | Kuster | Rahall |
| DeFazio | Langevin | Rangel |
| DeGette | Larsen (WA) | Richmond |
| Delaney | Larson (CT) | Royal-Allard |
| DeLauro | Lee (CA) | Ruiz |
| DelBene | Levin | Ruppersberger |
| Deutch | Lewis | Ryan (OH) |
| Dingell | Lipinski | Sánchez, Linda |
| Doggett | Loeb | T. |
| Doyle | Lofgren | Sanchez, Loretta |
| Duckworth | Lowenthal | Sarbanes |
| Edwards | Lujan Grisham | Schakowsky |
| Ellison | (NM) | Schiff |
| Engel | Luján, Ben Ray | Schneider |
| Enyart | (NM) | Schrader |
| Eshoo | Lynch | Scott (VA) |
| Esty | Maffei | Scott, David |
| Farr | Maloney, | Serrano |
| Fattah | Carolyn | Sewell (AL) |
| Foster | Maloney, Sean | Shea-Porter |
| Frankel (FL) | Matheson | Sherman |
| Fudge | Matsui | Sinema |
| Gabbard | McCarthy (NY) | Sires |
| Gallo | McCollum | Slaughter |
| Garamendi | McDermott | Smith (WA) |
| Garcia | McGovern | Speier |
| Grayson | McIntyre | Swalwell (CA) |
| Green, Al | McNerney | Takano |
| Green, Gene | Meeks | Thompson (CA) |
| Grijalva | Meng | Thompson (MS) |
| Gutiérrez | Michaud | Tierney |
| Hahn | Miller, George | Titus |
| Hanabusa | Moore | Tonko |
| Hastings (FL) | Moran | Tsongas |
| Heck (WA) | Murphy (FL) | Van Hollen |
| Higgins | Nadler | Vargas |
| Himes | Napolitano | Veasey |
| Holt | Neal | Vela |
| Honda | Negrete McLeod | Velázquez |
| Horsford | Nolan | Visclosky |
| Hoyer | O'Rourke | Walz |
| Huffman | Owens | Wasserman |
| Israel | Pallone | Schultz |
| Jackson Lee | Pascrell | Waters |
| Jeffries | Pastor (AZ) | Waxman |
| Johnson (GA) | Payne | Welch |
| Johnson, E. B. | Perlmutter | Wilson (FL) |
| Kaptur | Peters (CA) | Yarmuth |
| Keating | Peters (MI) | |

NOT VOTING—16

- | | | |
|---------------|--------------|--------------|
| Bass | Gingrey (GA) | Miller, Gary |
| Clark (MA) | Griffin (AR) | Pelosi |
| Coble | Hinojosa | Rush |
| Crawford | Joyce | Schwartz |
| Davis, Rodney | Kingston | |
| Duffy | Lowey | |

□ 1542

Messrs. NADLER, CROWLEY, and CUELLAR changed their vote from “yea” to “nay.”

Mr. KING of New York changed his vote from “nay” to “yea.”

So the previous question was ordered. The result of the vote was announced as above recorded.

Stated for:
Mr. RODNEY DAVIS of Illinois. Mr. Speaker, on rollcall No. 197 I was unavoidably detained. A meeting with constituents went longer than expected. Had I been present, I would have voted “yes.”

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. McGOVERN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered. The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 224, noes 187, not voting 20, as follows:

[Roll No. 198]

AYES—224

Aderholt Griffith (VA) Perry
 Amash Grimm Petri
 Amodei Guthrie Pittenger
 Bachmann Hall
 Bachus Hanna Poe (TX)
 Barber Harper Pompeo
 Barletta Harris Posey
 Barr Hartzler Price (GA)
 Barton Hastings (WA) Reed
 Benishek Heck (NV) Reichert
 Bentivolio Hensarling Renacci
 Bishop (UT) Ribble Herrera Beutler
 Black Holding Rice (SC)
 Blackburn Hudson Rigell
 Boustany Huelskamp Roby
 Brady (TX) Huizenga (MI) Roe (TN)
 Bridenstine Hultgren Rogers (KY)
 Brooks (AL) Hunter Rogers (MI)
 Brooks (IN) Hurt Rohrabacher
 Buchanan Issa Rokita
 Bucshon Jenkins Rooney
 Burgess Johnson (OH) Ros-Lehtinen
 Byrne Johnson, Sam Roskam
 Calvert Jolly Ross
 Camp Jones Rothfus
 Campbell Jordan Royce
 Cantor Joyce Runyan
 Capito Kelly (PA) Ryan (WI)
 Carter King (IA) Salmon
 Cassidy King (NY) Sanford
 Chabot Kinzinger (IL) Scalise
 Chaffetz Kline Schock
 Coffman Labrador Schweikert
 Cole LaMalfa Scott, Austin
 Collins (GA) Lamborn Sensenbrenner
 Collins (NY) Lance Sessions
 Conaway Lankford Shimkus
 Cook Latham Shuster
 Cotton Latta Simpson
 Cramer LoBiondo Smith (MO)
 Crenshaw Long Smith (NE)
 Culberson Lucas Smith (NJ)
 Daines Luetkemeyer Smith (TX)
 Davis, Rodney Lummis Southerland
 Denham Marchant Stewart
 Dent Marino Stivers
 DeSantis Massie Stockman
 DesJarlais McAllister Stutzman
 Diaz-Balart McCarthy (CA) Terry
 Duncan (SC) McCaul Thompson (PA)
 Duncan (TN) McClintock Thornberry
 Ellmers McHenry Tiberi
 Farenthold McIntyre Tipton
 Fincher McKeon Turner
 Fitzpatrick McKinley Upton
 Fleischmann McMorris Valadao
 Fleming Rodgers Wagner
 Flores Meadows Walberg
 Forbes Meehan Walden
 Fortenberry Messer Walorski
 Foxx Mica Weber (TX)
 Franks (AZ) Miller (FL) Webster (FL)
 Frelinghuysen Miller (MI) Wenstrup
 Gardner Mullin Westmoreland
 Garrett Mulvaney Whitfield
 Gerlach Murphy (PA) Williams
 Gibbs Neugebauer Wilson (SC)
 Gibson Noem Wittman
 Gohmert Nugent Wolf
 Goodlatte Nunes Womack
 Gosar Nunnelee Woodall
 Gowdy Olson Yoder
 Granger Palazzo Yoho
 Graves (GA) Paulsen Young (AK)
 Graves (MO) Pearce Young (IN)

NOES—187

Barrow (GA) Carson (IN) Davis, Danny
 Bass Cartwright DeFazio
 Beatty Castor (FL) DeGette
 Becerra Castro (TX) Delaney
 Bera (CA) Chu DeLauro
 Bishop (GA) Cicilline DelBene
 Bishop (NY) Clarke (NY) Deutch
 Blumenaier Clay Dingell
 Bonamici Cleaver Doggett
 Brady (PA) Clyburn Doyle
 Braley (IA) Cohen Duckworth
 Brown (FL) Conyers Edwards
 Brownley (CA) Cooper Ellison
 Bustos Costa Engel
 Butterfield Courtney Enyart
 Capps Crowley Eshoo
 Capuano Cuellar Esty
 Cárdenas Cummings Farr
 Carney Davis (CA) Fattah

Foster Lowenthal Rangel
 Frankel (FL) Lowey Richmond
 Fudge Lujan Grisham Roybal-Allard
 Gallego (NM) Ruiz
 Garamendi Lujan, Ben Ray Ruppertsberger
 Garcia (NM) Ryan (OH)
 Grayson Lynch Sánchez, Linda
 Green, Al Maffei T.
 Green, Gene Maloney, Sanchez, Loretta
 Grijalva Carolyn Sarbanes
 Gutiérrez Maloney, Sean Schakowsky
 Hahn Matheson Schiff
 Hanabusa Matsui Schneider
 Hastings (FL) McCarthy (NY) Scott (VA)
 Heck (WA) McCollum Scott, David
 Higgins McDermott Serrano
 Himes McGovern Sewell (AL)
 Holt McNeerney Shea-Porter
 Honda Meeks Sherman
 Horsford Meng Sinema
 Hoyer Michaud Sires
 Huffman Miller, George Slaughter
 Israel Moore Smith (WA)
 Jackson Lee Murphy (FL) Speier
 Jeffries Nadler Swalwell (CA)
 Johnson (GA) Napolitano Takano
 Johnson, E. B. Neal Thompson (CA)
 Kaptur Negrete McLeod Thompson (MS)
 Keating Nolan Tierney
 Kelly (IL) O'Rourke Titus
 Kennedy Owens Tonko
 Kildee Pallone Tsongas
 Kilmer Pascrell Van Hollen
 Kind Pastor (AZ) Vargas
 Kirkpatrick Payne Veasey
 Kuster Perlmutter Vela
 Langevin Peters (CA) Velázquez
 Larsen (WA) Peters (MI) Visclosky
 Larson (CT) Peterson Walz
 Lee (CA) Pingree (ME) Wasserman
 Levin Pocan Schultz
 Lewis Polis Waters
 Lipinski Price (NC) Welch
 Loeb sack Quigley Wilson (FL)
 Lofgren Rahall Yarmuth

NOT VOTING—20

Bilirakis Gabbard Pelosi
 Broun (GA) Gingrey (GA) Rogers (AL)
 Clark (MA) Griffin (AR) Rush
 Coble Hinojosa Schrader
 Connolly Kingston Schwartz
 Crawford Miller, Gary Waxman
 Duffy Moran

□ 1548

So the resolution was agreed to.
 The result of the vote was announced
 as above recorded.

A motion to reconsider was laid on
 the table.

PROVIDING FOR CONSIDERATION
 OF H.R. 4438, AMERICAN RE-
 SEARCH AND COMPETITIVENESS
 ACT OF 2014

The SPEAKER pro tempore. The un-
 finished business is the vote on order-
 ing the previous question on the reso-
 lution (H. Res. 569) providing for con-
 sideration of the bill (H.R. 4438) to
 amend the Internal Revenue Code of
 1986 to simplify and make permanent
 the research credit, on which the yeas
 and nays were ordered.

The Clerk read the title of the resolu-
 tion.

The SPEAKER pro tempore. The
 question is on ordering the previous
 question.

This is a 5-minute vote.

The vote was taken by electronic de-
 vice, and there were—yeas 225, nays
 191, not voting 15, as follows:

[Roll No. 199]

YEAS—225

Aderholt Amodei Bachus
 Amash Bachmann Barletta

Barr Harper Poe (TX)
 Barton Harris Pompeo
 Benishek Hartzler Posey
 Bentivolio Hastings (WA) Price (GA)
 Bilirakis Heck (NV) Reed
 Bishop (UT) Hensarling Reichert
 Black Herrera Beutler Renacci
 Blackburn Holding Ribble
 Boustany Hudson Rice (SC)
 Brady (TX) Huelskamp Rigell
 Bridenstine Huizenga (MI) Roby
 Brooks (AL) Hultgren Roe (TN)
 Brooks (IN) Hunter Rogers (AL)
 Buchanan Issa Rogers (KY)
 Bucshon Jenkins Rogers (MI)
 Burgess Johnson (OH) Rohrabacher
 Byrne Johnson, Sam Rokita
 Calvert Jolly Rooney
 Camp Jones Ros-Lehtinen
 Campbell Jordan Roskam
 Cantor Joyce Ross
 Capito Kelly (PA) Rothfus
 Carter King (IA) Royce
 Cassidy King (NY) Runyan
 Chabot Kinzinger (IL) Ryan (WI)
 Chaffetz Kline Salmon
 Coffman Labrador Sanford
 Cole LaMalfa Scalise
 Collins (GA) Lamborn Schock
 Collins (NY) Lance Schweikert
 Conaway Lankford Scott, Austin
 Cook Latham Sensenbrenner
 Cotton Latta Shimkus
 Cramer LoBiondo Shuster
 Crenshaw Long Smith (MO)
 Culberson Lucas Smith (NE)
 Daines Luetkemeyer Smith (NJ)
 Davis, Rodney Lummis Smith (TX)
 Denham Marchant Southerland
 Dent Marino Stewart
 DeSantis Massie Stivers
 DesJarlais McAllister Stockman
 Diaz-Balart McCarthy (CA) Stutzman
 Duncan (SC) McCaul Terry
 Duncan (TN) McClintock Thornberry
 Ellmers McHenry Tiberi
 Farenthold McIntyre Tipton
 Fincher McKeon Turner
 Fitzpatrick McKinley Upton
 Fleischmann McMorris Valadao
 Fleming Rodgers Wagner
 Flores Meadows Walberg
 Forbes Meehan Walden
 Fortenberry Messer Walorski
 Foxx Mica Weber (TX)
 Franks (AZ) Miller (FL) Webster (FL)
 Frelinghuysen Miller (MI) Wenstrup
 Gardner Mullin Westmoreland
 Garrett Mulvaney Whitfield
 Gerlach Murphy (PA) Williams
 Gibbs Neugebauer Wilson (SC)
 Gibson Noem Wittman
 Gohmert Nugent Wolf
 Goodlatte Nunes Womack
 Gosar Nunnelee Woodall
 Gowdy Olson Yoder
 Granger Palazzo Yoho
 Graves (GA) Paulsen Young (AK)
 Graves (MO) Pearce Young (IN)

NAYS—191

Barber Castro (TX) Deutch
 Barrow (GA) Chu Dingell
 Bass Cicilline Doggett
 Beatty Clarke (NY) Doyle
 Becerra Clay Duckworth
 Bera (CA) Cleaver Edwards
 Bishop (GA) Clyburn Ellison
 Bishop (NY) Cohen Engel
 Blumenaier Connolly Enyart
 Bonamici Conyers Eshoo
 Brady (PA) Cooper Esty
 Braley (IA) Costa Farr
 Brown (FL) Courtney Fattah
 Brownley (CA) Crowley Frankel (FL)
 Bustos Cuellar Fudge
 Butterfield Cummings Gabbard
 Capps Davis (CA) Gallego
 Capuano Davis, Danny Garamendi
 Cárdenas DeFazio Garcia
 Carney DeGette Grayson
 Carson (IN) Delaney Green, Al
 Cartwright DeLauro Green, Gene
 Castor (FL) DelBene Grijalva

Gutiérrez	Maloney,	Sánchez, Linda	Crenshaw	King (IA)	Rigell	Lowenthal	Pallone	Shea-Porter
Hahn	Carolyn	T.	Culberson	King (NY)	Roby	Lowe	Pascrell	Sherman
Hanabusa	Maloney, Sean	Sanchez, Loretta	Daines	Kinzinger (IL)	Roe (TN)	Lujan Grisham	Pastor (AZ)	Sinema
Hastings (FL)	Matheson	Sarbanes	Davis, Rodney	Kline	Rogers (AL)	(NM)	Payne	Sires
Heck (WA)	Matsui	Schakowsky	Labrador	Rogers (KY)	Rogers (MI)	Lujan, Ben Ray	Perlmutter	Slaughter
Higgins	McCollum	Schiff	Dent	Rohrabacher	Rogers (MI)	(NM)	Peters (CA)	Smith (WA)
Himes	McDermott	Schneider	DeSantis	Rokita	Rohrabacher	Lynch	Peters (MI)	Speier
Holt	McGovern	Schrader	DesJarlais	Rooney	Rokita	Maffei	Peterson	Swalwell (CA)
Honda	McNerney	Scott (VA)	Diaz-Balart	Ros-Lehtinen	Rooney	Maloney,	Pingree (ME)	Takano
Horsford	Meeks	Scott, David	Duncan (SC)	Latham	Ros-Lehtinen	Carolyn	Pocan	Thompson (CA)
Hoyer	Meng	Serrano	Duncan (TN)	Latta	Roskam	Maloney, Sean	Polis	Thompson (MS)
Huffman	Michaud	Sewell (AL)	Elmiers	LoBiondo	Ross	Matheson	Price (NC)	Titus
Israel	Miller, George	Shea-Porter	Farenthold	Lofgren	Rothfus	Matsui	Quigley	Tierney
Jackson Lee	Moore	Sherman	Fincher	Long	Royce	McCarthy (NY)	Rangel	Titus
Jeffries	Moran	Sinema	Fitzpatrick	Lucas	Runyan	McCollum	Richmond	Tonko
Johnson (GA)	Murphy (FL)	Sires	Fleischmann	Luetkemeyer	Ryan (WI)	McDermott	Roybal-Allard	Tsongas
Johnson, E. B.	Nadler	Slaughter	Fleming	Lummis	Salmon	McGovern	Ruiz	Van Hollen
Kaptur	Napolitano	Smith (WA)	Flores	Marchant	Sanford	McNerney	Ruppersberger	Vargas
Keating	Neal	Speier	Forbes	Marino	Scalise	Meeks	Ryan (OH)	Veasey
Kelly (IL)	Negrete McLeod	Swalwell (CA)	Fortenberry	Massie	Schock	Meng	Sánchez, Linda	Vela
Kennedy	Nolan	Takano	Fox	McAllister	Schweikert	Michaud	T.	Velázquez
Kildee	O'Rourke	Thompson (CA)	Franks (AZ)	McCarthy (CA)	Scott, Austin	Miller, George	Sanchez, Loretta	Visclosky
Kilmer	Owens	Thompson (MS)	Frelinghuysen	McCaul	Sensenbrenner	Moore	Sarbanes	Walz
Kind	Pallone	Tierney	Gardner	McClintock	Sessions	Moran	Schakowsky	Wasserman
Kirkpatrick	Pascrell	Titus	Garrett	McHenry	Shimkus	Nadler	Schiff	Schultz
Kuster	Pastor (AZ)	Tonko	Gerlach	McIntyre	Shuster	Napolitano	Schneider	Waters
Langevin	Payne	Tsongas	Gibbs	McKeon	Simpson	Neal	Schrader	Waxman
Larsen (WA)	Perlmutter	Van Hollen	Gibson	McKinley	Smith (MO)	Negrete McLeod	Scott (VA)	Welch
Larson (CT)	Peters (CA)	Vargas	Gohmert	McMorris	Smith (NE)	Nolan	Scott, David	Wilson (FL)
Lee (CA)	Peters (MI)	Veasey	Goodlatte	Rodgers	Smith (NJ)	O'Rourke	Serrano	Yarmuth
Levin	Peterson	Vela	Gosar	Meadows	Smith (TX)	Owens	Sewell (AL)	
Lewis	Pingree (ME)	Granger	Meehan	Meehan	Southerland			
Lipinski	Pocan	Velázquez	Messer	Messer	Stewart			
Loeback	Polis	Visclosky	Mica	Stivers	Stivers	Clark (MA)	Griffin (AR)	Pelosi
Lofgren	Price (NC)	Walz	Miller (FL)	Stockman	Stockman	Coble	Hinojosa	Rush
Lowenthal	Quigley	Wasserman	Miller (MI)	Stutzman	Stutzman	Crawford	Hurt	Schwartz
Lowe	Rahall	Schultz	Grimm	Mullin	Terry	Duffy	Kingston	
Lujan Grisham	Rangel	Waters	Guthrie	Mulvaney	Thompson (PA)	Gingrey (GA)	Miller, Gary	
(NM)	Richmond	Waxman	Hall	Murphy (FL)	Thornberry			
Luján, Ben Ray	Roybal-Allard	Welch	Hanna	Murphy (PA)	Tiberi			
(NM)	Ruiz	Wilson (FL)	Harper	Neugebauer	Turner			
Lynch	Ruppersberger	Yarmuth	Harris	Noem	Upton			
Maffei	Ryan (OH)		Hartzler	Nugent	Valadao			
			Hastings (WA)	Nunes	Wagner			
			Heck (NV)	Nunnelee	Walberg			
			Hensarling	Olson	Walden			
			Herrera Beutler	Palazzo	Walorski			
			Himes	Paulsen	Weber (TX)			
			Holding	Pearce	Webster (FL)			
			Hudson	Perry	Wenstrup			
			Huelskamp	Petri	Westmoreland			
			Huizenga (MI)	Pittenger	Whitfield			
			Hultgren	Pitts	Williams			
			Hunter	Poe (TX)	Wilson (SC)			
			Issa	Pompeo	Wittman			
			Jenkins	Posey	Wolf			
			Johnson (OH)	Price (GA)	Womack			
			Johnson, Sam	Rahall	Woodall			
			Jolly	Reed	Yoder			
			Jones	Reichert	Yoho			
			Jordan	Renacci	Young (AK)			
			Joyce	Ribble	Young (IN)			
			Kelly (PA)	Rice (SC)				

NOT VOTING—13

Clark (MA)	Griffin (AR)	Pelosi
Coble	Hinojosa	Rush
Crawford	Hurt	Schwartz
Duffy	Kingston	
Gingrey (GA)	Miller, Gary	

□ 1601

So the resolution was agreed to. The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:
Mr. HURT. Mr. Speaker, I was not present for rollcall vote No. 200, on agreeing to the resolution on H. Res. 569. Had I been present, I would have voted "yea."

COMMISSION TO STUDY THE POTENTIAL CREATION OF A NATIONAL WOMEN'S HISTORY MUSEUM ACT

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 863) to establish the Commission to Study the Potential Creation of a National Women's History Museum, and for other purposes, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill. The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Wyoming (Mrs. LUMMIS) that the House suspend the rules and pass the bill, as amended.

This is a 5-minute vote. The vote was taken by electronic device, and there were—yeas 383, nays 33, not voting 15, as follows:

[Roll No. 201]

YEAS—383

Aderholt	Benishek	Boustany
Amodel	Bentivolio	Brady (PA)
Bachus	Bera (CA)	Brady (TX)
Barber	Bilirakis	Braley (IA)
Barletta	Bishop (GA)	Brooks (AL)
Barr	Bishop (NY)	Brooks (IN)
Barton	Bishop (UT)	Brown (FL)
Benishek	Black	Brownley (CA)
Bentivolio	Blackburn	Buchanan
Bilirakis	Blumenauer	Bucshon
Bishop (UT)	Bonamici	Burgess
Black		

NOT VOTING—15

Clark (MA)	Foster	McCarthy (NY)
Coble	Gingrey (GA)	Miller, Gary
Cole	Griffin (AR)	Pelosi
Crawford	Hinojosa	Rush
Duffy	Kingston	Schwartz

□ 1554

So the previous question was ordered. The result of the vote was announced as above recorded.

Stated against:
Mr. FOSTER. Mr. Speaker, on May 7th I missed one recorded vote. I would like to indicate how I would have voted had I been present. On rollcall No. 199, I would have voted "no."

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

RECORDED VOTE

Mr. MCGOVERN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered. The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 230, noes 188, not voting 13, as follows:

[Roll No. 200]

AYES—230

Aderholt	Blackburn	Cantor
Amash	Boustany	Capito
Amodel	Brady (TX)	Carter
Bachmann	Bridenstine	Cassidy
Bachus	Brooks (AL)	Chabot
Barber	Brooks (IN)	Chaffetz
Barletta	Broun (GA)	Chaffman
Barr	Buchanan	Cole
Barton	Bucshon	Collins (GA)
Benishek	Burgess	Collins (NY)
Bentivolio	Byrne	Conaway
Bilirakis	Calvert	Cook
Bishop (UT)	Camp	Cotton
Black	Campbell	Cramer

NOES—188

Barrow (GA)	Courtney	Grijalva
Bass	Crowley	Gutiérrez
Beatty	Cuellar	Hahn
Becerra	Cummings	Hanabusa
Bera (CA)	Davis (CA)	Hastings (FL)
Bishop (GA)	Davis, Danny	Heck (WA)
Bishop (NY)	DeFazio	Higgins
Blumenauer	DeGette	Holt
Bonamici	Delaney	Honda
Brady (PA)	DeLauro	Horsford
Braley (IA)	DelBene	Hoyer
Brown (FL)	Deutch	Huffman
Brownley (CA)	Dingell	Israel
Bustos	Doggett	Jackson Lee
Butterfield	Doyle	Jeffries
Capps	Duckworth	Johnson (GA)
Capuano	Edwards	Johnson, E. B.
Cárdenas	Ellison	Kaptur
Carney	Engel	Keating
Carson (IN)	Enyart	Kelly (IL)
Cartwright	Eshoo	Kennedy
Castor (FL)	Esty	Kildee
Castro (TX)	Farr	Kilmer
Chu	Fattah	Kind
Ciциlline	Foster	Kirkpatrick
Clarke (NY)	Frankel (FL)	Kuster
Clay	Fudge	Langevin
Cleaver	Gabbard	Larsen (WA)
Clyburn	Gallego	Larson (CT)
Cohen	Garamendi	Lee (CA)
Connolly	Garcia	Levin
Conyers	Grayson	Lewis
Cooper	Green, Al	Lipinski
Costa	Green, Gene	Loeback

Bustos
Butterfield
Byrne
Calvert
Camp
Cantor
Capito
Capps
Capuano
Cárdenas
Carney
Carson (IN)
Carter
Cartwright
Cassidy
Castor (FL)
Castro (TX)
Chabot
Chaffetz
Chu
Cicilline
Clarke (NY)
Clay
Cleaver
Clyburn
Coffman
Cohen
Cole
Collins (GA)
Collins (NY)
Conaway
Connolly
Conyers
Cook
Cooper
Costa
Cotton
Courtney
Cramer
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Daines
Davis (CA)
Davis, Danny
Davis, Rodney
DeFazio
DeGette
Delaney
DeLauro
DelBene
Denham
Dent
DeSantis
DesJarlais
Deutch
Diaz-Balart
Dingell
Doggett
Doyle
Duckworth
Edwards
Ellison
Ellmers
Engel
Enyart
Eshoo
Esty
Farenthold
Farr
Fattah
Fincher
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foster
Foxx
Frankel (FL)
Frelinghuysen
Fudge
Gabbard
Gallego
Garamendi
Garcia
Gardner
Gerlach
Gibbs
Gibson
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)

Graves (MO)
Grayson
Green, Al
Green, Gene
Griffith (VA)
Grijalva
Grimm
Guthrie
Gutiérrez
Hahn
Hall
Hanabusa
Hanna
Harper
Hastings (FL)
Hastings (WA)
Heck (NV)
Heck (WA)
Herrera Beutler
Higgins
Holding
Holt
Honda
Horsford
Hoyer
Hudson
Huffman
Huizenga (MI)
Hultgren
Hunter
Hurt
Israel
Issa
Jackson Lee
Jeffries
Jenkins
Johnson (GA)
Johnson (OH)
Johnson, E. B.
Johnson, Sam
Jolly
Jordan
Joyce
Kaptur
Keating
Kelly (IL)
Kelly (PA)
Kennedy
Kildee
Kilmer
Kind
King (IA)
King (NY)
Kinzinger (IL)
Kirkpatrick
Kline
Kuster
Labrador
LaMalfa
Lance
Langevin
Larsen (WA)
Larsen (CT)
Latham
Latta
Lee (CA)
Levin
Lewis
Lipinski
LoBiondo
Loeb
Loeb
Loeb
Lofgren
Lowenthal
Lowe
Luetkemeyer
Lujan Grisham
(NM)
Luján, Ben Ray
(NM)
Lummis
Lynch
Maffei
Maloney,
Carolyn
Maloney, Sean
Marino
Matheson
Matsui
McAllister
McCarthy (CA)
McCarthy (NY)
McCaul
McCollum
McDermott
McGovern
McHenry
McIntyre
McKeon
McKinley

McMorris
Rodgers
McNerney
Meehan
Meeks
Meng
Messer
Michaud
Miller (FL)
Miller (MI)
Miller, George
Moore
Moran
Mullin
Mullane
Mulvaney
Murphy (FL)
Murphy (PA)
Nadler
Napolitano
Neal
Negrete McLeod
Noem
Nolan
Nugent
Nunes
O'Rourke
Owens
Pallone
Pascarella
Pastor (AZ)
Paulsen
Payne
Pearce
Perlmutter
Perry
Peters (CA)
Peters (MI)
Peterson
Petri
Pingree (ME)
Pittenger
Pitts
Pocan
Poe (TX)
Polis
Posey
Price (GA)
Price (NC)
Quigley
Rahall
Reed
Reichert
Renacci
Ribble
Rice (SC)
Richmond
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross
Rothfus
Roybal-Allard
Royce
Ruiz
Runyan
Ruppersberger
Ryan (OH)
Ryan (WI)
Salmon
Sánchez, Linda
T.
Sanchez, Loretta
Sanford
Sarbanes
Scalise
Schakowsky
Schiff
Schneider
Schock
Schradler
Schweikert
Scott (VA)
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell (AL)
Shea-Porter
Sherman
Shimkus
Simpson

Sinema
Sires
Slaughter
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Southernland
Speier
Stewart
Stivers
Swalwell (CA)
Takano
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi

NAYS—33

Amash
Bachmann
Bridenstine
Broun (GA)
Cankrell
Duncan (SC)
Duncan (TN)
Franks (AZ)
Garrett
Harris
Hartzler

Clark (MA)
Coble
Crawford
Duffy
Gingrey (GA)

NOT VOTING—15

Griffin (AR)
Himes
Hinojosa
Kingston
Miller, Gary

Wasserman
Schultz
Waters
Waxman
Webster (FL)
Welch
Wenstrup
Westmoreland
Whitfield
Williams
Wilson (FL)
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Yarmuth
Yoder
Young (AK)
Young (IN)

Hensarling
Neugebauer
Nunnelee
Olson
Pompeo
Scott, Austin
Shuster
Stockman
Massie
Stutzman
Weber (TX)
Yoho

Palazzo
Pelosi
Rangel
Rush
Schwartz

□ 1612

Messrs. ADERHOLT and HUDSON changed their vote from “nay” to “yea.”

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. HIMES. Mr. Speaker, on May 7, 2014, I was unable to cast my vote for H.R. 863, rollcall vote 201. Had I been present, I would have voted “yea.”

WITHDRAWAL OF RUSSIA AS BENEFICIARY UNDER THE GENERALIZED SYSTEM OF PREFERENCES PROGRAM—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 113-107)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Ways and Means and ordered to be printed:

To the Congress of the United States:

Consistent with section 502(f)(2) of the Trade Act of 1974 (the “1974 Act”) (19 U.S.C. 2462(f)(2)), I am providing notice of my intent to withdraw the designation of Russia as a beneficiary developing country under the Generalized System of Preferences (GSP) program.

Sections 501(1) and (4) of the 1974 Act (19 U.S.C. 2461(1) and (4)), provide that, in affording duty-free treatment under the GSP, the President shall have due regard for, among other factors, the effect such action will have on furthering the economic development of a beneficiary developing country through the

expansion of its exports and the extent of the beneficiary developing country’s competitiveness with respect to eligible articles.

Section 502(c) of the 1974 Act (19 U.S.C. 2462(c)) provides that, in determining whether to designate any country as a beneficiary developing country for purposes of the GSP, the President shall take into account various factors, including the country’s level of economic development, the country’s per capita gross national product, the living standards of its inhabitants, and any other economic factors he deems appropriate.

Having considered the factors set forth in sections 501 and 502(c) of the 1974 Act, I have determined that it is appropriate to withdraw Russia’s designation as a beneficiary developing country under the GSP program because Russia is sufficiently advanced in economic development and improved in trade competitiveness that continued preferential treatment under the GSP is not warranted. I intend to issue a proclamation withdrawing Russia’s designation consistent with section 502(f)(2) of the 1974 Act.

BARACK OBAMA,
THE WHITE HOUSE, May 7, 2014.

□ 1615

RECOMMENDING THAT THE HOUSE FIND LOIS G. LERNER IN CONTEMPT OF CONGRESS

Mr. ISSA. Mr. Speaker, by direction of the Committee on Oversight and Government Reform, I call up the report (H. Rept. 113-415) to accompany the resolution recommending that the House of Representatives find Lois G. Lerner, Former Director, Exempt Organizations, Internal Revenue Service, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform.

The Clerk read the title of the report. The SPEAKER pro tempore (Mr. AMODEI). Pursuant to House Resolution 568, the report is considered read.

The text of the report is as follows:

The Committee on Oversight and Government Reform, having considered this Report, report favorably thereon and recommend that the Report be approved.

The form of the resolution that the Committee on Oversight and Government Reform would recommend to the House of Representatives for citing Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service, for contempt of Congress pursuant to this report is as follows:

Resolved, That because Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service, offered a voluntary statement in testimony before the Committee, was found by the Committee to have waived her Fifth Amendment Privilege, was informed of the Committee’s decision of waiver, and continued to refuse to testify before the Committee, Ms. Lerner shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the

Committee on Oversight and Government Reform, detailing the refusal of Ms. Lerner to testify before the Committee on Oversight and Government Reform as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Ms. Lerner be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

I. EXECUTIVE SUMMARY

Lois G. Lerner has refused to comply with a congressional subpoena for testimony before the Committee on Oversight and Government Reform relating to her role in the Internal Revenue Service's treatment of certain applicants for tax-exempt status. Her testimony is vital to the Committee's investigation into this matter.

Ms. Lerner offered a voluntary statement in her appearance before the Committee. The Committee subsequently determined that she waived her Fifth Amendment privilege in making this statement, and it informed Ms. Lerner of its decision. Still, Ms. Lerner continued to refuse to testify before the Committee.

Accordingly, the Chairman of the Oversight and Government Reform Committee recommends that the House find Ms. Lerner in contempt for her failure to comply with the subpoena issued to her.

II. AUTHORITY AND PURPOSE

An important corollary to the powers expressly granted to Congress by the Constitution is the responsibility to perform rigorous oversight of the Executive Branch. The U.S. Supreme Court has recognized this Congressional power and responsibility on numerous occasions. For example, in *McGrain v. Daugherty*, the Court held:

[T]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. . . . A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change, and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.¹¹

Further, in *Watkins v. United States*, Chief Justice Earl Warren wrote for the majority: “The power of Congress to conduct investigations is inherent in the legislative process. That power is broad.”¹²

Further, both the Legislative Reorganization Act of 1946 (P.L. 79-601), which directed House and Senate Committees to “exercise continuous watchfulness” over Executive Branch programs under their jurisdiction, and the Legislative Reorganization Act of 1970 (P.L. 91-510), which authorized committees to “review and study, on a continuing basis, the application, administration, and execution” of laws, codify the powers of Congress.

The Committee on Oversight and Government Reform is a standing committee of the House of Representatives, duly established pursuant to the rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the U.S. Constitution.³ House Rule X grants to the Committee broad jurisdiction over federal “[g]overnment management” and reform, including the “[o]verall economy, efficiency, and management of government operations and activities,” the “[f]ederal civil service,” and “[r]eorganizations in the executive branch of the Government.”⁴ House Rule X further grants the Committee particularly broad oversight jurisdiction, including authority to “conduct investigations of any

matter without regard to clause 1, 2, 3, or this clause [of House Rule X] conferring jurisdiction over the matter to another standing committee.”⁵ The rules direct the Committee to make available “the findings and recommendations of the committee . . . to any other standing committee having jurisdiction over the matter involved.”⁶

House Rule XI specifically authorizes the Committee to “require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary.”⁷ The rule further provides that the “power to authorize and issue subpoenas” may be delegated to the Committee chairman.⁸ The subpoena discussed in this report was issued pursuant to this authority.

The Committee has undertaken its investigation into the IRS's inappropriate treatment of conservative tax-exempt organizations pursuant to the authority delegated to it under the House Rules, including as described above.

The oversight and legislative purposes of the investigation at issue here, described more fully immediately below, include (1) to evaluate decisions made by the Internal Revenue Service regarding the inappropriate treatment of conservative applicants for tax-exempt status; and (2) to assess, based on the findings of the investigation, whether the conduct uncovered may warrant additions or modifications to federal law, including, but not limited to, a possible restructuring of the Internal Revenue Service and the IRS Oversight Board.

III. BACKGROUND ON THE COMMITTEE'S INVESTIGATION

In February 2012, the Committee received reports that the Internal Revenue Service inappropriately scrutinized certain applicants for 501(c)(4) tax-exempt status. Since that time, the Committee has reviewed nearly 500,000 pages of documents obtained from (i) the Department of the Treasury, including particular component entities, the IRS, the Treasury Inspector General for Tax Administration (TIGTA), and the IRS Oversight Board, (ii) former and current IRS employees, and (iii) other sources. In addition, the Committee has conducted 33 transcribed interviews of current and former IRS officials, ranging from front-line employees in the IRS's Cincinnati office to the former Commissioner of the IRS.

Documents and testimony reveal that the IRS targeted conservative-aligned applicants for tax-exempt status by scrutinizing them in a manner distinct—and more intrusive—than other applicants. Critical questions remain regarding the extent of this targeting, and how and why the IRS acted—and persisted in acting—in this manner.

A. IRS TARGETING OF TEA PARTY TAX-EXEMPT APPLICATIONS

In late February 2010, a screener in the IRS's Cincinnati office identified a 501(c)(4) application connected with the Tea Party. Due to “media attention” surrounding the Tea Party, the application was elevated to the Exempt Organizations Technical Unit in Washington, D.C.⁹ When officials in the Cincinnati office discovered several similar applications in March 2010, the Washington, D.C. office asked for two “test” applications, and ordered the Cincinnati employees to “hold” the remainder of the applications.¹⁰ A manager in the Cincinnati office asked his screeners to develop criteria for identifying other Tea Party applications so that the applications would not “go into the general inventory.”¹¹ By early April 2010, Cincinnati screeners began to identify and hold any applications meeting certain criteria. Applications that met the criteria were removed

from the general inventory and assigned to a special group.

In late spring 2010, an individual recognized as an expert in 501(c)(4) applications in the Washington office was assigned to work on the test applications. The expert issued letters to the test applicants asking for additional information or clarification about information provided in their applications.¹² Meanwhile, through the summer and into fall 2010, applications from other conservative-aligned groups idled. As the Cincinnati office awaited guidance from Washington regarding those applications, a backlog developed. By fall 2010, the backlog of applications that had stalled in the Cincinnati office had grown to 60.

On February 1, 2011, Lois G. Lerner, who served as Director of Exempt Organizations (EO) at IRS from 2006 to 2013,¹³ wrote an e-mail to Michael Seto, the manager of the Technical Office within the Exempt Organizations business division. The EO Technical Office was staffed by approximately 40 IRS lawyers who offered advice to IRS agents across the country. Ms. Lerner wrote, “Tea Party Matter very dangerous” and ordered the Office of Chief Counsel to get involved.¹⁴ Ms. Lerner advocated for pulling the cases out of the Cincinnati office entirely. She advised Seto that “Cincy should probably NOT have these cases.”¹⁵ Seto testified to the Committee that Ms. Lerner ordered a “multi-tier” review for the test applications, a process that involved her senior technical advisor and the Office of Chief Counsel.¹⁶

On July 5, 2011, Ms. Lerner became aware that the backlog of Tea Party applications pending in Cincinnati had swelled to “over 100.”¹⁷ Ms. Lerner also learned of the specific criteria that were used to screen the cases that were caught in the backlog.¹⁸ She believed that the term “Tea Party”—which was a term that triggered additional scrutiny under the criteria developed by IRS personnel—was “pejorative.”¹⁹ Ms. Lerner ordered her staff to adjust the criteria.²⁰ She also directed the Technical Unit to conduct a “triage” of the backlogged applications and to develop a guide sheet to assist agents in Cincinnati with processing the cases.²¹

In November 2011, the draft guide sheet for processing the backlogged applications was complete.²² By this point, there were 160-170 pending applications in the backlog.²³ After the Cincinnati office received the guide sheet from Washington, officials there began to process the applications in January 2012. IRS employees drafted questions for the applicant organizations designed to solicit information mandated by the guide sheet. The questions asked for information about the applicant organizations' donors, among other things.²⁴

By early 2012, questions about the IRS's treatment of these backlogged applications had attracted public attention. Staff from the Committee on Oversight and Government Reform met with Ms. Lerner in February 2012 regarding the IRS's process for evaluating tax-exempt applications.²⁵ Committee staff then met with TIGTA representatives on March 8, 2012.²⁶ Shortly thereafter, TIGTA began an audit of the IRS's process for evaluating tax-exempt applications.

In late February 2012, after Ms. Lerner briefed Committee staff, Steven Miller, then the IRS Deputy Commissioner, requested a meeting with her to discuss these applications. She informed him of the backlog of applications and that the IRS had asked applicant organizations about donor information.²⁷ Miller relayed this information to IRS Commissioner Douglas Schulman.²⁸ On March 23, 2012, Miller convened a meeting of his senior staff to discuss these applications. Miller launched an internal review of potential inappropriate treatment of Tea Party

501(c)(4) applications “to find out why the cases were there and what was going on.”²⁹

The internal IRS review took place in April 2012. Miller realized there was a problem and that the application backlog needed to be addressed.³⁰ IRS officials designed a new system to process the backlog, and Miller received weekly updates on the progress of the backlog throughout the summer 2012.³¹

In May 2013, in advance of the release of TIGTA’s audit report on the IRS’s process for evaluating applications for tax-exempt status, the IRS sought to acknowledge publicly that certain tax-exempt applications had been inappropriately targeted.³² On May 10, 2013, at an event sponsored by the American Bar Association, Ms. Lerner responded to a question she had planted with a member of the audience prior to the event. A veteran tax lawyer asked, “Lois, a few months ago there were some concerns about the IRS’s review of 501(c)(4) organizations, of applications from tea party organizations. I was just wondering if you could provide an update.”³³ In response, Ms. Lerner stated:

So our line people in Cincinnati who handled the applications did what we call centralization of these cases. They centralized work on these in one particular group. . . . However, in these cases, the way they did the centralization was not so fine. Instead of referring to the cases as advocacy cases, they actually used case names on this list. They used names like Tea Party or Patriots and they selected cases simply because the applications had those names in the title. That was wrong, that was absolutely incorrect, insensitive, and inappropriate—that’s not how we go about selecting cases for further review. We don’t select for review because they have a particular name.³⁴

Ms. Lerner’s statement during the ABA panel, entitled “News from the IRS and Treasury,” was the first public acknowledgment that the IRS had inappropriately scrutinized the applications of conservative-aligned groups. Within days, the President and the Attorney General expressed serious concerns about the IRS’s actions. The Attorney General announced a Justice Department investigation.³⁵

B. LOIS LERNER’S TESTIMONY IS CRITICAL TO THE COMMITTEE’S INVESTIGATION

Lois Lerner’s testimony is critical to the Committee’s investigation. Without her testimony, the full extent of the IRS’s targeting of Tea Party applications cannot be known, and the Committee will be unable to fully complete its work.

Ms. Lerner was, during the relevant time period, the Director of the Exempt Organizations business division of the IRS, where the targeting of these applications occurred. The Exempt Organizations business division contains the two IRS units that were responsible for executing the targeting program: the Exempt Organizations Determinations Unit in Cincinnati, and the Exempt Organizations Technical Unit in Washington, D.C.

Ms. Lerner has not provided the Committee with any testimony since the release of the TIGTA audit in May 2013. Although the Committee staff has conducted transcribed interviews of dozens of IRS officials in Cincinnati and Washington, D.C., the Committee will never be able to understand the IRS’s actions fully without her testimony. She has unique, first-hand knowledge of how, and why, the IRS scrutinized applications for tax-exempt status from certain conservative-aligned groups.

The IRS sent letters to 501(c)(4) application organizations, signed by Ms. Lerner, that included questions about the organizations’ donors. These letters went to applicant organizations that had met certain criteria. As noted, Ms. Lerner later described the selec-

tion of these applicant organizations as “wrong, [] absolutely incorrect, insensitive, and inappropriate.”³⁶

Documents and testimony from other witnesses show Ms. Lerner’s testimony is critical to the Committee’s investigation. She was at the epicenter of the targeting program. As the Director of the Exempt Organizations business division, she interacted with a wide array of IRS personnel, from low-level managers all the way up to the Deputy Commissioner. Only Ms. Lerner can resolve conflicting testimony about why the IRS delayed 501(c)(4) applications, and why the agency asked the applicant organizations inappropriate and invasive questions. Only she can answer important outstanding questions that are key to the Committee’s investigation.

IV. LOIS LERNER’S REFUSAL TO COMPLY WITH THE COMMITTEE’S SUBPOENA FOR TESTIMONY AT THE MAY 22, 2013 HEARING

On May 14, 2013, Chairman Issa sent a letter to Ms. Lerner inviting her to testify at a hearing on May 22, 2013, about the IRS’s handling of certain applications for tax-exempt status.³⁷ The letter requested that she “please contact the Committee by May 17, 2013,” to confirm her attendance.³⁸ Ms. Lerner, through her attorney, confirmed that she would appear at the hearing.³⁹ Her attorney subsequently indicated that she would not answer questions during the hearing, and that she would invoke her Fifth Amendment rights.⁴⁰

Because Ms. Lerner would not testify voluntarily at the May 22, 2013 hearing and because her testimony was critical to the Committee’s investigation, Chairman Issa authorized a subpoena to compel the testimony. The subpoena was issued on May 20, 2013, and served on her the same day. Ms. Lerner’s attorney accepted service on her behalf.⁴¹

A. CORRESPONDENCE LEADING UP TO THE HEARING

On May 20, 2013, Ms. Lerner’s attorney sent a letter to Chairman Issa stating that she would be invoking her Fifth Amendment right not to answer any questions at the hearing. The letter stated, in relevant part:

You have requested that our client, Lois Lerner, appear at a public hearing on May 22, 2013, to testify regarding the Treasury Inspector General for Tax Administration’s (“TIGTA”) report on the Internal Revenue Service’s (“IRS”) processing of applications for tax-exempt status. As you know, the Department of Justice has launched a criminal investigation into the matters addressed in the TIGTA report, and your letter to Ms. Lerner dated May 14, 2013, alleges that she “provided false or misleading information on four separate occasions last year in response to” the Committee’s questions about the IRS’s processing of applications for tax-exempt status. Accordingly, we are writing to inform you that, upon our advice, Ms. Lerner will exercise her constitutional right not to answer any questions related to the matters addressed in the TIGTA report or to the written and oral exchanges that she had with the Committee in 2012 regarding the IRS’s processing of applications for tax-exempt status.

She has not committed any crimes or made any misrepresentation but under the circumstances she has no choice but to take this course. As the Supreme Court has “emphasized,” one of the Fifth Amendment’s “basic functions . . . is to protect *innocent* [individuals].” *Ohio v. Reiner*, 532 U.S. 17, 21 (2001) (quoting *Grunewald v. United States*, 353 U.S. 391, 421 (1957)).

Because Ms. Lerner is invoking her constitutional privilege, we respectfully request

that you excuse her from appearing at the hearing. . . . Because Ms. Lerner will exercise her right not to answer questions related to the matters discussed in the TIGTA report or to her prior exchanges with the Committee, requiring her to appear at the hearing merely to assert her Fifth Amendment privilege would have no purpose other than to embarrass or burden her.⁴²

The following day, after issuing the subpoena to compel Ms. Lerner to appear before the Committee, Chairman Issa responded to her attorney. Chairman Issa stated, in relevant part:

I write to advise you that the subpoena you accepted on Ms. Lerner’s behalf remains in effect. The subpoena compels Ms. Lerner to appear before the Committee on May 22, 2013, at 9:30 a.m.

According to your May 20, 2013, letter, ‘requiring [Ms. Lerner] to appear at the hearing merely to assert her Fifth Amendment privilege would have no purpose other than to embarrass or burden her.’ That is not correct. As Director, Exempt Organizations, Tax Exempt and Government Entities Division, of the Internal Revenue Service, Ms. Lerner is uniquely qualified to answer questions about the issues raised in the aforementioned TIGTA report. The Committee invited her to appear with the expectation that her testimony will advance the Committee’s investigation, which seeks information about the IRS’s questionable practices in processing and approving applications for 501(c)(4) tax exempt status. *The Committee requires Ms. Lerner’s appearance because of, among other reasons, the possibility that she will waive or choose not to assert the privilege as to at least certain questions of interest to the Committee; the possibility that the Committee will immunize her testimony pursuant to 18 U.S.C. §6005; and the possibility that the Committee will agree to hear her testimony in executive session.*⁴³

B. LOIS LERNER’S OPENING STATEMENT

Chairman Issa’s letter to Ms. Lerner’s attorney on May 22, 2013 raised the possibility that she would waive or choose not to assert her privilege as to at least certain questions of interest to the Committee.⁴⁴ In fact, that is exactly what happened. At the hearing, Ms. Lerner made a voluntary opening statement, of which she had provided the Committee no advance notice, notwithstanding Committee rules requiring that she do so.⁴⁵ She stated, after swearing an oath to tell “the truth, the whole truth, and nothing but the truth”:

Good morning, Mr. Chairman and members of the Committee. My name is Lois Lerner, and I’m the Director of Exempt Organizations at the Internal Revenue Service.

I have been a government employee for over 34 years. I initially practiced law at the Department of Justice and later at the Federal Election Commission. In 2001, I became—I moved to the IRS to work in the Exempt Organizations office, and in 2006, I was promoted to be the Director of that office.

Exempt Organizations oversees about 1.6 million tax-exempt organizations and processes over 60,000 applications for tax exemption every year. As Director I’m responsible for about 900 employees nationwide, and administer a budget of almost \$100 million. My professional career has been devoted to fulfilling responsibilities of the agencies for which I have worked, and I am very proud of the work that I have done in government.

On May 14th, the Treasury inspector general released a report finding that the Exempt Organizations field office in Cincinnati, Ohio, used inappropriate criteria to identify for further review applications for organizations that planned to engage in political activity which may mean that they did not

qualify for tax exemption. On that same day, the Department of Justice launched an investigation into the matters described in the inspector general's report. In addition, members of this committee have accused me of providing false information when I responded to questions about the IRS processing of applications for tax exemption.

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.

And while I would very much like to answer the Committee's questions today, I've been advised by my counsel to assert my constitutional right not to testify or answer questions related to the subject matter of this hearing. After very careful consideration, I have decided to follow my counsel's advice and not testify or answer any of the questions today.

Because I'm asserting my right not to testify, I know that some people will assume that I've done something wrong. I have not. One of the basic functions of the Fifth Amendment is to protect innocent individuals, and that is the protection I'm invoking today. Thank you.⁴⁶

After Ms. Lerner made this voluntary, self-selected opening statement—which included a proclamation that she had done nothing wrong and broken no laws, Chairman Issa explained that he believed she had waived her right to assert a Fifth Amendment privilege and asked her to reconsider her position on testifying.⁴⁷ In response, she stated:

I will not answer any questions or testify about the subject matter of this Committee's meeting.⁴⁸

Upon Ms. Lerner's refusal to answer any questions, Congressman Trey Gowdy made a statement from the dais. He said:

Mr. Issa, Mr. Cummings just said we should run this like a courtroom, and I agree with him. 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.*⁴⁹

Shortly after Congressman Gowdy's statement, Chairman Issa excused Ms. Lerner from the panel and reserved the option to recall her as a witness at a later date. Specifically, Chairman Issa stated that she was excused "subject to recall after we seek specific counsel on the questions of whether or not the constitutional right of the Fifth Amendment has been properly waived."⁵⁰

Rather than adjourning the hearing on May 22, 2013, the Chairman recessed it, in order to reconvene at a later date after a thorough analysis of Ms. Lerner's actions. He did so to avoid "mak[ing] a quick or uninformed decision" regarding what had transpired.⁵¹

C. THE COMMITTEE RESOLVED THAT LOIS LERNER WAIVED HER FIFTH AMENDMENT PRIVILEGE

On June 28, 2013, Chairman Issa convened a Committee business meeting to allow the Committee to determine whether Ms. Lerner had in fact waived her Fifth Amendment privilege. After reviewing during the intervening five weeks legal analysis provided by the Office of General Counsel, arguments presented by Ms. Lerner's counsel, and other relevant legal precedent, Chairman Issa concluded that Ms. Lerner waived her constitutional privilege when she made a voluntary opening statement that involved several specific denials of various allegations.⁵² Chairman Issa stated:

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 22.⁵³

After a lengthy debate, the Committee approved a resolution, by a 22–17 vote, which stated as follows:

[T]he 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."⁵⁴

D. LOIS LERNER CONTINUED TO DEFY THE COMMITTEE'S SUBPOENA

Following the Committee's resolution that Ms. Lerner waived her Fifth Amendment privilege, Chairman Issa recalled her to testify before the Committee. On February 25, 2014, Chairman Issa sent a letter to Ms. Lerner's attorney advising him that the May 22, 2013 hearing would reconvene on March 5, 2014.⁵⁵ The letter also advised that the subpoena that compelled her to appear on May 22, 2013 remained in effect.⁵⁶ The letter stated, in relevant part:

Ms. Lerner's testimony remains critical to the Committee's investigation Because Ms. Lerner's testimony will advance the Committee's investigation, the Committee is recalling her to a continuation of the May 22, 2013, hearing, on March 5, 2014, at 9:30 a.m. in room 2154 of the Rayburn House Office Building in Washington, D.C.

The subpoena you accepted on Ms. Lerner's behalf remains in effect. In light of this fact, and because the Committee explicitly rejected her Fifth Amendment privilege claim, I expect her to provide answers when the hearing reconvenes on March 5.⁵⁷

The next day, Ms. Lerner's attorney responded to Chairman Issa. In a letter, he wrote:

I write in response to your letter of yesterday. I was surprised to receive it. I met with the majority staff of the Committee on January 24, 2014, at their request. At the meeting, I advised them that Ms. Lerner would continue to assert her Constitutional rights not to testify if she were recalled. . . . We understand that the Committee voted that she had waived her rights. . . . We therefore request that the Committee not require Ms. Lerner to attend a hearing solely for the purpose of once again invoking her rights.⁵⁸

Because of the possibility that she would choose to answer some or all of the Committee's questions, Chairman Issa required Ms. Lerner to appear in person on March 5, 2014. When the May 22, 2013, hearing, entitled "The IRS: Targeting Americans for Their Political Beliefs," was reconvened, Chairman Issa noted that the Committee might recommend that the House hold Ms. Lerner in contempt if she continued to refuse to answer questions, based on the fact that the Committee had resolved that she had waived her Fifth Amendment privilege. He stated:

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 at the May 22, 2013, hearing.

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 22, 2013, and additionally, by affirming documents after making a statement of Fifth Amendment rights.

If Ms. Lerner continues to refuse to answer questions from our Members while she's under subpoena, the Committee may proceed to consider whether she should be held in contempt.⁵⁹

Despite the fact that Ms. Lerner was compelled by a duly issued subpoena and Chairman Issa had warned her of the possibility of contempt proceedings, and despite the Committee's resolution that she waived her Fifth Amendment privilege, Ms. Lerner continued to assert her Fifth Amendment privilege, and refused to answer any questions posed by Members of the Committee.

Specifically, Ms. Lerner asserted her Fifth Amendment privilege on eight separate occasions at the hearing. In response to questions from Chairman Issa, she stated:

Q. On October 10—on October—in October 2010, you told a Duke University group, and I quote, 'The Supreme Court dealt a huge blow overturning a 100-year-old precedent that basically corporations couldn't give directly to political campaigns. And everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it. They want the IRS to fix the problem.' Ms. Lerner, what exactly 'wanted to fix the problem caused by Citizens United,' what exactly does that mean?

A. My counsel has advised me that I have not—

Q. Would you please turn the mic on?

A. Sorry. I don't know how. My counsel has advised me that I have not waived my constitutional rights under the Fifth Amendment, and on his advice, I will decline to answer any question on the subject matter of this hearing.

Q. So, you are not going to tell us who wanted to fix the problem caused by Citizens United?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Q. Ms. Lerner, in February 2011, you emailed your colleagues in the IRS the following: "Tea Party matter, very dangerous. This could be the vehicle to go to court on the issue of whether Citizens United overturning the ban on corporate spending applies to tax-exempt rules. Counsel and Judy Kindell need to be on this one, please. Cincy should probably NOT," all in caps, 'have these cases.' What did you mean by 'Cincy should not have these cases'?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer the question.

Q. Ms. Lerner, why would you say Tea Party cases were very dangerous?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Q. Ms. Lerner, in September 2010, you emailed your subordinates about initiating a, parenthesis, (c)(4) project and wrote, ‘We need to be cautious so that it isn’t a per se ‘political project.’ Why were you worried about this being perceived as a political project?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Q. Ms. Lerner, Mike Seto, manager of EO Technical in Washington, testified that you ordered Tea Party cases to undergo a multi-tier review. He testified, and I quote, ‘She sent me email saying that when these cases need to go through—I say again—she sent me email saying that when these cases need to go through multi-tier review and they will eventually have to go to Ms. Kindell and the Chief Counsel’s Office.’ Why did you order Tea Party cases to undergo a multi-tier review?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Q. Ms. Lerner, in June 2011, you requested that Holly Paz obtain a copy of the tax-exempt application filed by Crossroads GPS so that your senior technical advisor, Judy Kindell, could review it and summarize the issues for you. Ms. Lerner, why did you want to personally order that they pull Crossroads GPS, Karl Rove’s organization’s application?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Q. Ms. Lerner, in June 2012, you were part of an email exchange that appeared to be about writing new regulations on political speech for 501(c)(4) groups, and in parenthesis, your quote, “off plan” in 2013. Ms. Lerner, what does “off plan” mean?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Q. Ms. Lerner, in February of 2014, President Obama stated that there was not a smidgeon of corruption in the IRS targeting. Ms. Lerner, do you believe that there is not a smidgeon of corruption in the IRS targeting of conservatives?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Q. Ms. Lerner, on Saturday, 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—in talking to the chairman”—excuse me—“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?

A. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.⁶⁰

The hearing was subsequently adjourned and Ms. Lerner was excused from the hearing room.

E. LEGAL PRECEDENT STRONGLY SUPPORTS THE COMMITTEE’S POSITION TO PROCEED WITH HOLDING LOIS LERNER IN CONTEMPT

After Ms. Lerner’s appearance before the Committee on March 5, 2014, her lawyer convened a press conference at which he apparently revealed that she had sat for an interview with Department of Justice prosecutors and TIGTA staff within the past six months.⁶¹ According to reports, Ms. Lerner’s lawyer described that interview as not under

oath⁶² and unconditional, i.e., provided under no grant of immunity.⁶³ Revelation of this interview calls into question the basis of Ms. Lerner’s assertion of the Fifth Amendment privilege in the first place, her waiver of any such privilege notwithstanding.

Despite that fact, and the balance of the record, Ranking Member Elijah E. Cummings questioned the Committee’s ability to proceed with a contempt citation for Ms. Lerner. On March 12, 2014, he sent a letter to Speaker Boehner arguing that the House of Representatives is barred “from successfully pursuing contempt proceedings against former IRS official Lois Lerner.”⁶⁴ The Ranking Member’s position was based on an allegedly “independent legal analysis” provided by his lawyer, Stanley M. Brand, and his “Legislative Consultant,” Morton Rosenberg.⁶⁵

Brand and Rosenberg claimed that the prospect of judicial contempt proceedings against Ms. Lerner has been compromised because, according to them, “at no stage in this proceeding did the witness receive the requisite clear rejections of her constitutional objections and direct demands for answers nor was it made unequivocally certain that her failure to respond would result in criminal contempt prosecution.”⁶⁶ The Ranking Member subsequently issued a press release that described “opinions from 25 legal experts across the country and the political spectrum”⁶⁷ regarding the Committee’s interactions with Ms. Lerner. The opinions released by Ranking Member Cummings largely relied on the same case law and analysis that Rosenberg and Brand provided, and are contrary to the opinion of the House Office of General Counsel.⁶⁸ The Ranking Member and his lawyers and consultants are wrong on the facts and the law.

1. Ms. Lerner knew that the Committee had rejected her privilege objection and that, consequently, she risked contempt should she persist in refusing to answer the Committee’s questions

At the March 5, 2014 proceeding, Chairman Issa specifically made Ms. Lerner and her counsel aware of developments that had occurred since the Committee first convened the hearing (on May 22, 2013): “These [developments] are important for the record and for Ms. Lerner to know and understand.”⁶⁹

Chairman Issa emphasized one particular development: “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.”⁷⁰ This, of course, was not news to Ms. Lerner or her counsel. The Committee had expressly notified her counsel of the Committee’s rejection of her Fifth Amendment claim, both orally and in writing. For example, in a letter to Ms. Lerner’s counsel on February 25, 2014, the Chairman wrote: “[B]ecause the Committee explicitly **rejected [Lerner’s] Fifth Amendment privilege claim**, I expect her to provide answers when the hearing reconvenes on March 5.”⁷¹ Moreover, the press widely reported the fact that the Committee had formally rejected Ms. Lerner’s Fifth Amendment claim.⁷²

Accordingly, it is facially unreasonable for Ranking Member Cummings and his lawyers and consultants to subsequently claim that “at no stage in this proceeding did the witness receive the requisite clear rejections of her constitutional objections.”⁷³

The Committee’s rejection of Ms. Lerner’s privilege objection was not the only point that Chairman Issa emphasized before and during the March 5, 2014 proceeding. At the hearing, after several additional references to the Committee’s determination that she had waived her privilege objection, the Chairman *expressly* warned her that she re-

mained under subpoena,⁷⁴ and thus that, if she should persist in refusing to answer the Committee’s questions, she risked contempt: “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.”⁷⁵

Ranking Member Cummings and his lawyers and consultants state, repeatedly, that the Committee did not provide “certainty for the witness and her counsel that a contempt prosecution was inevitable.”⁷⁶ But, that is a certainty that no Member of the Committee can provide. From the Committee’s perspective (and Ms. Lerner’s), there is no guarantee that the Department of Justice will prosecute Ms. Lerner for her contumacious conduct, and there is no guarantee that the full House of Representatives will vote to hold her in contempt. In fact, there is no guarantee that the Committee will make such a recommendation. The collective votes of Members voting their consciences determine both a Committee recommendation and a full House vote on a contempt resolution. And, the Department of Justice, of course, is an agency of the Executive Branch of the federal government. All the Chairman can do is what he did: make abundantly clear to Ms. Lerner and her counsel that of which she already was aware, i.e., that if she chose not to answer the Committee’s questions after the Committee’s ruling that she had waived her privilege objection (exactly the choice that she ultimately made), she would risk contempt.

2. The Law does not require magic words

The Ranking Member and his lawyers and consultants also misunderstand the law. Contrary to their insistence, the courts do not require the invocation by the Committee of certain magic words. Rather, and sensibly, the courts have required only that congressional committees provide witnesses with a “fair appraisal of the committee’s ruling on an objection,” thereby leaving the witness with a choice: comply with the relevant committee’s demand for testimony, or risk contempt.⁷⁷

The Ranking Member and his lawyers and consultants refer specifically to *Quinn v. United States* in support of their arguments. In that case, however, the Supreme Court held only that, because “[a]t no time did the committee [at issue there] specifically overrule [the witness’s] objection based on the Fifth Amendment,” the witness “was left to guess whether or not the committee had accepted his objection.”⁷⁸ Here, of course, the Committee expressly rejected Ms. Lerner’s objection, and specifically notified Ms. Lerner and her counsel of the same. She was left to guess at nothing.

The Ranking Member and his lawyers’ and consultants’ reliance on *Quinn* is odd for at least two additional reasons. First, in that case, the Supreme Court expressly noted that the congressional committee’s failure to rule on the witness’s objection mattered because it left the witness without “a clear-cut choice . . . between answering the question and **risking** prosecution for contempt.”⁷⁹ In other words, the Supreme Court expressly rejected the Ranking Member’s view that the Chairman should do the impossible by pronouncing on whether prosecution is “inevitable.”⁸⁰ The Supreme Court required that the Committee do no more than what it did: advise Ms. Lerner that her objection had been overruled and thus that she risked contempt.

Second, *Quinn* expressly rejects the Ranking Member’s insistence on the talismanic incantation by the Committee of certain magic words. The Supreme Court wrote that “the committee is not required to resort to

any fixed verbal formula to indicate its disposition of the objection. So long as the witness is not forced to guess the committee's ruling, he has no cause to complain."⁸¹

The other cases that the Ranking Member and his lawyers and consultants cite state the same law, and thus serve to confirm the propriety of the Committee's actions. In *Emspak v. United States*, the Supreme Court—just as in *Quinn*, and unlike here—noted that the congressional committee had failed to “overrule petitioner’s objection based on the Fifth Amendment” and thus failed to provide the witness a fair opportunity to choose between answering the relevant question and “risking prosecution for contempt.”⁸² And in *Bart v. United States*, the Supreme Court pointedly distinguished the circumstances there from those here. The Court wrote: “Because of the consistent failure to advise the witness of the committee’s position as to his objections, petitioner 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.”⁸³

V. CONCLUSION

For all these reasons, and others, Rosenberg’s opinion 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” is wrong.⁸⁴ 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.

At this point, it is clear Ms. Lerner will not comply with the Committee’s subpoena for testimony. On May 20, 2013, Chairman Issa issued the subpoena to compel Ms. Lerner’s testimony. On May 22, 2013, Ms. Lerner gave an opening statement and then refused to answer any of the Committee’s questions and asserted her Fifth Amendment privilege. On June 28, 2013, the Committee voted that Ms. Lerner waived her Fifth Amendment privilege. Chairman Issa subsequently recalled her to answer the Committee’s questions. When the May 22, 2013 hearing reconvened nine months later, on March 5, 2014, she again refused to answer any of the Committee’s questions and invoked the Fifth Amendment.

In short, Ms. Lerner has refused to provide testimony in response to the Committee’s duly issued subpoena.

VI. RULES REQUIREMENTS

EXPLANATION OF AMENDMENTS

No amendments were offered.

COMMITTEE CONSIDERATION

On April 10, 2014, the Committee on Oversight and Government Reform met in open session with a quorum present to consider a report of contempt against Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service, for failure to comply with a Congressional subpoena. The Committee approved the Report by a roll call vote of 21–12 and ordered the Report reported favorably to the House.

ROLL CALL VOTES

The following recorded votes were taken during consideration of the contempt Report:

The Report was favorably reported to the House, a quorum being present, by a vote of 23 Yeas to 17 Nays.

Voting Yea: Issa, Mica, Turner, McHenry, Jordan, Chaffetz, Walberg, Lankford, Amash, Gosar, Meehan, DesJarlais, Gowdy, Farenthold, Hastings, Lummis, Massie, Collins, Meadows, Benvolio, DeSantis.

Voting Nay: Cummings, Maloney, Clay, Lynch, Cooper, Connolly, Speier, Cartwright, Duckworth, Welch, Horsford, Lujan Grisham.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. The Report recommends that the House of Representatives find Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform. As such, the Report does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this Report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Report will assist the House of Representatives in considering whether to cite Lois G. Lerner for contempt for failing to comply with a valid congressional subpoena.

DUPLICATION OF FEDERAL PROGRAMS

No provision of the Report establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Report does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

CONSTITUTIONAL AUTHORITY STATEMENT

The Committee finds the authority for this Report in article 1, section 1 of the Constitution.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the Report does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

EARMARK IDENTIFICATION

The Report does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

UNFUNDED MANDATE STATEMENT, COMMITTEE ESTIMATE, BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee finds that clauses 3(c)(2), 3(c)(3), and 3(d)(1) of rule XIII of the Rules of the House of Representatives, sections 308(a) and 402 of the Congressional Budget Act of 1974, and section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) are inappli-

cable to this Report. Therefore, the Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this Report or costs incurred to carry out the report.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

This Report makes no changes in any existing federal statute.

ENDNOTES

1. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).
2. *Watkins v. United States*, 354 U.S. 178, 1887 (1957).
3. U.S. CONST., art I, §5, clause 2.
4. House Rule X, clause (1)(n).
5. House Rule X, clause (4)(c)(2).
6. *Id.*
7. House Rule XI, clause (2)(m)(1)(B).
8. House Rule XI, clause 2(m)(3)(A)(1).
9. E-mail from Cindy Thomas, Manager, Exempt Organizations Determinations, IRS, to Holly Paz, Manager, Exempt Organizations Technical Unit, IRS (Feb. 25, 2010) [IRSR 428451].
10. Transcribed Interview of Elizabeth Hofacre, Revenue Agent, Exempt Orgs. Determinations Unit, IRS (May 31, 2013).
11. Transcribed Interview of John Shafer, Group Manager, Exempt Orgs. Determinations Unit, IRS (June 6, 2013).
12. IRS, Timeline for the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]
13. *See The IRS: Targeting Americans for Their Political Beliefs: Hearing before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. 22 (May 22, 2013) (H. Rpt. 113-33) (statement of Lois Lerner, Director, Exempt Orgs., IRS) (emphasis added).
14. E-mail from Lois Lerner, Director, Exempt Orgs., IRS to Michael Seto, Manager, Exempt Orgs. Technical Unit, IRS (Feb. 1, 2011) [IRSR 161810].
15. *Id.*
16. Transcribed Interview of Michael Seto, Manager, Exempt Orgs. Technical Unit, IRS (July 11, 2013) [hereinafter Seto Interview].
17. Transcribed Interview of Justin Lowe, Technical Advisor to the Commissioner, Tax Exempt and Gov’t Entities Division, IRS (July 23, 2013).
18. *Id.*
19. Transcribed Interview of Holly Paz, Director, Exempt Orgs., Rulings and Agreements, IRS (May 21, 2013).
20. *Id.*
21. Seto Interview, *supra* note 6.
22. E-mail from Michael Seto, Manager, Exempt Orgs. Technical Unit, IRS, to Cindy Thomas, Manager, Exempt Orgs. Determinations Unit, IRS (Nov. 6, 2011) [IRSR 69902].
23. Transcribed Interview of Stephen Daejin Seok, Group Manager, Exempt Orgs. Determinations Unit, IRS (June 19, 2013).
24. *Id.*
25. Briefing by Lois Lerner, Director, Exempt Orgs., IRS, to H. Comm. on Oversight & Gov’t Reform Staff (Feb. 24, 2012).
26. Treasury Inspector Gen. for Tax Admin., What is the timeline for TIGTA’s involvement with this tax-exempt issue? (provided to the Committee May 2013).
27. Transcribed Interview of Steven Miller, Deputy Commissioner, IRS (Nov. 13, 2013) [hereinafter Miller Interview].
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. E-mail from Nicole Flax, Chief of Staff to the Deputy Commissioner, IRS, to Lois Lerner, Director, Exempt Orgs., IRS (Apr. 23, 2013) [IRSR 189013]; Miller Interview, *supra* note 16; Transcribed Interview of Sharon Light, Senior Technical Advisor to the Director, Exempt Orgs., IRS (Sept. 5, 2013); E-

mail from Nicole Flax, Chief of Staff to the Deputy Commissioner, IRS, to Adewale Adeyemo, Dept. of the Treasury (Apr. 22, 2013) [IRSR 466707].

33. Eric Lach, *IRS Official's Admission Baffled Audience at Tax Panel*, TALKING POINTS MEMO, May 14, 2013.

34. Rick Hasen, *Transcript of Lois Lerner's Remarks at Tax Meeting Sparking IRS Controversy*, ELECTION LAW BLOG (May 11, 2013, 7:37 a.m.), <http://electionlawblog.org/?p=50160>.

35. *Holder launches probe into IRS targeting of Tea Party groups*, FOXNEWS.COM, May 14, 2013.

36. Rick Hasen, *Transcript of Lois Lerner's Remarks at Tax Meeting Sparking IRS Controversy*, ELECTION LAW BLOG (May 11, 2013, 7:37 AM), <http://electionlawblog.org/?p=50160>.

37. Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Lois Lerner, Director, Exempt Orgs., IRS (May 14, 2013) (letter inviting Lerner to testify at May 22, 2013 hearing).

38. *Id.*

39. E-mail from William W. Taylor, III, Zuckerman Spaeder LLP, to H. Comm. on Oversight & Gov't Reform Majority Staff (May 17, 2013).

40. Letter from William W. Taylor, III, Zuckerman Spaeder LLP, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (May 20, 2013).

41. E-mail from William W. Taylor, III, Zuckerman Spaeder LLP, to H. Comm. on Oversight & Gov't Reform Majority Staff (May 20, 2013).

42. Letter from William W. Taylor, III, Zuckerman Spaeder LLP, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (May 20, 2013).

43. Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform to William W. Taylor, III, Zuckerman Spaeder LLP (May 21, 2013) (emphasis added).

44. *Id.*

45. Rule 9(f), Rules of the H. Comm. on Oversight & Gov't Reform, 113th Cong., available at <http://oversight.house.gov/wp-content/uploads/2013/12/OGR-Committee-Rules-113th-Congress.pdf> (last visited April 7, 2014).

46. *The IRS: Targeting Americans for Their Political Beliefs: Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. 22 (May 22, 2013) (H. Rpt. 113-33) (statement of Lois Lerner, Director, Exempt Orgs., IRS) (emphasis added).

47. *Id.*

48. *Id.*

49. *Id.* (emphasis added).

50. *Id.* at 24.

51. *Business Meeting of the H. Comm. on Oversight & Gov't Reform*, 113th Cong. 4 (June 28, 2013).

52. *Id.*

53. *Id.*

54. Resolution of the H. Comm. on Oversight & Gov't Reform (June 28, 2013), available at <http://oversight.house.gov/wp-content/uploads/2013/06/Resolution-of-the-Committee-on-Oversight-and-Government-Reform-6-28-131.pdf>.

55. Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform to William W. Taylor, III, Zuckerman Spaeder LLP (Feb. 25, 2014).

56. *Id.*

57. *Id.*

58. Letter from William W. Taylor, III, Zuckerman Spaeder LLP, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Feb. 26, 2014).

59. *The IRS: Targeting Americans for Their Political Beliefs: Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Mar. 5, 2014).

60. *Id.*

61. John D. McKinnon, Former *IRS Official Lerner Gave Interview to DOJ*, WALL ST. J., Mar. 6, 2014, <http://blogs.wsj.com/washwire/2014/03/06/former-irs-official-lerner-gave-interview-to-doj/>.

62. Patrick Howley, *Oversight lawmaker: Holding Lois Lerner in Contempt Is 'Where We're Moving'*, DAILY CALLER, Mar. 6, 2014, <http://dailycaller.com/2014/03/06/oversight-lawmaker-holding-lois-lerner-in-contempt-the-right-thing-to-do/>.

63. McKinnon, *supra* note 61.

64. Letter from Hon. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform, to Hon. John Boehner, Speaker, U.S. House of Representatives (Mar. 12, 2014), at 1 [hereinafter Boehner Letter], attaching Memorandum from Morton Rosenberg, Legislative Consultant, to Hon. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform (Mar. 12, 2014) [hereinafter Rosenberg Memo].

65. Boehner Letter at 1, Attachment at 1; Statement of Stanley M. Brand, *The Last Word with Lawrence O'Donnell*, MSNBC, Mar. 12, 2014, available at <http://www.msnbc.com/the-last-word/watch/the-fatal-error-of-issas-irs-blowup-193652803735> (last visited Mar. 14, 2014).

66. Rosenberg Memo at 3.

67. Press Release, Hon. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform (Mar. 26, 2014), available at <http://democrats.oversight.house.gov/>

[press-releases/twenty-five-independent-legal-experts-now-agree-that-issa-botched-contempt/](http://democrats.oversight.house.gov/press-releases/twenty-five-independent-legal-experts-now-agree-that-issa-botched-contempt/) (last visited Mar. 27, 2014).

68. Memorandum, *Lois Lerner and the Rosenberg Memorandum*, Office of General Counsel, United States House of Representatives (Mar. 25, 2014), available at <http://oversight.house.gov/release/house-counsel-oversight-committee-can-hold-lerner-contempt/> (last visited Apr. 4, 2014).

69. *The IRS: Targeting Americans for Their Political Beliefs: Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Mar. 5, 2014), Tr. at 3.

70. *Id.* at 4 (emphasis added).

71. Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to William W. Taylor, III, Esq., Zuckerman Spaeder LLP (Feb. 25, 2014), at 2 (emphasis added).

72. *See, e.g., House panel finds IRS official waived Fifth Amendment right, can be forced to testify in targeting probe*, FOXNEWS.COM, June 28, 2013, available at <http://www.foxnews.com/politics/2013/06/28/republican-led-house-panel-challenges-irs-worker-who-took-fifth-amendment/> (last visited Mar. 14, 2014).

73. Boehner Letter, at 1; Rosenberg Memo at 3.

74. The subpoena to Lerner "commanded" her "to be and appear" before the Committee and "to testify." Subpoena, Issued by Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Lois G. Lerner (May 17, 2013) (emphasis in original).

75. *The IRS: Targeting Americans for Their Political Beliefs: Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Mar. 5, 2014), Tr. at 5.

76. *Id.*; Rosenberg Memo at 3-4 (Committee did not make "unequivocally certain" that Lerner's "failure to respond would result in [a] criminal contempt prosecution"); *id.* at 2 (Chairman did not pronounce that "refusal to respond would result" in a criminal contempt prosecution") (emphasis added).

77. *Quinn v. United States*, 349 U.S. 155, 170 (1955).

78. *Id.* at 166.

79. *Id.* (emphasis added).

80. Boehner Letter, Attachment at 4.

81. 349 U.S. at 170 (emphasis added).

82. 349 U.S. at 190, 202 (1955).

83. 349 U.S. at 219, 223 (1955); *id.* at 222 (stating issue presented as: "whether petitioner was apprised of the committee's disposition of his objections").

84. Rosenberg Memo at 4.

VII. ADDITIONAL VIEWS

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
DARRELL ISSA, CHAIRMAN

LOIS LERNER'S INVOLVEMENT
IN THE
IRS TARGETING OF TAX-EXEMPT ORGANIZATIONS

STAFF REPORT
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
113TH CONGRESS
MARCH 11, 2014

I. Table of Contents

I. Table of Contents.....	2
II. Executive Summary	3
III. Background: IRS Targeting and Lois Lerner’s Involvement	6
A. Lerner’s False Statements to the Committee	6
B. The Events of May 14, 2013.....	8
II. Lerner’s Failed Assertion of her Fifth Amendment Privilege.....	10
A. Lerner Gave a Voluntary Statement at the May 22, 2013 Hearing	10
B. Lerner Authenticated a Document during the Hearing.....	11
C. Representative Gowdy’s Statement Regarding Lerner’s Waiver	12
D. Committee Business Meeting to Vote on Whether Lerner Waived Her Fifth Amendment Privilege	13
III. Lerner’s Testimony Is Critical to the Committee’s Investigation	16
A. Lerner’s Post-Citizens United Rhetoric	17
B. Lerner’s Involvement in the Delay and Scrutiny of Tea Party Applicants.....	24
1. “Multi-Tier Review” System.....	24
2. Lerner’s Briefing on the “Advocacy Cases”	25
3. The IRS’s Internal Review	27
C. Lerner’s Involvement in Regulating 501(c)(4) groups “off-plan”.....	31
D. IRS Discussions about Regulatory Reform	33
E. Lerner’s Reckless Handling Section 6103 Information.....	34
F. The Aftermath of the IRS’s Scrutiny of Tea Party Groups	36
1. Lerner’s Opinion Regarding Congressional Oversight	36
2. Tax Exempt Entities Division’s Contacts with TIGTA.....	39
3. Lerner Anticipates Issues with TIGTA Audit	40
4. Lerner Contemplates Retirement.....	42
5. The IRS’s Plans to Make an Application Denial Public	43
G. Lerner’s Role in Downplaying the IRS’s Scrutiny of Tea Party Applications.....	43
H. Lerner’s Management Style.....	45
I. Lerner’s Use of Unofficial E-mail	46
IV. Conclusion	47

II. Executive Summary

In February 2012, the Committee on Oversight and Government Reform began investigating allegations that the Internal Revenue Service inappropriately scrutinized certain applicants seeking tax-exempt status. Section 501(c)(4) of the Internal Revenue Code permits incorporation of organizations that meet certain criteria and focus on advancing “social welfare” goals.¹ With a 501(c)(4) designation, such organizations are not subject to federal income tax. Donations to these organizations are not tax deductible. Consistent with the Constitutionally protected right to free speech, these organizations – commonly referred to as “501(c)(4)s” – may engage in campaign-related activities provided that these activities do not comprise a majority of the organizations’ efforts.²

On May 12, 2013, the Treasury Inspector General for Tax Administration (TIGTA) released a report that found that the Exempt Organizations (EO) division of the IRS inappropriately targeted “Tea Party” and other conservative applicants for tax-exempt status and subjected them to heightened scrutiny.³ This additional scrutiny resulted in extended delays that, in most cases, sidelined applicants during the 2012 election cycle, in spite of their Constitutional right to participate. Meanwhile, the majority of liberal and left-leaning 501(c)(4) applicants won approval.⁴

Documents and information obtained by the Committee since the release of the TIGTA report show that Lois G. Lerner, the now-retired Director of IRS Exempt Organizations (EO), was extensively involved in targeting conservative-oriented tax-exempt applicants for inappropriate scrutiny. This report details her role in the targeting of conservative-oriented organizations, which would later result in some level of increased scrutiny of applicants from across the political spectrum. It also outlines her obstruction of the Committee’s investigation.

Prior to joining the IRS, Lerner was the Associate General Counsel and Head of the Enforcement Office at the Federal Elections Commission (FEC).⁵ During her tenure at the FEC, she also engaged in questionable tactics to target conservative groups seeking to expand their political involvement, often subjecting them to heightened scrutiny.⁶ Her political ideology was evident to her FEC colleagues. She brazenly subjected Republican groups to rigorous investigations. Similar Democratic groups did not receive the same scrutiny.⁷

The Committee’s investigation of Lerner’s role in the IRS’s targeting of tax-exempt organizations found that she led efforts to scrutinize conservative groups while working to

¹ I.R.C. § 501(c)(4).

² I.R.C. § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1(a)(2).

³ TREASURY INSPECTOR GEN. FOR TAX ADMIN., INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW (May 14, 2013).

⁴ Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA Today, May 15, 2013.

⁵ Eliana Johnson, *Lois Lerner at the FEC*, NAT’L REVIEW (May 23, 2013) [hereinafter *Lois Lerner at the FEC*].

⁶ *Id.*

⁷ *Id.*; Rebekah Metzler, *Lois Lerner: Career Gov’t Employee Under Fire*, U.S. NEWS & WORLD REP. (May 30, 2013), available at <http://www.usnews.com/news/articles/2013/05/30/lois-lerner-career-government-employee-under-fire> (last accessed Jan. 14, 2014).

maintain a veneer of objective enforcement. Following the Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*, the IRS faced pressure from voices on the left to heighten scrutiny of applicants for tax-exempt status. IRS EO employees in Cincinnati identified the first Tea Party applicants and promptly forwarded these applications to IRS headquarters in Washington, D.C. for further guidance. Officials in Washington, D.C. directed IRS employees in Cincinnati to isolate Tea Party applicants even though the IRS had not developed a process for approving their applications.

While IRS employees were screening applications, documents show that Lerner and other senior officials contemplated concerns about the “hugely influential Koch brothers,” and that Lerner advised her IRS colleagues that her unit should “do a c4 project next year” focusing on existing organizations.⁸ Lerner even showed her recognition that such an effort would approach dangerous ground and would have to be engineered as not a “*per se* political project.”⁹ Underscoring a political bias against the lawful activity of such groups, Lerner referenced the political pressure on the IRS to “fix the problem” of 501(c)(4) groups engaging in political speech at an event sponsored by Duke University's Sanford School of Public Policy.¹⁰

Lerner not only proposed ways for the IRS to scrutinize groups with 501(c)(4) status, but also helped implement and manage hurdles that hindered and delayed the approval of groups applying for 501(c)(4) status. In early 2011, Lerner directed the manager of the IRS's EO Technical Unit to subject Tea Party cases to a “multi-tier review” system.¹¹ She characterized these Tea Party cases as “very dangerous,” and believed that the Chief Counsel's office should “be in on” the review process.¹² Lerner was extensively involved in handling the Tea Party cases—from directing the review process to receiving periodic status updates.¹³ Other IRS employees would later testify that the level of scrutiny Lerner ordered for the Tea Party cases was unprecedented.¹⁴

Eventually, Lerner became uncomfortable with the burgeoning number of conservative organizations facing immensely heightened scrutiny from a purportedly apolitical agency. Consistent with her past concerns that scrutiny could not be “*per se* political,” she ordered the implementation of a new screening method. Without doing anything to inform applicants that they had been subject to inappropriate treatment, this sleight of hand added a level of deniability for the IRS that officials would eventually use to dismiss accusations of political motivations — she broadened the spectrum of groups that would be scrutinized going forward.

⁸ E-mail from Paul Streckfus to Paul Streckfus (Sept. 15, 2010) (EO Tax Journal 2010-130); E-mail from Lois Lerner, IRS, to Cheryl Chasin et al., IRS (Sept. 15, 2010). [IRSR 191032-33].

⁹ E-mail from Lois Lerner, IRS, to Cheryl Chasin et al., IRS (Sept. 16, 2010). [IRSR 191030]

¹⁰ John Sexton, *Lois Lerner Discusses Political Pressure on the IRS in 2010*, BREITBART.COM, Aug. 6, 2013.

¹¹ Transcribed Interview of Michael Seto, IRS, in Wash., D.C., at 34 (July 11, 2013).

¹² E-mail from Lois Lerner, IRS, to Michael Seto, IRS (Feb. 1, 2011). [IRSR 161810-11]

¹³ Justin Lowe, IRS, Increase in (c)(3)/(c)(4) Advocacy Org. Applications (June 27, 2011). [IRSR 2735]; E-mail from Judith Kindell, IRS, to Lois Lerner, IRS (July 18, 2012). [IRSR 179406]

¹⁴ See, e.g., Transcribed interview of Carter Hull, IRS, in Wash., D.C. (June 14, 2013); Transcribed interview of Elizabeth Hofacre, IRS, in Wash., D.C. (May 31, 2013).

When Congress asked Lerner about a shift in criteria, she flatly denied it along with allegations about disparate treatment.¹⁵ Even as targeting continued, Lerner engaged in a surreptitious discussion about an “off-plan” effort to restrict the right of existing 501(c)(4) applicants to participate in the political process through new regulations made outside established protocols for disclosing new regulatory action.¹⁶ E-mails obtained by the Committee show she and other seemingly like-minded IRS employees even discussed how, if an aggrieved Tea Party applicant were to file suit, the IRS might get the chance to showcase the scrutiny it had applied to conservative applicants.¹⁷ IRS officials seemed to envision a potential lawsuit as an expedient vehicle for bypassing federal laws that protect the anonymity of applicants denied tax exempt status.¹⁸ Lerner surmised that Tea Party groups would indeed opt for litigation because, in her mind, they were “itching for a Constitutional challenge.”¹⁹

Through e-mails, documents, and the testimony of other IRS officials, the Committee has learned a great deal about Lois Lerner’s role in the IRS targeting scandal since the Committee first issued a subpoena for her testimony. She was keenly aware of acute political pressure to crack down on conservative-leaning organizations. Not only did she seek to convey her agreement with this sentiment publicly, she went so far as to engage in a wholly inappropriate effort to circumvent federal prohibitions in order to publicize her efforts to crack down on a particular Tea Party applicant. She created unprecedented roadblocks for Tea Party organizations, worked surreptitiously to advance new Obama Administration regulations that curtail the activities of existing 501(c)(4) organizations – all the while attempting to maintain an appearance that her efforts did not appear, in her own words, “*per se* political.”

Lerner’s testimony remains critical to the Committee’s investigation. E-mails dated shortly before the public disclosure of the targeting scandal show Lerner engaging with higher ranking officials behind the scenes in an attempt to spin the imminent release of the TIGTA report.²⁰ Documents and testimony provided by the IRS point to her as the instigator of the IRS’s efforts to crack down on 501(c)(4) organizations and the singularly most relevant official in the IRS targeting scandal. Her unwillingness to testify deprives Congress the opportunity to have her explain her conduct, hear her response to personal criticisms levied by her IRS coworkers, and provide vital context regarding the actions of other IRS officials. In a recent interview, President Obama broadly asserted that there is not even a “smidgeon of corruption” in the IRS targeting scandal.²¹ If this is true, Lois Lerner should be willing to return to Congress to testify about her actions. The public needs a full accounting of what occurred and who was involved. Through its investigation, the Committee seeks to ensure that government officials are never in a position to abuse the public trust by depriving Americans of their Constitutional right to participate in our democracy, regardless of their political beliefs. This is the only way to restore confidence in the IRS.

¹⁵ Briefing by IRS staff to Committee staff (Feb. 24, 2012); see Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov’t Reform, to Lois Lerner, IRS (May 14, 2013).

¹⁶ E-mail from Ruth Madrigal, Dep’t of the Treasury, to Victoria Judson et al., IRS (June 14, 2012). [IRSR 305906]

¹⁷ E-mail from Nancy Marks, IRS, to Lois Lerner, Holly Paz, & David Fish, IRS (Mar. 29, 2013). [IRSR 190611]

¹⁸ *Id.*

¹⁹ E-mail from Lois Lerner, IRS, to Nancy Marks, Holly Paz, & David Fish, IRS (Apr. 1, 2013). [IRSR 190611]

²⁰ See, e.g., E-mail from Lois Lerner, IRS, to Michelle Eldridge et al., IRS (Apr. 23, 2013). [IRSR 196295]; E-mail from Nikole Flax, IRS, to Lois Lerner, IRS (Apr. 23, 2013). [IRSR 189013]

²¹ “Not even a smidgeon of corruption”: Obama downplays IRS, other scandals, FOX NEWS, Feb. 3, 2014.

III. Background: IRS Targeting and Lois Lerner's Involvement

In February 2012, the Committee received complaints from several congressional offices alleging that the IRS was delaying the approval of conservative-oriented organizations for tax-exempt status. On February 17, 2012, Committee staff requested a briefing from the IRS about this matter. On February 24, 2012, Lerner and other IRS officials provided the Committee staff with an informal briefing. The Committee continued to receive complaints of disparate treatment by the IRS EO office, and the matter continued to garner media attention.²² On March 27, 2012, the Oversight and Government Reform Committee sent Lerner a joint letter requesting information about development letters that the IRS sent several applicants for tax-exempt status. In response, Lerner participated in a briefing with Committee staff on April 4, 2012. She also sent two letters to the Committee, dated April 26, 2012, and May 4, 2012, in response to the Committee's March 27, 2012 letter. Lerner's responses largely focused on rules, regulations, and IRS processes for evaluating applications for tax-exempt status. In the course of responding to the Committee's request for information, Lerner made several false statements, which are discussed below in greater detail.

A. Lerner's False Statements to the Committee

During the February 24, 2012, briefing, Committee staff asked Lerner whether the criteria for evaluating tax-exempt applications had changed at any point. Lerner responded that the criteria had not changed. In fact, they had. According to the Treasury Inspector General for Tax Administration (TIGTA), in late June 2011, Lerner directed that the criteria used to identify applications be changed.²³ **This was the first time Lerner made a false or misleading statement during the Committee's investigation.**

On March 1, 2012, the Committee requested that TIGTA begin investigating the IRS process for evaluating tax-exempt applications. Committee staff and TIGTA met on March 8, 2012 to discuss the scope of TIGTA's investigation. TIGTA's investigation commenced immediately and proceeded concurrently with the Committee's investigation.

During another briefing on April 4, 2012, Lerner told Committee staff that the information the IRS was requesting in follow-up letters to conservative-leaning groups—which, in some cases, included a complete list of donors and their respective contributions—was not out

²² See, e.g., Janie Lorber, *IRS Oversight Reignites Tea Party Ire: Agency's Already Controversial Role is in Dispute After Questionnaires Sent to Conservative Groups*, ROLL CALL, Mar. 8, 2012, available at http://www.rollcall.com/issues/57_106/IRS-Oversight-Reignites-Tea-Party-Ire-212969-1.html; Susan Jones, *IRS Accused of 'Intimidation Campaign' Against Tea Party Groups*, CNSNEWS.COM, Mar. 7, 2012, <http://cnsnews.com/news/article/irs-accused-intimidation-campaign-against-tea-party-groups>; Perry Chiaramonte, *Numerous Tea Party Chapters Claim IRS Attempts to Sabotage Nonprofit Status*, FOX NEWS, Feb. 28, 2012, <http://www.foxnews.com/politics/2012/02/28/numerous-tea-party-chapters-claim-irs-attempting-to-sabotage-non-profit-status/>.

²³ Briefing by IRS staff to Committee staff (May 13, 2013); Treasury Inspector Gen. for Tax Admin., *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 2013) (2013-10-053), at 7, available at <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf> [hereinafter TIGTA Audit Rpt.].

of the ordinary. Moreover, on April 26, 2012, in Lerner's first written response to the Committee's request for information, Lerner wrote that the follow-up letters to conservative applicants were "in the ordinary course of the application process to obtain the information as the IRS deems it necessary to make a determination whether the organization meets the legal requirements for tax-exempt status."²⁴

In fact, the scope of the information that EO requested from conservative groups was extraordinary. At a briefing on May 13, 2013, IRS officials, including Nikole Flax, the IRS Commissioner's Chief of Staff, could not identify any other instance in the agency's history in which the IRS asked groups for a complete list of donors with corresponding amounts. **These marked the second and third times Lerner made a false or misleading statement during the Committee's investigation.**

On May 4, 2012, in her second written response to the Committee, Lerner justified the extraordinary requests for additional information from conservative applicants for tax-exempt status.²⁵ Among other things, Lerner stated, "the requests for information . . . are not beyond the scope of Form 1024 [the application for recognition under section 501(c)(4)]."²⁶

According to TIGTA, however, at some point in May 2012, the IRS identified seven types of information, including requests for donor information, which it had inappropriately requested from conservative groups. In fact, according to the TIGTA report, Lerner had received a list of these unprecedented questions on April 25, 2012—more than one week before she sent a response letter to the Committee defending the additional scrutiny applied by EO to certain applicants. **Lerner's statement about the information requests was the fourth time she made a false or misleading statement during the Committee's investigation.**

During the May 10, 2013, American Bar Association (ABA) tax conference, Lerner revealed, through a question she planted with an audience member,²⁷ that the IRS knew that certain conservative groups had in fact been targeted for additional scrutiny.²⁸ She blamed the inappropriate actions of the IRS on "line people" in Cincinnati. She stated:

²⁴ Letter from Lois G. Lerner, Director, Exempt Orgs., IRS, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 26, 2012).

²⁵ Letter from Lois G. Lerner, Director, Exempt Orgs., IRS, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (May 4, 2012).

²⁶ *Id.* at 1.

²⁷ *Hearing on the IRS Targeting Conservative Groups: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Rep. Nunes); Bernie Becker, *Question that Revealed IRS Scandal was Planted, Chief Admits*, THE HILL, May 17, 2013, available at <http://thehill.com/blogs/on-the-money/domestic-taxes/150878-question-that-revealed-irs-scandal-was-planted-chief-admits>; Abby Phillip, *IRS Planted Question About Tax Exempt Groups*, ABC NEWS, May 17, 2013, <http://abcnews.go.com/blogs/politics/2013/05/irs-planted-question-about-tax-exempt-groups/>.

²⁸ John D. McKinnon & Corey Boles, *IRS Apologizes for Scrutiny of Conservative Groups*, WALL ST. J., May 10, 2013, available at <http://online.wsj.com/news/articles/SB10001424127887323744604578474983310370360>; Jonathan Weisman, *IRS Apologizes to Tea Party Groups Over Audits of Applications for Tax Exemption*, N.Y. TIMES, May 10, 2013; Abram Brown, *IRS, to Tea Party: Sorry We Targeted You & Your Tax Status*, FORBES, May 10, 2013, available at <http://www.forbes.com/sites/abrambrown/2013/05/10/irs-to-tea-party-were-sorry-we-targeted-your-taxes/>.

So our line people in Cincinnati who handled the applications did what we call centralization of these cases. They centralized work on these in one particular group. . . . However, in these cases, the way they did the centralization was not so fine. Instead of referring to the cases as advocacy cases, they actually used case names on this list. They used names like Tea Party or Patriots and they selected cases simply because the applications had those names in the title. **That was wrong, that was absolutely incorrect, insensitive, and inappropriate — that’s not how we go about selecting cases for further review. We don’t select for review because they have a particular name.**²⁹

This revelation occurred two days after members of the House Ways and Means Oversight Subcommittee on May 8, 2013, had asked Lerner for an update on the IRS’s internal investigation into allegations of improper targeting at a hearing.³⁰ During the hearing, she declined to answer and directed Members to questionnaires on the IRS website. Lerner’s failure to disclose relevant information to the House Ways and Means Committee—opting instead to leak the damaging information during an obscure conference—was the first in a series of attempts to obstruct the congressional investigation into targeting of conservative groups.

B. The Events of May 14, 2013

Three significant events occurred on May 14, 2013. First, TIGTA released its final audit report, finding that the IRS used inappropriate criteria and politicized the process to evaluate organizations for 501(c)(4) tax-exempt status.³¹ Specifically, TIGTA found that beginning in early 2010, the IRS used inappropriate criteria to target certain groups based on their names and political positions.³² According to the report, “ineffective management” allowed the development and use of inappropriate criteria for more than 18 months.³³ The IRS’s actions also resulted in “substantial delays in processing certain applications.”³⁴ TIGTA found that the IRS delayed beginning work on a majority of targeted cases for 13 months.³⁵ The IRS also sent follow-up requests for additional information to targeted organizations. During its audit, TIGTA “determined [these follow-up requests] to be unnecessary for 98 (58 percent) of 170 organizations” that received the requests.³⁶

Second, the Department of Justice announced that it had launched an FBI investigation into potential criminal violations in connection with the targeting of conservative tax-exempt

²⁹ Rick Hasen, *Transcript of Lois Lerner’s Remarks at Tax Meeting Sparking IRS Controversy*, ELECTION LAW BLOG (May 11, 2013, 7:37AM) <http://electionlawblog.org/?p=50160> (emphasis added).

³⁰ *Hearing on the Oversight of Tax-Exempt Orgs.: Hearing before the H. Comm. on Ways & Means, Subcomm. on Oversight*, 113th Cong. (2013).

³¹ TIGTA Audit Rpt., *supra* note 23.

³² *Id.* at 6.

³³ *Id.* at 12.

³⁴ *Id.* at 5.

³⁵ *Id.* at 14.

³⁶ *Id.* at 18.

organizations.³⁷ Despite this announcement, FBI Director Robert Mueller was unable to provide even the most basic facts about the status of the FBI's investigation when he testified before Congress on June 13, 2013.³⁸ He testified a month after the Attorney General announced the FBI's investigation, calling the matter "outrageous and unacceptable."³⁹ Chairman Issa and Chairman Jordan wrote to incoming FBI Director James B. Comey on September 6, 2013, with questions about the Bureau's progress in undertaking its investigation into the findings of the May 14, 2013, TIGTA targeting report.⁴⁰ While the FBI responded to the Committee's request on October 31, 2013, it failed to produce any documents in response to the Committee's request and has refused to provide briefings on related issues. Chairman Issa and Chairman Jordan wrote to Director Comey again on December 2, requesting documents and information relating to the Bureau's response to the Committee's September 6 letter.⁴¹ To date, the Bureau has responded with scant information, leaving open the possibility the Committee will have to explore other options to compel DOJ into providing the materials requested.⁴²

Third, Chairman Issa and Chairman Jordan sent a letter to Lerner outlining each instance that she provided false or misleading information to the Committee. The letter also pointed out Lerner's failure to be candid and forthright regarding the IRS's internal review and subsequent findings related to targeting of conservative-oriented organizations. The Chairmen's letter stated:

Moreover, despite repeated questions from the Committee over a year ago and despite your intimate knowledge of the situation, you failed to inform the Committee of IRS's plan, developed in early 2010, to single out conservative groups and how that plan changed over time. You also failed to inform the Committee that IRS launched its own internal review of this matter in late March 2012, or that the internal review was completed on May 3, 2012, finding significant problems in the review process and a substantial bias against conservative groups. At no point did you or anyone else at IRS inform Congress of the results of these findings.⁴³

³⁷ *Transcript: Holder on IRS, AP, Civil Liberties, Boston*, WALL STREET J. BLOG (May 14, 2013, 4:51PM), <http://blogs.wsj.com/washwire/2013/05/14/transcript-holder-on-irs-ap-civil-liberties-boston/>; Rachel Weiner, *Holder Has Ordered IRS Investigation*, WASH. POST, May 14, 2013, available at <http://www.washingtonpost.com/blogs/post-politics/wp/2013/05/14/holder-has-ordered-irs-investigation/> [hereinafter Weiner].

³⁸ *Hearing on the Federal Bureau of Investigation: Hearing before the H. Comm. on the Judiciary*, 113th Cong. (2013) (question and answer with Rep. Jordan).

³⁹ Weiner, *supra* note 37.

⁴⁰ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, & Hon. Jim Jordan, Chairman, Subcomm. on Econ. Growth, Job Creation & Reg. Affairs, to Hon. James B. Comey, Director, Federal Bureau of Investigation (Sept. 6, 2013).

⁴¹ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, & Hon. Jim Jordan, Chairman, Subcomm. on Econ. Growth, Job Creation & Reg. Affairs, to Hon. James B. Comey, Director, Federal Bureau of Investigation (Dec. 2, 2013).

⁴² *See id.* at 3.

⁴³ Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, & Hon. Jim Jordan, Chairman, H. Subcomm. on Econ. Growth, Job Creation, & Regulatory Affairs, to Lois G. Lerner, Director, Exempt Orgs., IRS (May 14, 2013).

The letter requested additional documents and communications between Lerner and her colleagues, and urged the IRS and Lerner to cooperate with the Committee's efforts to uncover the extent of the targeting of conservative groups. Lerner did not cooperate.

II. Lerner's Failed Assertion of her Fifth Amendment Privilege

In advance of a May 22, 2013 hearing regarding TIGTA's report, the Committee formally invited Lerner to testify. Other witnesses invited to appear were Neal S. Wolin, Deputy Treasury Secretary, Douglas Shulman, former IRS Commissioner, and J. Russell George, the Treasury Inspector General for Tax Administration. Wolin, Schulman, and George all agreed to appear voluntarily. Lerner's testimony was necessary to understand the rationale for and extent of the IRS's practice of targeting certain tax-exempt groups for heightened scrutiny. By then, it was well known that Lerner had extensive knowledge of the scheme to target conservative groups. In addition to the fact that she was director of the Exempt Organizations Division, the Committee believed, as set forth above, that Lerner made numerous misrepresentations of fact related to the targeting program. The Committee's hearing intended to answer important questions and set the record straight about the IRS's handling of tax-exempt applications.

However, prior to the hearing, Lerner's attorney informed Committee staff that she would assert her Fifth Amendment privilege⁴⁴—a refusal to appear before the Committee voluntarily to answer questions. As a result, the Chairman issued a subpoena on May 17, 2013, to compel her testimony at the Committee hearing on May 22, 2013. On May 20, 2013, William Taylor III, representing Lerner, sent the Chairman a letter advising that Lerner intended to invoke her Fifth Amendment privilege against self incrimination.⁴⁵ For this reason, Taylor requested that Lerner be excused from appearing.⁴⁶ On May 21, 2013, the Chairman responded to Taylor's letter, informing him that her attendance at the hearing was necessary due to "the possibility that [Lerner] will waive or choose not to assert the privilege as to at least certain questions of interest to the Committee."⁴⁷ The subpoena that compelled her appearance remained in place.⁴⁸

A. Lerner Gave a Voluntary Statement at the May 22, 2013 Hearing

On May 22, 2013, Lerner appeared with the other invited witnesses. The events that followed are now well known. Rather than properly asserting her Fifth Amendment privilege, Lerner, in the opinion of the Committee, the House General Counsel, and many legal scholars, waived her privilege by making a voluntary statement of innocence. Instead of remaining silent and declining to answer questions, with the exception of stating her name, Lerner read a lengthy statement professing her innocence:

⁴⁴ Letter from Mr. William W. Taylor, Partner, Zuckerman Spaeder LLP, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (May 20, 2013).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Letter from Hon. Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform to Mr. William W. Taylor, III, Zuckerman Spaeder, May 21, 2013.

⁴⁸ *Id.*

Good morning, Mr. Chairman and members of the Committee. My name is Lois Lerner, and I'm the Director of Exempt Organizations at the Internal Revenue Service.

I have been a government employee for over 34 years. I initially practiced law at the Department of Justice and later at the Federal Election Commission. In 2001, I became — I moved to the IRS to work in the Exempt Organizations office, and in 2006, I was promoted to be the Director of that office.

* * *

On May 14th, the Treasury inspector general released a report finding that the Exempt Organizations field office in Cincinnati, Ohio, used inappropriate criteria to identify for further review applications for organizations that planned to engage in political activity which may mean that they did not qualify for tax exemption. On that same day, the Department of Justice launched an investigation into the matters described in the inspector general's report. In addition, members of this committee have accused me of providing false information when I responded to questions about the IRS processing of applications for tax exemption.

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.

And while I would very much like to answer the Committee's questions today, I've been advised by my counsel to assert my constitutional right not to testify or answer questions related to the subject matter of this hearing. After very careful consideration, I have decided to follow my counsel's advice and not testify or answer any of the questions today.

Because I'm asserting my right not to testify, I know that some people will assume that I've done something wrong. I have not. One of the basic functions of the Fifth Amendment is to protect innocent individuals, and that is the protection I'm invoking today. Thank you.⁴⁹

B. Lerner Authenticated a Document during the Hearing

Prior to Lerner's statement, Ranking Member Elijah E. Cummings sought to introduce into the record a document containing Lerner's responses to questions posed by TIGTA. After

⁴⁹ *Hearing on the IRS: Targeting Americans for Their Political Beliefs: Hearing before the H. Comm. on Oversight & Gov't Reform, 113th Cong. 22 (2013) (H. Rept. 113-33) (statement of Lois Lerner, Director, Exempt Orgs., IRS) [hereinafter May 22, 2013 IRS Hearing] (emphasis added).*

her statement and at the request of the Chairman, Lerner reviewed and authenticated the document offered into the record by the Ranking Member.⁵⁰ In response to questions from Chairman Issa, she stated:

Chairman Issa: Ms. Lerner, earlier the ranking member made me aware of a response we have that is purported to come from you in regards to questions that the IG asked during his investigation. Can we have you authenticate simply the questions and answers previously given to the inspector general?

Ms. Lerner: I don't know what that is. I would have to look at it.

Chairman Issa: Okay. Would you please make it available to the witness?

Ms. Lerner: This appears to be my response.

Chairman Issa: So it's your testimony that as far as your recollection, that is your response?

Ms. Lerner: That's correct.⁵¹

Next, the Chairman asked Lerner to reconsider her position on testifying and stated that he believed she had waived her Fifth Amendment privilege by giving an opening statement and authenticating a document.⁵² Lerner responded: "I will not answer any questions or testify about the subject matter of this Committee's meeting."⁵³

C. Representative Gowdy's Statement Regarding Lerner's Waiver

After Lerner refused to answer any questions, Representative Trey Gowdy sought recognition at the hearing. He stated:

Mr. Issa, Mr. Cummings just said we should run this like a courtroom, and I agree with him. 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.⁵⁴

⁵⁰ *Id.* at 23 (statement of Lois Lerner, Director, Exempt Orgs., IRS).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Shortly after Representative Gowdy's comments, Chairman Issa excused Lerner, reserving the option to recall her at a later date. Chairman Issa stated that Lerner was excused "subject to recall after we seek specific counsel on the questions of whether or not the constitutional right of the Fifth Amendment has been properly waived."⁵⁵ Rather than adjourning the hearing on May 22, 2013, the Chairman recessed it, in order to reconvene at a later date after a thorough analysis of Lerner's actions.

D. Committee Business Meeting to Vote on Whether Lerner Waived Her Fifth Amendment Privilege

On June 28, 2013, the Chairman convened a business meeting to allow the Committee to vote on whether Lerner waived her Fifth Amendment privilege. The Chairman made clear that he recessed the May 22, 2013 hearing so as not to "make a quick or uninformed decision."⁵⁶ He took more than five weeks to review the circumstances, facts, and legal arguments related to Lerner's voluntary statements.⁵⁷ The Chairman reviewed advice from the Office of General Counsel of the U.S. House of Representatives, arguments presented by Lerner's counsel, and the relevant legal precedent.⁵⁸ After much deliberation, he determined that Lerner waived her constitutional privilege when she made a voluntary opening statement that involved several specific denials of various allegations.⁵⁹ Chairman Issa stated:

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 she previously had provided -- sorry -- 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 22.⁶⁰

Lerner's counsel disagreed with the Chairman's assessment that his client waived her constitutional privilege.⁶¹ In a letter dated May 30, 2013, Lerner's counsel argued that she had

⁵⁵ *Id.* at 24.

⁵⁶ Business Meeting, H. Comm. on Oversight & Gov't Reform (June 28, 2013).

⁵⁷ *Id.*

⁵⁸ *Id.* at 5.

⁵⁹ *Id.*

⁶⁰ *Id.* (emphasis added)

⁶¹ Letter from William W. Taylor, III, Zuckerman Spaeder LLP, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (May 30, 2013) [hereinafter May 30, 2013 Letter].

not waived the privilege.⁶² Specifically, he argued that a witness compelled to appear and answer questions does not waive her Fifth Amendment privilege by giving testimony proclaiming her innocence.⁶³ He cited the example of *Isaacs v. United States*, in which a witness subpoenaed to appear before a grand jury testified that he was not guilty of any crime while at the same time invoking his Fifth Amendment privilege.⁶⁴ The U.S. Court of Appeals for the Eighth Circuit rejected the government's waiver argument, holding that the witness's "claim of innocence . . . did not preclude him from relying upon his Constitutional privilege."⁶⁵

Lerner's lawyer further argued that the law is no different for witnesses who proclaim their innocence before a congressional committee.⁶⁶ In *United States v. Haag*, a witness subpoenaed to appear before a Senate committee investigating links to the Communist Party testified that she had "never engaged in espionage," but invoked her Fifth Amendment privilege in declining to answer questions related to her alleged involvement with the Communist Party.⁶⁷ The U.S. District Court for the District of Columbia held that the witness did not waive her Fifth Amendment privilege.⁶⁸ In *United States v. Costello*, a witness subpoenaed to appear before a Senate committee investigating his involvement in a major crime syndicate testified that he had "always upheld the Constitution and the laws" and provided testimony on his assets, but invoked his Fifth Amendment privilege in declining to answer questions related to his net worth and indebtedness.⁶⁹ The U.S. Court of Appeals for the Second Circuit held that the witness did not waive his constitutional privilege.⁷⁰

The cases cited by Lerner's lawyer do not apply to the facts in this matter. The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."⁷¹ By choosing to give an opening statement, Lerner cannot then claim the Fifth Amendment privilege to avoid answering questions on the subject matter contained in that statement.⁷² It is well established that a witness "may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details."⁷³ In such a case, "[t]he privilege is waived for the matters to which the witness testifies. . . ."⁷⁴

Furthermore, a witness may waive the privilege by voluntarily giving exculpatory testimony. In *Brown v. United States*, for example, the Supreme Court held that "a denial of any activities that might provide a basis for prosecution" waived the privilege.⁷⁵ The Court

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 256 F.2d 654, 656 (8th Cir. 1958).

⁶⁵ *Id.* at 661.

⁶⁶ May 30, 2013 Letter, *supra* note 61.

⁶⁷ 142 F. Supp. 667-669 (D.D.C. 1956).

⁶⁸ *Id.* at 671-72.

⁶⁹ 198 F.2d 200, 202 (2d Cir. 1952).

⁷⁰ *Id.* at 202-03.

⁷¹ U.S. CONST., amend. V.

⁷² See *Brown v. United States*, 356 U.S. 148 (1958).

⁷³ *Mitchell v. United States*, 526 U.S. 314, 321 (1999) ("A witness may not pick and choose what aspects of a particular subject to discuss without casting doubt on the trustworthiness of the statements and diminishing the integrity of the factual inquiry.").

⁷⁴ *Id.*

⁷⁵ *Brown*, 356 U.S. at 154-55.

analogized the situation to one in which a criminal defendant takes the stand and testifies on his own behalf, and then attempts to invoke the Fifth Amendment on cross-examination.⁷⁶

Even though the Committee's subpoena compelled her to appear at the hearing, Lerner made an entirely voluntary statement. She denied breaking any laws, she denied breaking any IRS rules, she denied providing false information to Congress—in fact, she denied any wrongdoing whatsoever. Then she refused to answer questions posed by the Committee Members and exited the hearing.

On the morning of June 28, 2013, the Committee convened a business meeting to consider a resolution finding that Lois Lerner waived her Fifth Amendment privilege against self-incrimination when she made a voluntary opening statement at the Committee's May 22, 2013, hearing entitled "The IRS: Targeting Americans for Their Political Beliefs."⁷⁷ After lengthy debate, the Committee approved the resolution by a vote of 22 ayes to 17 nays.⁷⁸

E. Lois Lerner Continues to Defy the Committee's Subpoena

Following the Committee's resolution that Lerner waived her Fifth Amendment privilege, Chairman Issa recalled her to testify before the Committee. On February 25, 2014, Chairman Issa sent a letter to Lerner's attorney advising him that the May 22, 2013 hearing would reconvene on March 5, 2014.⁷⁹ The letter also advised that the subpoena that compelled Lerner to appear on May 22, 2013 remained in effect.⁸⁰

Because of the possibility that she would choose to answer some or all of the Committee's questions, Chairman Issa required Lerner to appear in person on March 5, 2014. When the May 22, 2013 hearing, entitled "The IRS: Targeting Americans for Their Political Beliefs," was reconvened, Chairman Issa noted that the Committee might hold Lois Lerner in contempt of Congress if she continued to refuse to answer questions, based on the fact that the Committee had resolved that Lerner waived her Fifth Amendment privilege.

Despite the fact that Lerner was compelled by a duly issued subpoena and had been warned by Chairman Issa of the possibility of contempt proceedings, and despite the Committee having previously voted that she waived her Fifth Amendment privilege, Lerner continued to assert her Fifth Amendment privilege, and refused to answer any questions posed by Members of the Committee. Chairman Issa subsequently adjourned the hearing and excused Lerner from the hearing room. At that point, it was clear Lerner would not comply with the Committee's subpoena for testimony.

⁷⁶ *Id.*

⁷⁷ Business Meeting, H. Comm. on Oversight & Gov't Reform (June 28, 2013).

⁷⁸ *Id.* at 65-66.

⁷⁹ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. On Oversight & Gov't Reform to William W. Taylor III, Zuckerman Spaeder LLP (Feb. 25, 2014).

⁸⁰ *Id.*

Following Lerner's appearance before the Committee on March 5, 2014, her lawyer revealed during a press conference that she had sat for an interview with Department of Justice prosecutors and TIGTA staff within the past six months.⁸¹ According to the lawyer, the interview was unconditional and not under oath, and prosecutors did not grant her immunity.⁸² This interview weakens the credibility of her assertion of the Fifth Amendment privilege before the Committee. More broadly, it calls into question the basis for the assertion in the first place.

III. Lerner's Testimony Is Critical to the Committee's Investigation

Prior to Lerner's attempted assertion of her Fifth Amendment privilege, the Committee believed her testimony would advance the investigation of the targeting of tax-exempt conservative-oriented organizations. The following facts supported the Committee's assessment of the probative value of Lerner's testimony:

- **Lerner was head of the IRS Exempt Organization's division, where the targeting of conservative groups occurred.** She managed the two IRS divisions most involved with the targeting – the EO Determinations Unit in Cincinnati and the EO Technical Unit in Washington, D.C.
- **Lerner has not provided any testimony since the release of TIGTA's audit.** Committee staff have conducted transcribed interviews of numerous IRS officials in Cincinnati and Washington. Without testimony from Lois Lerner, however, the Committee will never be able to fully understand the IRS's actions. Lerner has unique, first-hand knowledge of how and why the IRS decided to scrutinize conservative applicants.
- **Acting Commissioner Daniel Werfel did not interview Lerner as part of his ongoing internal review.** In finding no intentional wrongdoing associated with the targeting of conservative groups, Werfel never spoke to Lois Lerner. Furthermore, Werfel lacks the power to require Lerner to provide answers.
- **Lerner's signature appears on harassing letters the IRS sent to targeted groups.** As part of the "development" of the cases, the IRS sent harassing letters to the targeted organizations, asking intrusive questions consistent with guidance from senior IRS officials in Washington. Letters sent under Lois Lerner's signature included inappropriate questions, including requests for donor information.
- **Lerner appears to have edited the TIGTA report.** According to documents provided by the IRS, Lerner was the custodian of a draft version of the TIGTA report that contained tracked changes and written edits that became part of the final report.

⁸¹ John D. McKinnon, *Former IRS Official Lerner Gave Interview to DOJ*, WALL ST. J., Mar. 6, 2014, <http://blogs.wsj.com/washwire/2014/03/06/former-irs-official-lerner-gave-interview-to-doj/>.

⁸² *Id.*

In addition, many of Lerner's voluntary statements from May 22, 2013, have been refuted by evidence obtained by the Committee. Contrary to her statement that she did not do "anything wrong," the Committee knows that Lerner was intrinsically involved in the IRS's inappropriate treatment of tax-exempt applicants. Contrary to Lerner's plea that she has not "violated any IRS rules or regulations," the Committee has learned that Lerner transmitted sensitive taxpayer information to her non-official e-mail account in breach of IRS rules. Contrary to Lerner's statement that she has not provided "false information to this or any other congressional committee," the Committee has confirmed that Lerner made four false and misleading statements about the IRS's screening criteria and information requests for tax-exempt applicants.

In the months following the May 22, 2013 hearing, and after the receipt of additional documents from IRS, it is clear that Lerner's testimony is *essential* to understanding the truth regarding the targeting of certain groups. Subsequent to Lois Lerner's Fifth Amendment waiver during a hearing before the Committee on May 22, 2013, Committee staff learned through both additional transcribed interviews and review of additional documents that she had a greater involvement in targeting tax-exempt organizations than was previously understood.

A. Lerner's Post-Citizens United Rhetoric

After the Supreme Court decided the *Citizens United v. Federal Election Commission* case, holding that government of restrictions of corporations and associations' expenditures on political activities was unconstitutional,⁸³ the IRS faced mounting pressure from the public to heighten scrutiny of applications for tax-exempt status. IRS officials in Washington played a key role in the disparate treatment of conservative groups. E-mails obtained by the Committee show that senior-level IRS officials in Washington, including Lerner, were well aware of the pressure the agency faced, and actively sought to scrutinize applications from certain conservative-leaning groups in response to public pressure.

On the same day of the *Citizens United* decision, White House Press Secretary Robert Gibbs warned that Americans "should be worried that special interest groups that have already clouded the legislative process are soon going to get involved in an even more active way in doing the same thing in electing men and women to serve in Congress."⁸⁴ On January 23, 2010, President Obama proclaimed that the *Citizens United* "ruling strikes at our democracy itself" and "opens the floodgates for an unlimited amount of special interest money into our democracy."⁸⁵ Less than a week later, the President publicly criticized the decision during his State of the Union address. The President declared:

With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit

⁸³ *Citizens United v. Federal Election Comm.*, 558 U.S. 310 (2010).

⁸⁴ The White House, Briefing by White House Press Secretary Robert Gibbs and PERAB Chief Economist Austan Goolsbee (Jan. 21, 2010).

⁸⁵ The White House, Weekly Address: President Obama Vows to Continue Standing Up to the Special Interest on Behalf of the American People (Jan. 23, 2010).

in our elections. I don't think American elections should be bankrolled by America's most powerful interests, or worse by foreign entities. They should be decided by the American people.⁸⁶

Over the next several months, the President continued his public tirade against the decision, so-called "secret money" in politics, and the emergence of conservative grassroots groups. In a July 2010 White House Rose Garden speech, the President proclaimed:

Because of the Supreme Court's decision earlier this year in the *Citizens United* case, big corporations . . . can buy millions of dollars worth of TV ads — and worst of all, they don't even have to reveal who's actually paying for the ads. . . . These shadow groups are already forming and building war chests of tens of millions of dollars to influence the fall elections.⁸⁷

During an August 2010 campaign event, the President declared:

Right now all around this country there are groups with harmless-sounding names like Americans for Prosperity, who are running millions of dollars of ads against Democratic candidates all across the country. And they don't have to say who exactly the Americans for Prosperity are. You don't know if it's a foreign-controlled corporation. You don't know if it's a big oil company, or a big bank. You don't know if it's a insurance [*sic*] company that wants to see some of the provisions in health reform repealed because it's good for their bottom line, even if it's not good for the American people.⁸⁸

Similarly, while speaking at a September 2010 campaign event, the President stated:

Right now, all across this country, special interests are running millions of dollars of attack ads against Democratic candidates. And the reason for this is last year's Supreme Court decision in *Citizens United*, which basically says that special interests can gather up millions of dollars — they are now allowed to spend as much as they want without limit, and they don't have to ever reveal who's paying for these ads.⁸⁹

These public statements criticizing conservative-leaning organizations in the aftermath of the Supreme Court's *Citizens United* opinion affected how the IRS identified and evaluated applications. In September 2010, *EO Tax Journal* published an article critical of certain tax-exempt organizations which purportedly engaged in political activity.⁹⁰ The article—published several months after the *Citizens United* opinion and during the President's tirade against the

⁸⁶ The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).

⁸⁷ The White House, Remarks by the President on the DISCLOSE ACT (July 26, 2010).

⁸⁸ The White House, Remarks by the President at a DNC Finance Event in Austin, Texas (Aug. 9, 2010).

⁸⁹ The White House, Remarks by the President at Finance Reception for Congressman Sestak (Sept. 20, 2010).

⁹⁰ E-mail from Paul Streckfus to Paul Streckfus (Sept. 15, 2010) (EO Tax Journal 2010-130) [IRSR 191032-33].

decision—argued that tax-exempt groups, which participate in the political process, are abusing their status.⁹¹ Lerner sent the article to several IRS officials, including her senior advisor, Judy Kindell. Lerner stated “I’m really thinking we need to do a c4 project next year.”⁹²

Kindell agreed with Lerner that the IRS should focus special attention on certain tax-exempt groups.⁹³ Kindell conveyed her belief that tax-exempt groups participating in political activities should not qualify as 501(c)(4) groups.⁹⁴ Lerner agreed with her senior advisor, explaining in response that those tax-exempt groups which support political activity should be subject to scrutiny from the IRS.⁹⁵ Lerner wrote:⁹⁶

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 1:51 PM
To: Kindell Judith E; Chasin Cheryl D; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

I'm not saying this is correct—but there is a perception out there that that is what is happening. My guess is most who conduct political activity never pay the tax on the activity and we surely should be looking at that. Wouldn't that be a surprising turn of events. My object is not to look for political activity—more to see whether self-declared c4s are really acting like c4s. Then we'll move on to c5,c6,c7—it will fill up the work plan forever!

Lois G. Lerner
 Director, Exempt Organizations

Soon thereafter, Cheryl Chasin, an IRS official within the Exempt Organizations division, replied to Lerner with the names of several organizations which, in Chasin’s opinion, were engaging in political activity.⁹⁷ In turn, Lerner replied that the IRS officials “need to have a plan” to handle the applications from certain tax-exempt groups.⁹⁸ Lerner wrote “We need to be cautious so it isn’t a *per se* political project.”⁹⁹

⁹¹ *Id.*

⁹² E-mail from Lois Lerner, IRS, to Cheryl Chasin et al., IRS (Sept. 15, 2010). [IRSR 191032-33].

⁹³ E-mail from Judith Kindell, IRS, to Lois Lerner, Cheryl Chasin, & Laurice Ghougasian, IRS (Sept. 15, 2010) [IRSR 191032].

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ E-mail from Cheryl Chasin, IRS, to Lois Lerner, Judith Kindell, & Laurice Ghougasian, IRS (Sept. 15, 2010). [IRSR 191030]

⁹⁸ E-mail from Lois Lerner, IRS, to Cheryl Chasin, Judith Kindell, & Laurice Ghougasian, IRS (Sept. 16, 2010). [IRSR 191030]

⁹⁹ *Id.*

From: Lerner Lois G
Sent: Thursday, September 16, 2010 9:58 AM
To: Chasin Cheryl D; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: Re: EO Tax Journal 2010-130

Ok guys. We need to have a plan. We need to be cautious so it isn't a per se political project. More a c4 project that will look at levels of lobbying and pol. activity along with exempt activity. Cheryl- I assume none of those came in with a 1024?
 Lois G. Lerner-----

In addition to her e-mails critical of applications from certain groups, Lerner publicly criticized the Supreme Court's *Citizens United* opinion.¹⁰⁰ On October 19, 2010, Lerner spoke at an event sponsored by Duke University's Sanford School of Public Policy. At the event, Lerner referenced the political pressure the IRS faced to "fix the problem" of 501(c)(4) groups engaging in political activity.¹⁰¹ She stated:

What happened last year was the Supreme Court – the law kept getting chipped away, chipped away in the federal election arena. The Supreme Court dealt a huge blow, overturning a 100-year old precedent that basically corporations couldn't give directly to political campaigns. And everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it.

They want the IRS to fix the problem. The IRS laws are not set up to fix the problem: (c)(4)s can do straight political activity. They can go out and pay for an ad that says, "Vote for Joe Blow." That's something they can do as long as their primary activity is their (c)(4) activity, which is social welfare.

So everybody is screaming at us right now: 'Fix it now before the election. Can't you see how much these people are spending?' I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can't do anything right now.¹⁰²

Lerner reiterated her views to TIGTA investigators:

The *Citizens United* decision allows corporations to spend freely on elections. Last year, there was a lot of press on 501(c)(4)s being used to funnel money on elections and the IRS was urged to do something about it.¹⁰³

¹⁰⁰ *Citizens United v. Federal Election Comm.*, 558 U.S. 310 (2010).

¹⁰¹ John Sexton, *Lois Lerner Discusses Political Pressure on the IRS in 2010*, BREITBART.COM, Aug. 6, 2013.

¹⁰² See "Lois Lerner Discusses Political Pressure on IRS in 2010," www.youtube.com (last visited Feb. 28, 2013) (transcription by authors).

¹⁰³ Treasury Inspector General for Tax Admin., Memo of Contact (Apr. 5, 2012).

Lerner openly shared her opinion that the Executive Branch needed to take steps to undermine the Supreme Court's decision. Her view was abundantly clear in many instances, including in one when Sharon Light, another senior advisor to Lerner, e-mailed Lerner an article about allegations that unknown conservative donors were influencing U.S. Senate races.¹⁰⁴ The article explained how outside money was making it increasingly difficult for Democrats to remain in the majority in the Senate.¹⁰⁵ Lerner replied: "Perhaps the FEC will save the day."¹⁰⁶

In May 2011, Lerner again commented about her disdain for the *Citizens United* decision.¹⁰⁷ In her view, the decision had a major effect on election laws and, more broadly, the Constitution and democracy going forward.¹⁰⁸ She stated, "The constitutional issue is the big *Citizens United* issue. I'm guessing no one wants that going forward."¹⁰⁹

From:	Lerner Lois G
Sent:	Tuesday, May 17, 2011 10:37 AM
To:	Urban Joseph J
Subject:	Re: BNA - IRS Answers Few Questions Regarding Audits Of Donors Giving to Section 501(c)(4) Groups

The constitutional issue is the big Citizens United issue. I'm guessing no one wants that going forward Lois G. Lerner-----

IRS officials, including Lerner, were acutely aware of criticisms of the political activities of conservative-leaning tax-exempt groups through electronic publications.¹¹⁰ In October 2011, *EO Tax Journal* published a report regarding a letter sent by a group called "Democracy 21" to then-IRS Commissioner Doug Shulman and Lerner.¹¹¹ The letter called on the IRS to investigate certain conservative-leaning tax-exempt groups.¹¹² The IRS Deputy Division Counsel for the Tax Exempt Entities Division, Janine Cook, sent, via e-mail, the report and letter to the Division Counsel, Victoria Judson, calling the matter a "very hot button issue floating around."¹¹³

On several occasions, Lerner received articles from her colleagues that focused on discussions about conservative-leaning groups' political involvement. In March 2012, Cook e-mailed Lerner another *EO Tax Journal* article.¹¹⁴ The article discussed congressional investigations and the IRS's treatment of tax-exempt applicants.¹¹⁵ In response, Lerner stated, "we're going to get creamed."¹¹⁶

¹⁰⁴ Peter Overby, *Democrats Say Anonymous Donors Unfairly Influencing Senate Races*, NAT'L PUBLIC RADIO, July 10, 2012.

¹⁰⁵ *Id.*

¹⁰⁶ E-mail from Lois Lerner, IRS, to Sharon Light, IRS (July 10, 2010). [IRS 179093]

¹⁰⁷ E-mail from Lois Lerner, IRS, to Joseph Urban, IRS (May 17, 2011). [IRSR 196471]

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *See, e.g.*, e-mail from Monice Rosenbaum, IRS, to Kenneth Griffin, IRS (Sept. 30, 2010). [IRSR 15430]

¹¹¹ E-mail from Paul Streckfus to Paul Streckfus (Oct. 3, 2011) (*EO Tax Journal* 2011-163) [IRSR 191032-33].

¹¹² *Id.*

¹¹³ E-mail from Janine Cook, IRS, to Victoria Judson, IRS (Oct. 10, 2011). [IRSR 15433]

¹¹⁴ E-mail from Janine Cook, IRS, to Lois Lerner, IRS (Mar. 2, 2012). [IRSR 56965]

¹¹⁵ *Id.*

¹¹⁶ E-mail from Lois Lerner, IRS, to Janine Cook, IRS (Mar. 2, 2012). [IRSR 56965]

From: Lerner Lois G <Lois.G.Lerner@irs.gov>
Sent: Friday, March 02, 2012 9:20 AM
To: Cook Janine
Subject: RE: Advocacy orgs

If only you could help--we're going to get creamed being able to provide the guidance piece ASAP will be the best--thanks

Lois J. Lerner

Director of Exempt Organizations

In June 2012, Roberta Zarin, Director of the Tax-Exempt and Government Entities Communication and Liaison, forwarded an e-mail to Lerner and her senior advisor, Judy Kindell, about an article published by *Mother Jones* entitled “How Dark-Money Groups Sneak by the Taxman.”¹¹⁷ The article specifically named several conservative-leaning groups, including the American Action Network, Crossroads GPS, Americans for Prosperity, FreedomWorks and Citizens United, and commented negatively on specific methods conservative-leaning groups have purportedly used to influence the political process.¹¹⁸

The *Mother Jones* article caught Lerner’s attention. She forwarded the article to the Director of Examinations, Nanette Downing.¹¹⁹

From: Lerner Lois G
Sent: Wednesday, June 13, 2012 12:48 PM
To: Downing Nanette M
Subject: FW: Mother Jones on (c)(4)s

6103

Lois J. Lerner

Director of Exempt Organizations

Lerner’s e-mail contained confidential tax return information, which was redacted pursuant to 26 U.S.C. § 6103, meaning that Lerner referenced a particular tax-exempt group in connection with the article.¹²⁰

Not long after, in October 2012, Justin Lowe, a tax law specialist, alerted Lerner to yet another article critical of anonymous money allegedly donated to conservative-leaning groups.¹²¹ The article, published by *Politico*, criticized the IRS’s inability to restrain corporate money

¹¹⁷ E-mail from Roberta Zarin, IRS, to Lois Lerner, Joseph Urban, Judith Kindell, Moises Medina, Joseph Grant, Sarah Hall Ingram, Melaney Partner, Holly Paz, David Fish, & Nancy Marks, IRS (June 13, 2012). [IRSR 177479]

¹¹⁸ Gavin Aronsen, *How Dark-Money Groups Sneak by the Taxman*, MOTHER JONES, June 13, 2012, available at <http://www.motherjones.com/mojo/2012/06/dark-money-501c4-irs-social-welfare>.

¹¹⁹ E-mail from Lois Lerner, IRS, to Nanette Downing, IRS (June 13, 2012). [IRSR 177479]

¹²⁰ *Id.*

¹²¹ E-mail from Justin Lowe, IRS, to Roberta Zarin, Lois Lerner, Holly Paz, & Melaney Partner, IRS (Oct. 17, 2012). [IRSR 180728]

donated to conservative-leaning groups.¹²² Lerner's response showed that she believed Congress ought to change the law to prohibit such activity.¹²³ She wrote, "I never understand why they don't go after Congress to change the law."¹²⁴

From: Lerner Lois G
Sent: Wednesday, October 17, 2012 9:28 AM
To: Lowe Justin; Zarin Roberta B; Paz Holly O; Partner Melaney J
Subject: RE: Politico Article on the IRS, Disclosure, and (c)(4)s

I never understand why they don't go after Congress to change the law!

Lois G. Lerner
 Director of Exempt Organizations

In the spring of 2013, the IRS was again facing mounting pressure from congressional leaders – largely on the Democratic side of the aisle – to crack down on certain organizations engaged in political activity. An official with the IRS Criminal Investigations Division testified before the Senate Judiciary Committee's Subcommittee on Crime and Terrorism at a hearing on campaign speech.¹²⁵ An e-mail discussion between Lerner and other IRS officials demonstrates that IRS officials believed that the purpose of the hearing was to discuss the extent to which certain tax-exempt organizations were participating in political activities.¹²⁶ In an e-mail to several top IRS officials, including Nikole Flax, the Chief of Staff to former Acting Commissioner Steve Miller, Lerner stated that the pressure from certain congressional leaders was completely focused on certain 501(c)(4) organizations.¹²⁷ She stated in part: "[D]on't be fooled about how this is being articulated—it is ALL about 501(c)(4) orgs and political activity."¹²⁸

She also explained that her previous boss at the Federal Election Commission, Larry Noble, was now working as the President of Americans for Campaign Reform to "shut these [501(c)(4)s] down."¹²⁹

Lerner's public statements, comments to TIGTA investigators, and candid e-mails to colleagues show that she was aware that Senate Democrats and certain Administration officials were not only aware of, but actively opposed to, the political activities of conservative-oriented groups. Further, she was well aware of the drumbeat that the IRS should crack down on applications from certain tax-exempt groups engaging in political activity.

¹²² Kenneth Vogel & Tarini Parti, *The IRS's 'Feeble' Grip on Political Cash*, POLITICO, Oct. 15, 2012.

¹²³ E-mail from Lois Lerner, IRS, to Justin Lowe, Roberta Zarin, Holly Paz, & Melaney Partner, IRS (Oct. 17, 2012). [IRSR 180728]

¹²⁴ *Id.*

¹²⁵ *Hearing on the Current Issues in Campaign Finance Law Enforcement: Hearing before the S. Comm. on the Judiciary, Subcomm. on Crime & Terrorism*, 113th Cong. (2013).

¹²⁶ E-mail from Lois Lerner, IRS, to Nikole Flax, Suzanne Sinno, Catherine Barre, Scott Landes, Amy Amato, & Jennifer Vozne, IRS (Mar. 27, 2013) [IRSR 188329]

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

B. Lerner's Involvement in the Delay and Scrutiny of Tea Party Applicants

Lerner, along with several senior officials, subjected applications from conservative leaning groups to heightened scrutiny. She established a “multi-tier review” system, which resulted in long delays for certain applications.¹³⁰ Furthermore, according to testimony from Carter Hull, a tax law specialist who retired in the summer of 2013, the IRS still has not approved certain applications.¹³¹

1. “Multi-Tier Review” System

Lerner and her senior advisors closely monitored and actively assisted in evaluating Tea Party cases. In April 2010, Steve Grodnitzky, then-acting manager of EO Technical Group in Washington, directed subordinates to prepare “sensitive case reports” for the Tea Party cases.¹³² These reports summarized the status and progress of the Tea Party test cases, and were eventually presented to Lerner and her senior advisors.

In early 2011, Lerner directed Michael Seto, manager of EO Technical, to place the Tea Party cases through a “multi-tier review.”¹³³ He testified that Lerner “sent [him an] e-mail saying that when these cases need to go through multi-tier review and they will eventually have to go to [Judy Kindell, Lerner’s senior technical advisor] and the Chief Counsel’s office.”¹³⁴

In February 2011, Lerner sent an e-mail to her staff advising them that cases involving Tea Party applicants were “very dangerous,” and something “Counsel and Judy Kindell need to be in on.”¹³⁵ Further, Lerner explained that “Cincy should probably NOT have these cases.”¹³⁶ Holly Paz, Director of the Office of Rulings and Agreements, also wrote to Lerner stating that “He [Carter Hull] reviews info from TPs [taxpayers] correspondence to TPs etc. No decisions are going out of Cincy until we go all the way through the process with the c3 and c4 cases here.”¹³⁷

In a transcribed interview with Committee staff, Carter Hull testified that during the winter of 2010-2011, Lerner’s senior advisor told him the Chief Counsel’s office would need to review the Tea Party applications.¹³⁸ This review process was an unusual departure from standard procedure.¹³⁹ He told Committee staff that during his 48 years with the IRS, he never

¹³⁰ Transcribed Interview of Michael Seto, IRS, in Wash., D.C., at 34 (July 11, 2013).

¹³¹ Transcribed Interview of Carter Hull, IRS, in Wash., D.C., at 53 (June 14, 2013).

¹³² Email from Steven Grodnitzky, IRS, to Ronald J. Shoemaker & Cindy M. Thomas, IRS (Apr. 5, 2010). [Muthert 6]

¹³³ Transcribed Interview of Michael Seto, IRS, in Wash., D.C., at 34 (July 11, 2013).

¹³⁴ *Id.*

¹³⁵ E-mail from Lois Lerner, IRS, to Michael Seto, IRS (Feb. 1, 2011). [IRSR 161810-11]

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Transcribed Interview of Carter Hull, IRS, at 44-45 (June 14, 2013).

¹³⁹ *Id.*

previously sent a case to Lerner's senior advisor and did not remember ever sending a case to the Chief Counsel for review.¹⁴⁰

In April 2011, Lerner's senior advisor, Kindell, wrote to Lerner and Holly Paz explaining that she instructed tax law specialists Carter Hull and Elizabeth Kastenberg to coordinate with the Chief Counsel's office to work through two specific Tea Party cases.¹⁴¹ Kindell thought it would be beneficial to request that all Tea Party cases be sent to Washington. She stated "there are a number of other (c)(3) and (c)(4) applications of orgs related to the Tea Party that are currently in Cincinnati. Apparently the plan had been to send one of each to DC to develop a position to be applied to others."¹⁴²

From: Kindell Judith E
Sent: Thursday, April 07, 2011 10:16 AM
To: Lerner Lois G; Paz Holly O
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: sensitive (c)(3) and (c)(4) applications

I just spoke with Chip Hull and Elizabeth Kastenberg about two cases they have that are related to the Tea Party - one a (c)(3) application and the other a (c)(4) application. I recommended that they develop the private benefit argument further and that they coordinate with Counsel. They also mentioned that there are a number of other (c)(3) and (c)(4) applications of orgs related to the Tea Party that are currently in Cincinnati. Apparently the plan had been to send one of each to DC to develop a position to be applied to the others. Given the sensitivity of the issue and the need (I believe) to coordinate with Counsel, I think it would be beneficial to have the other cases worked in DC as well. I understand that there may be TAS inquiries on some of the cases.

In response, Holly Paz expressed her reservations about sending all of the Tea Party cases to Washington.¹⁴³ She explained that because of the IRS's considerable responsibilities in overseeing the implementation of the Affordable Care Act, as well as the approximately 40 Tea Party cases that were already pending, she was doubtful Washington would be able to handle all of the cases.¹⁴⁴

2. Lerner's Briefing on the "Advocacy Cases"

During the summer of 2011, Lerner ordered her subordinates to reclassify the Tea Party cases as "advocacy cases."¹⁴⁵ She told subordinates she ordered this reclassification because she thought the term "Tea Party" was "just too pejorative."¹⁴⁶ Consistent with her earlier concern that scrutiny could not be "*per se* political," she also ordered the implementation of a new screening method. This change occurred without informing applicants selected for enhanced scrutiny that they had been selected through inappropriate criteria. This sleight-of-hand change

¹⁴⁰ *Id.* at 44, 47.

¹⁴¹ E-mail from Judith Kindell, IRS, to Lois Lerner & Holly Paz, IRS (Apr. 7, 2011). [IRSR 69898]

¹⁴² *Id.*

¹⁴³ E-mail from Holly Paz, IRS, to Judith Kindell & Lois Lerner, IRS (Apr. 7, 2011). [IRSR 69898]

¹⁴⁴ *Id.*

¹⁴⁵ Transcribed Interview of Carter Hull, IRS, in Wash., D.C., at 132 (June 14, 2013).

¹⁴⁶ *Id.*

added a level of deniability for the IRS, which officials would eventually use to dismiss accusations of political motivations.

According to testimony from Cindy Thomas, the IRS official in charge of the Cincinnati office, Lerner “cares about power and that it’s important to her maybe to be more involved with what’s going on politically and to me we should be focusing on working the determinations cases . . . and it shouldn’t matter what type of organization it is.”¹⁴⁷

In June 2011, Holly Paz contacted Cindy Thomas regarding the Tea Party cases.¹⁴⁸ Paz explained that Lerner wanted a briefing on the cases.¹⁴⁹

From: Paz Holly O
Sent: Wednesday, June 01, 2011 2:21 PM
To: Thomas Cindy M
Cc: Melahn Brenda
Subject: group of cases

re: Tea Party cases

Two things re: these cases:

1. Can you please send me a copy of the Crossroads Grassroots Policy Strategies (EIN 27-2753378) application? Lois wants Judy to take a look at it so she can summarize the issues for Lois.
2. What criteria are being used to label a case a "Tea Party case"? We want to think about whether those criteria are resulting in over-inclusion.

Lois wants a briefing on these cases. We'll take the lead but would like you to participate. We're aiming for the week of 6/27.

Thanks!

Holly

In late June 2011, Justin Lowe, a tax law specialist with EO Technical, prepared a briefing paper for Lerner summarizing the test cases sent from Cincinnati.¹⁵⁰ The paper described the groups as “organizations [that] are advocating on issues related to government spending, taxes, and similar matters.”¹⁵¹ The paper listed several criteria, which were used to identify Tea Party cases, including the phrases “Tea Party,” “Patriots,” or “9/12 Project” or “[s]tatements in the case file [that] criticize how the country is being run.”¹⁵²

¹⁴⁷ Transcribed Interview of Lucinda Thomas, IRS, in Wash., D.C., at 212 (June 28, 2013).

¹⁴⁸ E-mail from Holly Paz, IRS, to Cindy Thomas, IRS (June 1, 2011). [IRSR 69915]

¹⁴⁹ *Id.*

¹⁵⁰ Justin Lowe, IRS, Increase in (c)(3)/(c)(4) Advocacy Org. Applications (June 27, 2011). [IRSR 2735]

¹⁵¹ *Id.*

¹⁵² *Id.*

The briefing paper prepared for Lerner further stated that the applicant for 501(c)(4) status “stated it will conduct advocacy and political campaign intervention, but political campaign intervention will account for 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.”¹⁵³ Although the applicant planned to engage in minimal campaign activities, the IRS did not immediately approve the application. Despite the fact that Hull recommended the application for approval, as of June 2013, the application was still pending.¹⁵⁴

In July 2011, Holly Paz wrote to an attorney in the IRS Chief Counsel’s office expressing her reluctance to approve the Tea Party applications and noting Lerner’s involvement in handling the cases. She wrote: “Lois would like to discuss our planned approach for dealing with these cases. We suspect we will have to approve the majority of the c4 applications.”¹⁵⁵

In August 2011, the Chief Counsel’s office held a meeting with Carter Hull, Lerner’s senior advisor, and other Washington officials to discuss the test cases.¹⁵⁶ For the next few months, however, these test cases were still pending. Later, the Chief Counsel’s office told Hull that the office required updated information to evaluate the applications.¹⁵⁷ The request for updated information was unusual since the applications had been up-to-date as of a few months earlier.¹⁵⁸ In addition, the Chief Counsel’s office discussed the possibility of creating a template letter for all Tea Party applications, including those which had remained in Cincinnati.¹⁵⁹ Hull testified that the template letter plan was impractical since each application was different.¹⁶⁰

3. The IRS’s Internal Review

Despite Lerner’s substantial involvement in delaying the approval of Tea Party applications, IRS leadership excluded Lerner from an internal review of allegations of inappropriate treatment of the Tea Party applications.¹⁶¹ Steve Miller, then-Deputy Commissioner, testified during a transcribed interview that he asked Nan Marks, a veteran IRS official, to conduct the review because he wanted someone independent to examine the allegations.¹⁶² Lerner contacted Miller, expressing her confusion and a lack of direction on the IRS’s review. She asked, “What are your expectations as to who is implementing the plan?”¹⁶³

¹⁵³ *Id.*

¹⁵⁴ Transcribed Interview of Carter Hull, IRS, in Wash., D.C., at 53 (June 14, 2013).

¹⁵⁵ E-mail from Holly Paz, IRS, to Janine Cook, IRS (July 19, 2011). [IRSR 14372-73]

¹⁵⁶ Transcribed Interview of Carter Hull, IRS, in Wash., D.C., at 47-49 (June 14, 2013).

¹⁵⁷ *Id.* at 50-51.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 51-52.

¹⁶⁰ *Id.* at 50-51.

¹⁶¹ E-mail from Lois Lerner, IRS, to Steven Miller, IRS (May 2, 2012). [IRSR 198685]

¹⁶² Transcribed interview of Steven Miller, IRS, in Wash., D.C., at 32-33 (Nov. 13, 2013).

¹⁶³ *Id.*

From: Lerner Lois G
Sent: Wednesday, May 02, 2012 9:40 AM
To: Miller Steven T
Subject: A Question

I'm wondering if

you might be able to give me a better sense of your expectations regarding roles and responsibilities for the c4 matters. I understand you have asked Nan to take a deep look at the what is going on and make recommendations. I'm fine with that. Then there was the discussion yesterday about how we plan to approach the issues going forward. That is where the confusion lies. What are your expectations as to who is implementing the plan?

Prior to that

meeting, unbeknownst to me, Cathy had made comments regarding the guidance—which Nan knew about. Nan then directed one of my staff to meet with Cathy and start moving in a new direction. The staff person came to me and I talked to Nan, suggesting before we moved, we needed to hear from you, which is where we are now.

We're all on good

terms and we all want to do the best, but I fear that unless there's a better

understanding of roles, we may step on each others toes without intending to.

Your thoughts

please. Thanks

Lois G. Lerner

Director of Exempt Organizations

Once Marks's internal review confirmed that the IRS had inappropriately treated conservative applications, Lerner was personally involved in the aftermath. Echoing Lerner's

early 2011 orders to create a multi-layer review system for the Tea Party cases, Seto, manager of EO Technical, explained in June 2012 the new procedures for certain cases with “advocacy issues.”¹⁶⁴ Seto advised staff that reviewers required the approval of senior managers, including Seto himself, before approving any cases with “advocacy issues.”¹⁶⁵

From: Seto Michael C

Sent: Wednesday,

June 20, 2012 2:11 PM

To: McNaughton Mackenzie P; Salins Mary J;

Shoemaker Ronald J; Lieber Theodore R

Cc: Grodnitzky Steven; Megosh

Andy; Giuliano Matthew L; Fish David L; Paz Holly O

Subject:

Additional procedures on cases with advocacy issues - before issuing any favorable or initial denial ruling

Please

inform the reviewers and staff in your groups that before issuing any

favorable or initial denial rulings on any cases with advocacy issues, the

reviewers must notify me and you via e-mail and get our

approval. No favorable or initial denial rulings can be issued

without your and my approval. The e-mail notification includes the

name of the case, and a synopsis of facts and denial rationale. I may

require a short briefing depending on the facts and circumstances of the

particular case.

If you have any

questions, please let me know.

Thanks, _____

Mike

¹⁶⁴ E-mail from Michael Seto, IRS, to Mackenzie McNaughton, Mary Salins, Ronald Shoemaker, & Theodore Lieber, IRS (June 20, 2012). [IRSR 199229]

¹⁶⁵ *Id.*

These new procedures again delayed applications because reviewers were unable to issue any rulings on their own. Paz forwarded the e-mail to Lerner, ensuring Lerner was aware of the additional review procedures.¹⁶⁶

Lerner's e-mails show she was well-aware that IRS officials had set aside numerous Tea Party cases for further review.¹⁶⁷ In July 2012, her senior advisor, Judy Kindell, explained what percentage of both (c)(3) and (c)(4) cases officials had set aside.¹⁶⁸ Kindell estimated that half of the (c)(3) applicants and three-quarters of the (c)(4) applicants appeared to be conservative leaning "based solely on the name."¹⁶⁹ Kindell also noted that the number of conservative-leaning applications set aside was much larger than that of applications set aside for liberal or progressive groups.¹⁷⁰

From:	Kindell Judith E
Sent:	Wednesday, July 18, 2012 10:54 AM
To:	Lerner Lois G
Cc:	Light Sharon P
Subject:	Bucketed cases

Of the 84 (c)(3) cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

Of the 199 (c)(4) cases, approximately 3/4 appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

The multi-tier review process in Washington and requests for additional information sent to applicants led to the delay of the test cases as well as other Tea Party applications pending in Cincinnati. The Chief Counsel's office also directed Lerner's staff to request additional information from Tea Party applicants, including information about political activities leading up to the 2010 election. In fact, it appears the IRS never resolved the test applications.¹⁷¹

¹⁶⁶ E-mail from Holly Paz, IRS, to Lois Lerner, IRS (June 20, 2012). [IRSR 199229]

¹⁶⁷ E-mail from Judith Kindell, IRS, to Lois Lerner, IRS (July 18, 2012). [IRSR 179406]

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See Transcribed Interview of Carter Hull, IRS, at 53 (June 14, 2013).

C. Lerner's Involvement in Regulating 501(c)(4) groups "off-plan"

According to information available to the Committee, the IRS and the Treasury Department considered regulating political speech of § 501(c)(4) social welfare organizations well before 2013.¹⁷² The IRS and Treasury Department worked on these regulations in secret without noticing its work on the IRS's Priority Guidance Plan. Lois Lerner played a role in the this "off-plan" regulation of § 501(c)(4) organizations.

In June 2012, Ruth Madrigal of the Treasury Department's Office of Tax Policy wrote to Lerner and other IRS leaders about potential § 501(c)(4) regulations. She wrote: "Don't know who in your organization is keeping tabs on c4s, but since we mentioned potentially addressing them (off-plan) in 2013, I've got my radar up and this seemed interesting."¹⁷³ Madrigal forwarded a short article about a court decision with "potentially major ramifications for politically active section 501(c)(4) organizations."¹⁷⁴

From:	Ruth.Madrigal [REDACTED]
Sent:	Thursday, June 14, 2012 3:10 PM
To:	Judson Victoria A; Cook Janine; Lerner Lois G; Marks Nancy J
Subject:	501(c)(4)s - From the Nonprofit Law Prof Blog

Don't know who in your organizations is keeping tabs on c4s, but since we mentioned potentially addressing them (off-plan) in 2013, I've got my radar up and this seemed interesting...

In a transcribed interview with Committee staff, Madrigal discussed her e-mail. She explained that the Department worked with Lerner and her IRS colleagues to develop the § 501(c)(4) regulation "off-plan." She testified:

- Q And ma'am, you wrote, "potentially addressing them." Do you know what you meant by, quote, "potentially addressing them?"
- A Well, at this time, we would have gotten the request to do guidance of general applicability relating to (c)(4)s. And while I can't – I don't know exactly what was in my mind at the time I wrote this, the "them" seems to refer back to the (c)(4)s. And the communications between our offices would have had to do with guidance of general applicability.
- Q So, sitting here today, you take the phrase, "potentially addressing them" to mean issuing guidance of general applicability of 501(c)(4)s?

¹⁷² See Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to John Koskinen, IRS (Feb. 4, 2014).

¹⁷³ E-mail from Ruth Madrigal, Dep't of the Treasury, to Victoria Judson et al., IRS (June 14, 2012). [IRS 305906]

¹⁷⁴ *Id.*

A I don't know exactly what was in my head at the time when I wrote this, but to the extent that my office collaborates with the IRS, it's on guidance of general applicability.

Q And the recipients of this email, Ms. Judson and Ms. Cook are in the Chief Counsel's Office, is that correct?

A That's correct.

Q And Ms. Lerner and Ms. Marks are from the Commissioner side of the IRS?

A At the time of this email, I believe that Nan Marks was on the Commissioner's side, and Ms. Lerner would have been as well, yes.

Q So those are the two entities involved in rulemaking process or the guidance process for tax exempt organizations, is that right?

A Correct.

Q What did the term "off plan" mean in your email?

A Again, I don't have a recollection of doing – of writing this email at the time. I can't say with certainty what was meant at the time.

Q Sitting here today, what do you take the term "off plan" to mean?

A Generally speaking, off plan would refer to guidance that is not on – or the plan that is mentioned there would refer to the priority guidance plan. And so off plan would be not on the priority guidance plan.

Q And had you had discussions with the IRS about issuing guidance on 501(c)(4)s that was not placed on the priority guidance plan?

A In 2012, we – yes, in 2012, there were conversations between my office, Office of Tax Policy, and the IRS regarding guidance relating to qualifications for tax exemption under (c)(4).

Q And this guidance was in response to requests from outside parties to issue guidance?

- A Yes. Generally speaking, our priority guidance plan process starts with – includes gathering suggestions from the public and evaluating suggestions from the public regarding guidance, potential guidance topics, and by this point, to the best of my recollection, we had had requests to do guidance on this topic.¹⁷⁵

Similarly, IRS attorney Janine Cook explained in a transcribed interview how the IRS and Treasury Department develop a regulation “off-plan.” She testified that “it’s a coined term, the term means the idea of spending some resources on working it, getting legal issues together, things like that, but not listing it on the published plan as an item we are working. That’s what the term off plan means.”¹⁷⁶ In a separate transcribed interview, IRS Division Counsel Victoria Judson explained that the IRS develops regulations “off-plan” when it seeks to “stop behavior that we feel is inappropriate under the tax law.” She testified:

We also have items we work on that are off-plan, and there are reasons we don’t want to solicit comments. For example, if they might relate to a desire to stop behavior that we feel is inappropriate under the tax law, we might not want to publicize that we are working on that before we come out with the guidance.¹⁷⁷

Information available to the Committee indicates that Lerner played some role in the IRS’s and the Treasury Department’s secret “off-plan” work to regulate § 501(c)(4) groups. Because the Committee has not obtained Lerner’s testimony, it is unclear as to the nature and extent of her role in this “off-plan” regulatory work.

D. IRS Discussions about Regulatory Reform

In 2012, the IRS received letters from Members of Congress and certain public interest groups about regulatory reform for 501(c)(4) groups. The letters asked the IRS to change the regulations regarding how much political activity is permissible. As IRS officials were contemplating the possibility of changing the level of permissible political activity for 501(c)(4) groups, the press picked up their discussions. After learning that the press was aware of the discussions, Nikole Flax, the Chief of Staff to then-Acting Commissioner Steve Miller, instructed IRS officials that she wanted to delay sending any responses, and that all response letters would require her approval.¹⁷⁸ Flax alerted Lerner that the letters “created a ton of issues including from Treasury and [the] timing [is] not ideal.”¹⁷⁹ In response, Lerner wrote to Flax, explaining that she thought all the attention was “stupid.”¹⁸⁰

¹⁷⁵ Transcribed interview of Ruth Madrigal, U.S. Dep’t of the Treasury, in Wash., D.C. (Feb. 3, 2014).

¹⁷⁶ Transcribed interview of Janine Cook, IRS, in Wash., D.C. (Aug. 23, 2013).

¹⁷⁷ Transcribed interview of Victoria Ann Judson, IRS, in Wash., D.C. (Aug. 29, 2013).

¹⁷⁸ E-mail from Nikole Flax, IRS, to Lois Lerner, Holly Paz, Andy Megosh, Nalee Park, & Joseph Urban, IRS (July 24, 2012). [IRSR 179666]

¹⁷⁹ E-mail from Nikole Flax, IRS, to Lois Lerner, IRS (July 24, 2012). [IRSR 179666]

¹⁸⁰ *Id.*

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 10:36 AM
To: Flax Nikole C
Subject: Re: c4 letters

That is why I told them every letter had to go thru you. Don't know why this didn't, but have now told all involved, I hope! Sorry for all the noise. It is just stupid, but not welcome, I'm sure.
 Lois G. Lerner-----

Lerner instructed IRS officials that Nikole Flax, one of the agency's most senior officials, would have to approve all response letters to Members of Congress and public interest groups regarding regulatory reform for 501(c)(4) groups.¹⁸¹ She advised staff that "NO responses related to c4 stuff go out without an affirmative message, in writing from Nikole."¹⁸²

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 10:40 AM
To: Paz Holly O; Megosh Andy; Fish David L; Park Nalee; Williams Melinda G
Cc: Flax Nikole C
Subject: C4

I know you all have received messages independently, but I wanted all to hear same message at same time. Regardless whether language has previously been approved, NO responses related to c4 stuff go out without an affirmative message, in writing from Nikole. Thanks Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

E. Lerner's Reckless Handling Section 6103 Information

According to e-mails obtained by the Committee, Lerner recklessly treated taxpayer information covered by 26 U.S.C. § 6103.¹⁸³ Section 6103 of the Internal Revenue Code of 1986 generally prohibits the disclosure of "tax returns" and other "tax return information" outside the IRS. In February 2010, Lerner sent an e-mail to William Powers, a Federal Election Commission attorney, which contained confidential taxpayer information according to the IRS.¹⁸⁴

¹⁸¹ E-mail from Lois Lerner, IRS, to Holly Paz, Andy Megosh, David Fish, Nalee Park, & Melinda Williams, IRS (July 24, 2012). [IRSR 179669]

¹⁸² *Id.*

¹⁸³ E-mail from Lois Lerner, IRS, to William Powers, Fed. Election Comm'n (Feb. 3, 2010, 11:25AM). [IRSR 123142]

¹⁸⁴ *Id.*

From: Lerner Lois G
Sent: Wednesday, February 03, 2010 11:25 AM
To: [REDACTED]
Cc: Fish David L
Subject: Your request

Per your request, we have checked our records and there are no additional filings at this time. [REDACTED]
 [REDACTED] Hope that helps.

Lois G. Lerner
 Director, Exempt Organizations

In addition, Lerner received confidential taxpayer information on her non-official e-mail account.¹⁸⁵ Her receipt of confidential taxpayer information on an unsecure, non-IRS computer system and e-mail account poses a substantial risk to the security of the taxpayer information. Her willingness to handle this information on a non-official e-mail account highlights her disregard for confidential taxpayer information. It also suggests a fundamental lack of respect for the organizations applying to the IRS for tax-exempt status.

From: Biss Meghan R
Sent: Saturday, May 04, 2013 11:07 AM Eastern Standard Time
To: Lerner Lois G; [REDACTED] Lerner's Non-official E-mail Address
Subject: Summary of Application

Lois:

Attached is a summary of the entire application from [REDACTED]. It includes the information from their initial 1023, our development letter, and their May 3 response. In it, I also point out situations where the revenue rulings they cite aren't exactly on point. Additionally, where they reference other [REDACTED] I included the information we have on those [REDACTED] from internet research.

As a note, the [REDACTED] may be an issue for the community foundation that made the payments. The [REDACTED]
 [REDACTED] But we won't know anything for sure until their 2012 Form 990 is filed.

Also, this article re [REDACTED] is interesting:
 [REDACTED]

After you have had a chance to look over this document, we can have a discussion about it and any questions prior to your meeting with Steve.

Thanks,
 Meghan

Lerner's messages contained private tax return information, redacted pursuant to 26 U.S.C. § 6103 when the IRS reviewed the e-mails prior to production to the Committee.¹⁸⁶ Section 6103 is in place to prevent federal workers from disclosing confidential taxpayer

¹⁸⁵ E-mail from Meghan Biss, IRS, to Lois Lerner, IRS (May 4, 2013, 11:07 AM). [Lerner-ORG 1607]

¹⁸⁶ *Id.*

information.¹⁸⁷ Tax returns and return information, which meet the statutory definitions, must remain confidential.¹⁸⁸ Lerner's e-mails containing confidential return information therefore represent a disregard for the protections of the statute and present very serious privacy concerns. These reckless disclosures of such sensitive information also raise questions of whether they were isolated events.

F. The Aftermath of the IRS's Scrutiny of Tea Party Groups

As congressional committees and TIGTA began to examine more closely the IRS's treatment of applications from certain Tea Party groups, top officials within the agency were reluctant to disclose information. After Steve Miller, then Acting Commissioner of the IRS, testified at a House Committee on Ways and Means hearing in July 2012, Lerner stated in an e-mail a sense of relief that the hearing was more "boring" than anticipated.¹⁸⁹

When Lerner learned about TIGTA's audit regarding the Tax Exempt Entities Division's treatment of applications from certain groups, she accepted the fact that the Division would be subject to a critical analysis from TIGTA officials.¹⁹⁰ Despite TIGTA and congressional scrutiny, Lerner's approach to the applications did not change. Documents show that, Lerner, along with several other IRS officials, were somehow emboldened and believed it was necessary to make their efforts known publicly, albeit not necessarily in a truthful manner. Specifically, they contemplated ways to make their denial of a 501(c)(4) group's application public knowledge.¹⁹¹ The officials contemplated using the court system to do so.¹⁹²

1. Lerner's Opinion Regarding Congressional Oversight

In July 2012, Lerner received an e-mail from Steve Miller soon after he testified at a House Ways and Means Committee hearing on charitable organizations.¹⁹³ Miller thanked Lerner and other IRS officials in Washington for their assistance in preparing for the hearing. In response, Lerner conveyed her relief that the hearing was less interesting than it could have been.¹⁹⁴ Because the Committee has not been able to speak with Lerner, it is uncertain what she meant by this e-mail.

¹⁸⁷ 26 U.S.C. § 6103 (2012).

¹⁸⁸ *Id.*

¹⁸⁹ E-mail from Lois Lerner, IRS, to Steven Miller, IRS (July 25, 2012). [IRSR 179767]

¹⁹⁰ E-mail from Lois Lerner, IRS, to Richard Daly, Sarah Hall Ingram, Dawn Marx, Joseph Urban, Nancy Marks, Holly Paz, & David Fish, IRS (June 25, 2012). [IRSR 178166]

¹⁹¹ E-mail from Lois Lerner, IRS, to Nancy Marks, Holly Paz, & David Fish, IRS (Apr. 1, 2013). [IRSR 190611]

¹⁹² *Id.*

¹⁹³ E-mail from Steven Miller, IRS, to Justin Lowe, Joseph Urban, Christine Mistr, Nikole Flax, Catherine Barre, William Norton, Virginia Richardson, Richard Daly, Lois Lerner, & Holly Paz, IRS (July 25, 2012) [IRSR 179767]

¹⁹⁴ E-mail from Lois Lerner, IRS, to Steven Miller, IRS (July 25, 2012). [IRSR 179767]

From:	Lerner Lois G
Sent:	Wednesday, July 25, 2012 7:47 PM
To:	Miller Steven T
Subject:	Re: thank you

Glad it turned out to be far more boring than it might have. Happy to be able to help.
Lois G. Lerner-----

The Committee has sent numerous letters to the IRS requesting documents and information relating to the scrutiny of Tea Party applications. The IRS has often been evasive in its responses, and the Committee has encountered great difficulty in obtaining the agency’s cooperation in conducting its investigation. In one instance in 2012, the Committee sent a letter to the IRS requesting information about the agency’s treatment of Tea Party groups. Documents obtained by the Committee demonstrate that Lerner not only aware of the letter, but also reviewed the request, and approved the written response sent to the Committee.¹⁹⁵

¹⁹⁵ Action Routing Sheet, IRS (Apr. 25, 2012). [IRSR 14425]

2. Tax Exempt Entities Division's Contacts with TIGTA

In January 2013, a TIGTA official contacted Holly Paz to inquire about an e-mail regarding Tea Party cases.¹⁹⁶ The official explained that during a recent briefing, he had mentioned TIGTA was seeking an e-mail from May 2010, which called for Tea Party applications to receive additional review.¹⁹⁷

From: Paterson Troy D TIGTA [REDACTED]
Sent: Thursday, January 24, 2013 8:51 AM
To: Paz Holly O
Subject: E-Mail Retention Question

Holly,

Good morning.

During a recent briefing, I mentioned that we do not have the original e-mail from May 2010 stating that "Tea Party" applications should be forwarded to a specific group for additional review. After thinking it through, I was wondering about the IRS's retention or backup policy regarding e-mails. Do you know who I could contact to find out if this e-mail may have been retained?

Troy

Lerner was aware of the request for the May 2010 Tea Party e-mail because Paz replied to the TIGTA official and copied Lerner on the response.¹⁹⁸ Paz wrote that she could not provide any assistance in retrieving the e-mail, but rather the Chief Counsel's office needed to handle the request.¹⁹⁹

From: Paz Holly O
Sent: Thursday, January 31, 2013 4:15 AM
To: Paterson Troy D TIGTA
Cc: Lerner Lois G
Subject: RE: E-Mail Retention Question

Troy,

I'm sorry we won't get to see you today. We have reached out to determine the appropriate contact regarding your question below and have been told that, if this data request is part of e-Discovery, the coordination needs to go through Chief Counsel. The person to contact regarding e-Discovery requests is Glenn Melcher. His email address is [REDACTED] and his phone number is [REDACTED].

Holly

¹⁹⁶ E-mail from Troy Paterson, IRS, to Holly Paz, IRS (Jan. 24, 2013). [IRSR 202641]

¹⁹⁷ *Id.*

¹⁹⁸ E-mail from Holly Paz, IRS, to Troy Paterson, Treasury Inspector Gen. for Tax Admin. (Jan. 31, 2013). [IRSR 202641]

¹⁹⁹ *Id.*

The e-mails above show Lerner and her colleagues unnecessarily delayed TIGTA's audit. Rather than simply providing the documents and information requested by TIGTA, Paz, who reported to Lerner directly, instructed TIGTA to go through the Chief Counsel's office for certain information.

3. Lerner Anticipates Issues with TIGTA Audit

Lerner anticipated blowback from TIGTA over the disparate treatment of certain applications for tax-exempt status. In June 2012, Lerner received an e-mail from Richard Daly, a technical executive assistant to the Tax Exempt and Government Entities Division Commissioner, informing her that TIGTA would be investigating how the tax-exempt division handles applications from § 501(c)(4) groups.²⁰⁰

²⁰⁰ E-mail from Richard Daly, IRS, to Sarah Hall Ingram, Lois Lerner, & Dawn Marx, IRS (June 22, 2012). [IRSR 178167].

From: Daly Richard M
Sent: Friday,

June 22, 2012 5:10 PM

To: Ingram Sarah H; Lerner Lois G; Marx Dawn R;
 Urban Joseph J; Marks Nancy J
Subject: FW: 201210022 Engagement

Letter

Importance: High

TIGTA is going to look at how we deal with the applications from (c)(4)s. Among other things they will look at our consistency, and whether we had a reasonable basis for asking for information from the applicants. ~~The engagement letter bears a close~~ reading. To my mind, it has a more skeptical tone than usual.

Among the documents they want to look at are the following:

All

documents and correspondence (including e-mail) concerning the Exempt Organizations function's response to and decision-making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.

TIGTA expects to issue its report in the spring.

Daly recommended a “close reading” of TIGTA’s engagement letter, noting that it had a “more skeptical tone than usual.”²⁰¹

Lerner accepted the fact that TIGTA would scrutinize the tax-exempt division. In reply, she stated, in part: “It is what it is . . . we will get dinged.”²⁰²

²⁰¹ *Id.*

²⁰² E-mail from Lois Lerner, IRS, to Richard Daly, Sarah Hall Ingram, Dawn Marx, Joseph Urban, Nancy Marks, Holly Paz, & David Fish, IRS (June 25, 2012). [IRSR 178166]

From: Lerner Lois G
Sent: Monday, June 25, 2012 5:00 PM
To: Daly Richard M; Ingram Sarah H; Marx Dawn R; Urban Joseph J; Marks Nancy J
Cc: Paz Holly O; Fish David L
Subject: RE: 201210022 Engagement Letter

It is what it is. Although the original story isn't as pretty as we'd like, once we learned this were off track, we have done what we can to change the process, better educate our staff and move the cases. So, we will get dinged, but we took steps before the "dinging" to make things better and we have written procedures. So, it is what what it is.

Lois G.

Lerner

Director of Exempt Organizations

4. Lerner Contemplates Retirement

By January 28, 2013, Lerner was considering retirement from the IRS.²⁰³ She wrote to benefits specialist Richard Klein to request reports regarding the benefits she could expect to receive upon retirement.²⁰⁴

From: Klein Richard T
Sent: Monday, January 28, 2013 6:23 AM
To: Lerner Lois G
Subject: personnel info
Importance: Low

Here are your reports you requested.....set your sick leave at 1360 for the first report and bumped it up to 1700 for the second.....redeposit amount and hi three used are shown on the bottom right.....call or email if you need any thing else please.

This e-mail and any attachments contain information intended solely for the use of the named recipient(s). This e-mail may contain privileged communications not suitable for forwarding to others. If you believe you have received this e-mail in error, please notify me immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments.

Richard T. Klein
Benefits Specialist

²⁰³ E-mail from Richard Klein, IRS, to Lois Lerner, IRS (Jan. 28, 2013). [IRSR 202597]

²⁰⁴ *Id.*

The reports Klein sent prompted several questions from Lerner, including an estimate of the amount in benefits she would receive if she retired in October 2013:²⁰⁵

From: Lerner Lois G
Sent: Monday, January 28, 2013 10:06 AM
To: Klein Richard T
Subject: RE: personnel info

OK--questions already. I see at the bottom what my CSRS repayment amount would be should I decide to repay. It looks like the calculation at the tops assumes I am repaying--is that correct? Can I see what the numbers look like if I decide not to repay? Also, how do I go about repaying, if I choose to? Where would I find that information? Would you mind running a calculation for a retirement date of October 1, 2013? Also, the definition of monthly social security offset seems to say that at age 62(which I am) my monthly annuity will be offset by social security even if I don't apply. First--what the heck does that mean? Second, I don't see an offset on the chart--please explain. Thank you.

Lois G. Lerner
 Director of Exempt Organizations

5. The IRS's Plans to Make an Application Denial Public

IRS officials in Washington wanted to publicize the fact that the IRS had closely scrutinized applications from Tea Party groups. The officials wanted to make the denial of one specific Tea Party group's application public knowledge. At the end of March 2013, Lerner had a discussion with other IRS officials about how they could inform the public about the application denial.²⁰⁶ IRS officials discussed the possibility of bringing the case through the court system, rather than an administrative hearing, to ensure that the denial became public.²⁰⁷ Lerner assumed these groups would opt for litigation because, in her mind, they were "itching for a Constitutional challenge."²⁰⁸

G. Lerner's Role in Downplaying the IRS's Scrutiny of Tea Party Applications

In the spring of 2013, senior IRS officials prepared a plan to acknowledge publicly yet downplay the scrutiny given to Tea Party applications. Although Lerner spoke on the subject at an ABA event in May 2013, the IRS had originally planned to have Lerner comment on it at a Georgetown University Law Center conference in April. Lerner e-mailed several of her

²⁰⁵ E-mail from Lois Lerner, IRS, to Richard Klein, IRS (Jan. 28, 2013). [IRSR 202597]

²⁰⁶ E-mail from Nancy Marks, IRS, to Lois Lerner, Holly Paz, & David Fish, IRS (Mar. 29, 2013). [IRSR 190611]

²⁰⁷ *Id.*

²⁰⁸ E-mail from Lois Lerner, IRS, to Nancy Marks, Holly Paz, & David Fish, IRS (Apr. 1, 2013). [IRSR 190611]

colleagues about the Georgetown speaking engagement, noting that she might add “remarks that are being discussed at a higher level.”²⁰⁹

To:	Eldridge Michelle L; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc:	Partner Melaney J; Marx Dawn R
Subject:	RE: Georgetown

I will now be speaking somewhere between 11-11:30 depending on when previous speaker finishes. I may or may not be adding some remarks that are being discussed at a higher level. If approved, I have not been told whether those remarks will be in the written speech, or I will simply give them orally. There may be a desire to get the speech up ASAP if the new proposed language is added to the draft—these are Nikole questions. Right now, though, we're simple on hold.

Lois J. Lerner
Director of Exempt Organizations

Contemporaneously, Nikole Flax sent Lerner a draft set of remarks on 501(c)(4) activity.²¹⁰ The remarks stated in part:

Here's where a problem occurred. In centralizing the cases in Cincinnati, my review team placed too much reliance on the particular name of an organization; in this case, relying on names in organization titles like 'tea party' or 'patriot,' rather than looking deeper into the facts to determine the level of activity under c4 guidelines. Our Inspector General is looking at this situation, but I believe and the IRS leadership team believe[s] this to be an error – not a political vendetta.²¹¹

Although Lerner did not acknowledge the extra scrutiny given to Tea Party applications at the Georgetown conference, the officials in the Acting Commissioner's office made plans to have her speak on the subject at an ABA event using a question planted with an audience member. In May 2013, Flax contacted Lerner to inquire about the topic of her remarks at the event.²¹² Flax's inquiry demonstrates that senior IRS officials were seeking a venue for Lerner to speak about the Tea Party scrutiny in order to downplay and gloss over the issue.²¹³ At the ABA event on May 10, 2013, Lerner did so.

²⁰⁹ E-mail from Lois Lerner, IRS, to Michelle Eldridge, Roberta Zarin, Terry Lemons, & Anthony Burke, IRS (Apr. 23, 2013). [IRSR 196295]

²¹⁰ E-mail from Nikole Flax, IRS, to Lois Lerner, IRS (Apr. 23, 2013). [IRSR 189013]

²¹¹ Preliminary Draft, Recent Section 501(c)(4) Activity, IRS (Apr. 22, 2013). [IRSR 189014]

²¹² E-mail from Nikole Flax, IRS, to Lois Lerner, IRS (May 3, 2013). [IRSR 189445]

²¹³ *Id.*

H. Lerner's Management Style

During transcribed interviews with Committee staff, several IRS officials testified that Lerner is a bad manager who is “unpredictable”²¹⁴ and “emotional.”²¹⁵ On October 22, 2013, during a transcribed interview, Nikole Flax, the former IRS Acting Commissioner’s Chief of Staff, discussed the July 2012 House Ways and Means Committee hearing on tax-exempt issues.²¹⁶ Steve Miller, then-Deputy Commissioner of the IRS, testified at the hearing. Lerner did not.²¹⁷ Committee staff asked Flax why the IRS did not choose Lerner as a witness.²¹⁸ Flax testified:

Q And you said before that [Acting Commissioner of Tax Exempt and Government Entities Joseph] Grant wasn’t the best witness at the hearing. Was there any discussion about having Ms. Lerner as a witness for that hearing?

A No.

Q Why not?

A **Lois is unpredictable. She’s emotional.** I have trouble talking negative about someone. I think in terms of a hearing witness, she was not the ideal selection.²¹⁹

Further, during an interview with Cindy Thomas, the IRS official in charge of the Cincinnati office, Thomas stated that when she became aware of Lerner’s comments about the IRS’s treatment of Tea Party applications at the ABA event, she was extremely upset. Thomas wrote Lerner an e-mail on May 10, 2013, with “Low Level workers thrown under the Bus” in the subject line.²²⁰ Thomas excoriated Lerner, noting that through Lerner’s remarks, **“Cincinnati wasn’t publicly ‘thrown under the bus’ (but) instead was hit by a convoy of Mack trucks.”**²²¹ Thomas explained Lerner’s statements at the event were “derogatory” to lower level employees working determinations cases.²²² She testified:

Q And what was your reaction to hearing the news?

A I was really, really mad.

Q Why?

²¹⁴ Transcribed Interview of Nikole Flax, IRS, at 153 (Oct. 22, 2013).

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* (emphasis added).

²²⁰ E-mail from Cindy M. Thomas to Lois G. Lerner, et al. (May 10, 2013). [IRSR 366782]

²²¹ *Id.* (emphasis added).

²²² Transcribed Interview of Lucinda Thomas, IRS, at 210 (June 28, 2013).

- A **I feel as though Cincinnati employees and EO Determinations was basically thrown under a bus and that the Washington office wasn't taking any responsibility for knowing about these applications, having been involved in them and being the ones to basically delay processing of the cases.**²²³

Although Thomas admitted that the Cincinnati office made mistakes in handling tax-exempt applications, she explained that IRS officials in Washington were primarily responsible for the delay.²²⁴ She stated: **[Y]es, there were mistakes made by folks in Cincinnati as well [as] D.C. but the D.C. office is the one who delayed the processing of the cases.**²²⁵

While Thomas found Lerner's reference to the culpability of lower level workers for the delay of the applications during her talk at the ABA event was upsetting and misguided, Thomas also stated in part: **"It's not the first time that she has used derogatory comments about the employees working determination cases and she has done it before."**²²⁶

Thomas testified that Lerner's statements about lower level employees in Cincinnati were just one example of offensive remarks she often made to other IRS employees. She explained that Lerner "referred to us as backwater before."²²⁷ Thomas also noted the impact of Lerner's comments on employee morale. She stated in part: **"[I]t's frustrating like how am I supposed to keep them motivated when our so-called leader is referring to people in that direction."**²²⁸ Thomas also stated: **"She also makes comments like, well, you're not a lawyer."**²²⁹

Lerner's comments reflect a startling attitude toward her subordinates. As the director of the Exempt Organizations Division, she was a powerful figure at IRS headquarters in Washington. It is evident from testimony that Lerner brazenly shifted blame to lower level employees for delaying the Tea Party applications. Instead of taking responsibility for the major role she played in the delay, she found fault with others, diminishing employee morale in the process.

I. Lerner's Use of Unofficial E-mail

As the Committee has continued to investigate Lerner's involvement in targeting Tea Party groups, Committee staff has also learned that she improperly used a non-official e-mail account to conduct official business. On several occasions, Lerner sent documents related to her official duties from her official IRS e-mail account to an msn.com e-mail account labeled "Lois Home."

²²³ *Id.* (emphasis added).

²²⁴ *Id.* at 211.

²²⁵ *Id.*

²²⁶ *Id.* at 210 (emphasis added).

²²⁷ *Id.* at 213.

²²⁸ *Id.*

²²⁹ *Id.*

Lerner's use of a non-official e-mail account to conduct official business not only implicates federal records requirements, but also frustrates congressional oversight obligations. Use of a non-official e-mail account raises the concern that official government e-mail archiving systems did not capture the records, as defined by the Federal Records Act.²³⁰ Further, it creates difficulty for the agency when responding to Freedom of Information Act, congressional subpoenas, or litigation requests.

IV. Conclusion

Since Lois Lerner first publicly acknowledged the IRS's inappropriate treatment of conservative tax-exempt applicants during an American Bar Association speech on May 10, 2013, substantial debate has ensued over the nature of the IRS misconduct. While bureaucratic bumbling played an undeniable role in some delays and inappropriate treatment, questions have persisted. Could someone with a political agenda – or under instructions – and a sophisticated understanding of the IRS cause a partisan delay for organizations seeking to promote social welfare and exercise their Constitutionally guaranteed First Amendment right to participate in the political process?

From her days at the Federal Election Commission, Lerner's left-leaning politics were known and recognized.²³¹ Even at a supposedly apolitical agency like the IRS, her views should not have been an obstacle to fair and impartial judgment that would impair her job performance. But amidst a scandal in which her agency deprived Americans of their Constitutional rights, a relevant question is whether the actions she took in her job improperly reflected her political beliefs. Congressional investigators found evidence that this occurred.

Lerner's views on the *Citizens United* Supreme Court ruling, which struck down certain restrictions on election-related activities, showed a keen awareness of arguments that the Court's decision would be detrimental to Democratic Party candidates. As she explained in her own words to her agency's Inspector General:

The *Citizens United* decision allows corporations to spend freely on elections. Last year, there was a lot of press on 501(c)(4)s being used to funnel money on elections and the IRS was urged to do something about it.²³²

When a colleague sent her an article about allegations that unknown conservative donors were influencing U.S. Senate races, she responded hopefully: "Perhaps the FEC will save the day."²³³

Evidence indicates Lerner and her Exempt Organizations unit took a three pronged approach to "do something about it" to "fix the problem" of nonprofit political speech:

²³⁰ 44 U.S.C. § 3101.

²³¹ *Lois Lerner at the FEC*, *supra* note 5.

²³² Treasury Inspector Gen. for Tax Admin, Memo of Contact (Apr. 5, 2012) (memorandum of contact with Lois Lerner).

²³³ E-mail from Lois Lerner, IRS, to Sharon Light, IRS (July 10, 2010). [IRS 179093]

- 1) Scrutiny of new applicants for tax-exempt status (which began as Tea Party targeting);
- 2) Plans to scrutinize organizations, like those supported by the “Koch Brothers,” that were already acting as 501(c)(4) organizations; and
- 3) “[O]ff plan” efforts to write new rules cracking down on political activity to replace those that had been in place since 1959.

Even without her full testimony, and despite the fact that the IRS has still not turned over many of her e-mails, a political agenda to crack down on tax-exempt organizations comes into focus. Lerner believed the political participation of tax-exempt organizations harmed Democratic candidates, she believed something needed to be done, and she directed action from her unit at the IRS. Compounding the egregiousness of the inappropriate actions, Lerner’s own e-mails showed recognition that she would need to be “cautious” so it would not be a “*per se* political project.”²³⁴ She was involved in an “off-plan” effort to write new regulations in a manner that intentionally sought to undermine an existing framework for transparency.²³⁵

Most damning of all, even when she found that the actions of subordinates had not adhered to a standard that could be defended as not “*per se* political,” instead of immediately reporting this conduct to victims and appropriate authorities, Lerner engaged in efforts to cover it up. She falsely denied to Congress that criteria for scrutiny had changed and that disparate treatment had occurred. The actions she took to broaden scrutiny to non-conservative applicants were consistent with efforts to create plausible deniability for what had happened – a defense that the Administration and its most hardcore supporters have repeated once unified outrage eroded over one of the most divisive controversies in American politics today.

Bureaucratic bumbling and IRS employees who sincerely believed they were following the directions of superiors did occur. Even when Lerner directed what employees would characterize as “unprecedented” levels of scrutiny for Tea Party cases, they did not attribute this direction to a partisan agenda. Ironically, the bureaucratic bumbling that seems to have been behind many inappropriate requests for information from applicants and a screening criterion that could never pass as not “*per se* political” may have had a silver lining. Without it, Lois Lerner’s agenda to scrutinize tax-exempt organizations that exercised their First Amendment rights might not have ever been exposed.

The Committee continues to offer Lois Lerner the opportunity to testify. Many questions remain, including the identities of others at the IRS and elsewhere who may have known about key events and decisions she undertook. Americans, and particularly those Americans who faced mistreatment at the hands of the IRS, deserve the full documented truth that both Lois Lerner and the IRS have withheld from them.

²³⁴ E-mail from Lois Lerner, IRS, to Cheryl Chasin et al., IRS (Sept. 16, 2010). [IRSR 191030]

²³⁵ See E-mail from Ruth Madrigal, Dep’t of the Treasury, to Victoria Judson et al., IRS (June 14, 2012). [IRSR 305906]

To: Eldridge Michelle L; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

I will now be speaking somewhere between 11-11:30 depending on when previous speaker finishes. I may or may not be adding some remarks that are being discussed at a higher level. If approved, I have not been told whether those remarks will be in the written speech, or I will simply give them orally. There may be a desire to get the speech up ASAP if the new proposed language is added to the draft--these are Nikole questions. Right now, though, we're simple on hold.

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, April 23, 2013 9:55 AM
To: Lerner Lois G; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

I'm sorry--I've lost track. What time is your speech? Given timing of other stuff that day--we may be looking at posting both in the afternoon. I'm sure this will continue to be discussed...as I hear more details, I will pass it along. Please let me know what you are hearing as well. Thanks. --Michelle

From: Lerner Lois G
Sent: Monday, April 22, 2013 6:49 PM
To: Zarin Roberta B; Lemons Terry L; Eldridge Michelle L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown
Importance: High

Hmm--I was thinking the speech would go up right after I speak and the report would go up later in the afternoon. Will that work?

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Monday, April 22, 2013 1:32 PM
To: Lemons Terry L; Eldridge Michelle L; Burke Anthony
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

Thanks, but Melaney deserves credit for that one! We are planning to post Lois' speech, along with the report, Thursday afternoon

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
[REDACTED]

From: Lemons Terry L
Sent: Monday, April 22, 2013 1:10 PM
To: Zarin Roberta B; Eldridge Michelle L; Burke Anthony
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

Bobby – good catch on the news release. Think we should try doing a short one since we did the interim one. Think text should track what we did before (below.) Anthony Burke will be reaching out to you. Think we need text by mid-day Tuesday so we can get through clearance channels on third floor and Treasury.

Also possible we may post text of Thursday speech on IRS.gov.

Thanks.

From: Zarin Roberta B
Sent: Monday, April 22, 2013 11:09 AM
To: Lemons Terry L; Eldridge Michelle L
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: FW: Georgetown

Fun for the week:

Do you know if we have language Lois can use re: the furlough? (see below.) I'm sure other IRS speakers are facing the same issue.

Also, as you know, she'll be announcing that the College and University Report that afternoon. We never discussed a press release (you did one for the interim report), and it may be too late now, but should it be considered?

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
[REDACTED]

From: Flax Nikole C
Sent: Friday, April 19, 2013 11:44 AM
To: Lerner Lois G; Lemons Terry L
Cc: Grant Joseph H; Zarin Roberta B
Subject: Re: Georgetown

We will pull something together - can you let me know when/if you are open later today to discuss other topics?

From: Lerner Lois G
Sent: Friday, April 19, 2013 11:37 AM Eastern Standard Time
To: Flax Nikole C; Lemons Terry L
Cc: Grant Joseph H; Zarin Roberta B
Subject: Georgetown

We have numerous speakers over 2 days at the conference, starting on Wed. I am sure we will be asked about the furloughs. There is already press out there on the NTEU issue, so I don't

think we can avoid saying something. I'm thinking it would be best for me to lead off with some statement at the beginning before I get into my formal written speech to respond before the question comes. That way, all that follow me can either say exactly what I say or refer the questioner back to my earlier remarks. Otherwise I fear we may have someone get nervous and say more than we planned. Does that sound like a plan? If so, can we get parameters of what my statement should look like? Sorry, but this isn't one we can skate by. Thanks

Leis J. Lerner

Director of Exempt Organizations

From: Rosenbaum Monice L
Sent: Thursday, September 30, 2010 10:18 AM
To: Griffin Kenneth M
Subject: FW: EO Tax Journal 2010-139

Ken,

You may already be a subscriber to Mr. Streckfus's journal, but below is his brief summary of the DC Bar lunch meeting. He hopes a transcript will be available soon. Monice

From: paul streckfus [REDACTED]
Sent: Thursday, September 30, 2010 11:07 AM
To: paul streckfus
Subject: EO Tax Journal 2010-139

*From the Desk of Paul Streckfus,
 Editor, EO Tax Journal*

Email Update 2010-139 (Thursday, September 30, 2010)
 Copyright 2010 Paul Streckfus

Two events occurred yesterday at about the same time. One was the release of a letter (reprinted below) by the Chairman of the Senate Finance Committee, Senator Max Baucus. The other was a panel discussion titled "Political Activities of Exempt Organizations This Election Cycle" sponsored by the D.C. Bar, from which I hope to have a transcript in the near future.

After reading Senator Baucus' letter and accompanying news release, my sense is that Senator Baucus should have been at the D.C. Bar discussion since he is concerned that political campaigns and individuals are manipulating 501(c)(4), (5), and (6) organizations to advance their own political agenda, and he wants the IRS to look into this situation.

At the D.C. Bar discussion, Marc Owens of Caplin & Drysdale, Washington, explained that there is little that the IRS can do on a current, real-time basis to regulate (c)(4)s for two reasons. First, a new (c)(4) does not have to apply for recognition of exemption. Second, a new (c)(4) formed this year would not have to file a Form 990 until next year at the earliest and the IRS would probably not do a substantive review of the filed Form 990 until 2012 at the earliest. By then, Owens joked, the winners are in office, and the losers are in another career.

At the same time that the IRS can do little to regulate new (c)(4)s, it is not even looking at existing (c)(4)s. According to Owens, the IRS has little interest in regulating exempt organizations beyond (c)(3)s. The IRS has "effectively abandoned the field" at a time of heightened political activity by all exempt organizations, including (c)(3)s. Owens added that "we seem to have a haphazard IRS enforcement system now breaking down completely." This results in a corrosive effect on the integrity of exempt organizations in general and a stimulus to evasion of their responsibilities by organizations and their tax advisors.

Karl Sandstrom of Perkins Coie, Washington, was equally negative. According to Sandstrom, the IRS is "a poor vehicle to regulate political activity," in that this is not their focus or interest. In defense of the IRS, he did say Congress was also guilty in foisting upon the IRS regulation of political activity, using section 527 as an example. At the same time, Sandstrom did not see an active IRS as an answer to current concerns. Section 501(c)(4) organizations are just the current vehicle *du jour*. If (c)(4)s are shut down, Sandstrom said many other vehicles remain.

My guess: I doubt if we'll see much of Owens' and Sandstrom's views in the IRS' report to Senator Baucus and the Finance Committee.

* * * * *

Senate Committee on Finance News Release

For Immediate Release
September 29, 2010

Contact: Scott Mulhauser/Erin Shields
[REDACTED]

Baucus Calls On IRS to Investigate Use of Tax-Exempt Groups for Political Activity

Finance Chairman works to ensure special interests don't use tax-exempt groups to influence communities, spend secret donations

Washington, DC – Senate Finance Committee Chairman Max Baucus (D-Mont.) today sent a letter to IRS Commissioner Doug Shulman requesting an investigation into the use of tax-exempt groups for political advocacy. Baucus asked for the investigation after recent media reports uncovered instances of political activity by nonprofit organizations secretly backed by individuals advancing personal interests and organizations supporting political campaigns. Under the tax code, political campaign activity cannot be the main purpose of a tax-exempt organization and limits exist on political campaign activities in which these organizations can participate. Tax-exempt organizations also cannot serve private interests. Baucus expressed serious concern that if political groups are able to take advantage of tax-exempt organizations, these groups could curtail transparency in America's elections because nonprofit organizations do not have to disclose any information regarding their donors.

“Political campaigns and powerful individuals should not be able to use tax-exempt organizations as political pawns to serve their own special interests. The tax exemption given to nonprofit organizations comes with a responsibility to serve the public interest and Congress has an obligation to exercise the vigorous oversight necessary to ensure they do,” said Baucus. “When political campaigns and individuals manipulate tax-exempt organizations to advance their own political agenda, they are able to raise and spend money without disclosing a dime, deceive the public and manipulate the entire political system. Special interests hiding behind the cloak of independent nonprofits threatens the transparency our democracy deserves and does a disservice to fair, honest and open elections.”

Baucus asked Shulman to review major 501(c)(4), (c)(5) and (c)(6) organizations involved in political campaign activity. He asked the Commissioner to determine if these organizations are operating for the organization's intended tax exempt purpose, to ensure that political activity is not the organization's primary activity and to determine if they are acting as conduits for major donors advancing their own private interests regarding legislation or political campaigns, or are providing major donors with excess benefits. Baucus instructed Shulman to produce a report for the Committee on the agency's findings as quickly as possible. Baucus' full letter to Commissioner Shulman follows here.

September 28, 2010

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Via Electronic Transmission

Dear Commissioner Shulman:

The Senate Finance Committee has jurisdiction over revenue matters, and the Committee is responsible for conducting oversight of the administration of the federal tax system, including matters involving tax-exempt organizations. The Committee has focused extensively over the past decade on whether tax-exempt groups have been used for lobbying or other financial or political gain.

The central question examined by the Committee has been whether certain charitable or social welfare organizations qualify for the tax-exempt status provided under the Internal Revenue Code.

Recent media reports on various 501(c)(4) organizations engaged in political activity have raised serious questions about whether such organizations are operating in compliance with the Internal Revenue Code.

The law requires that political campaign activity by a 501(c)(4), (c)(5) or (c)(6) entity must not be the primary purpose of the organization.

If it is determined the primary purpose of the 501(c)(4), (c)(5) and (c)(6) organization is political campaign activity the tax exemption for that nonprofit can be terminated.

Even if political campaign activity is not the primary purpose of a 501(c)(4), (c)(5), and (c)(6) organization, it must notify its members of the portion of dues paid due to political activity or pay a proxy tax under Section 6033(e).

Also, tax-exempt organizations and their donors must not engage in private inurement or excess benefit transactions. These rules prevent private individuals or groups from using tax-exempt organizations to benefit their private interests or to profit from the tax-exempt organization's activities.

A September 23 New York Times article entitled "Hidden Under a Tax-Exempt Cloak, Private Dollars Flow" described the activities of the organization Americans for Job Security. An Alaska Public Office Commission investigation revealed that AJS, organized as an entity to promote social welfare under 501(c)(6), fought development in Alaska at the behest of a "local financier who paid for most of the referendum campaign." The Commission report said that "Americans for Job Security has no other purpose other than to cover money trails all over the country." The article also noted that "membership dues and assessments ... plunged to zero before rising to \$12.2 million for the presidential race."

A September 16 Time Magazine article examined the activities of Washington D.C. based 501(c)(4) groups planning a "\$300 million ... spending blitz" in the 2010 elections. The article describes a group transforming itself into a nonprofit under 501(c)(4) of the tax code, ensuring that they would not have to "publically disclose any information about its donors."

These media reports raise a basic question: Is the tax code being used to eliminate transparency in the funding of our elections -- elections that are the constitutional bedrock of our democracy? They also raise concerns about whether the tax benefits of nonprofits are being used to advance private interests.

With hundreds of millions of dollars being spent in election contests by tax-exempt entities, it is time to take a fresh look at current practices and how they comport with the Internal Revenue Code's rules for nonprofits.

I request that you and your agency survey major 501(c)(4), (c)(5) and (c)(6) organizations involved in political campaign activity to examine whether they are operated for the organization's intended tax-exempt purpose and to ensure that political campaign activity is not the organization's primary activity. Specifically you should examine if these political activities reach a primary purpose level -- the standard imposed by the federal tax code -- and if they do not, whether the organization is complying with the notice or proxy tax requirements of Section 6033(e). I also request that you or your agency survey major 501(c)(4), (c)(5), and (c)(6) organizations to determine whether they are acting as conduits for major donors advancing their own private interests regarding legislation or political campaigns, or are providing major donors with excess benefits.

Possible violation of tax laws should be identified as you conduct this study.

Please report back to the Finance Committee as soon as possible with your findings and recommended actions regarding this matter.

Based on your report I plan to ask the Committee to open its own investigation and/or to take appropriate legislative action.

Sincerely,

Max Baucus, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

3. Educate the public through advocacy/legislative activities to make America a better place to live.
4. Statements in the case file that are critical of the how the country is being run.

John Shafer
Group Manager
SE:T:EQ:RA:D:1:7838



From: Thomas Cindy M
Sent: Thursday, June 02, 2011 12:46 AM
To: Shafer John H
Cc: Esrig Bonnie A; Bowling Steven F
Subject: Tea Party Cases - NEED CRITERIA
Importance: High

John,

Could you send me an email that includes the criteria screeners use to label a case as a "tea party case?" BOLO spreadsheet includes the following:

Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).

Do the applications specify/state "tea party?" If not, how do we know applicant is involved with the tea party movement?

I need to forward to Holly per her request below. Thanks.

From: Melahn Brenda
Sent: Wednesday, June 01, 2011 3:08 PM
To: Paz Holly O; Thomas Cindy M
Subject: RE: group of cases

Holly - we will UPS a copy of the case in #1 below to your attention tomorrow. It should be there Monday. I'm sure Cindy will respond to #2.

Brenda

From: Paz Holly O
Sent: Wednesday, June 01, 2011 2:21 PM
To: Thomas Cindy M

May 7, 2014

Cc: Melahn Brenda
Subject: group of cases

re: Tea Party cases

Two things re: these cases:

1. Can you please send me a copy of the Crossroads Grassroots Policy Strategies ([REDACTED]) application? Lois wants Judy to take a look at it so she can summarize the issues for Lois.

2. What criteria are being used to label a case a "Tea Party case"? We want to think about whether those criteria are resulting in over-inclusion.

Lois wants a briefing on these cases. We'll take the lead but would like you to participate. We're aiming for the week of 6/27.

Thanks!

Holly

From: Paz Holly O
Sent: Thursday, April 07, 2011 10:33 AM
To: Seto Michael C
Subject: FW: sensitive (c)(3) and (c)(4) applications
FYI

From: Paz Holly O
Sent: Thursday, April 07, 2011 10:26 AM
To: Kindell Judith E; Lerner Lois G
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: RE: sensitive (c)(3) and (c)(4) applications

The last information I have is that there are approx. 40 Tea Party cases in Determs. With so many EOT and Guidance folks tied up with ACA (cases and Guidance) and the possibility looming that we may have to work reinstatement cases up here to prevent a backlog in Determs, I have serious reservations about our ability to work all of the Tea Party cases out of this office.

From: Kindell Judith E
Sent: Thursday, April 07, 2011 10:16 AM
To: Lerner Lois G; Paz Holly O
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: sensitive (c)(3) and (c)(4) applications

I just spoke with Chip Hull and Elizabeth Kastenberg about two cases they have that are related to the Tea Party - one a (c)(3) application and the other a (c)(4) application. I recommended that they develop the private benefit argument further and that they coordinate with Counsel. They also mentioned that there are a number of other (c)(3) and (c)(4) applications of orgs related to the Tea Party that are currently in Cincinnati. Apparently the plan had been to send one of each to DC to develop a position to be applied to the others. Given the sensitivity of the issue and the need (I believe) to coordinate with Counsel, I think it would be beneficial to have the other cases worked in DC as well. I understand that there may be TAS inquiries on some of the cases.

From: Lerner Lois G <[REDACTED]>
Sent: Friday, March 02, 2012 9:20 AM
To: Cook Janine
Subject: RE: Advocacy orgs

If only you could help--we're going to get creamed being able to provide the guidance piece ASAP will be the best--thanks

Lois G. Lerner

Director of Exempt Organizations

From: Cook Janine [REDACTED]
Sent: Friday, March 02, 2012 8:58 AM
To: Lerner Lois G
Subject: FW: Advocacy orgs

Fun all around. (Streckfus email today). We're working diligently on reviewing the advocacy guide. Let us know if you want our assistance on anything else.

1 - House Oversight Chairman Seeks Additional Information from the IRS on Tax-Exempt Sector Compliance, as Reports of IRS Questioning Grassroots Political Groups Raises New Concerns

March 1, 2012

Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Shulman:

On October 6, 2011, I wrote to you requesting information about the status of various IRS compliance efforts involving the tax-exempt sector and issues related to audits of tax-exempt organizations [for this letter, see email update 2011-166]. While awaiting a complete response to that letter, I have since heard the IRS has been questioning new tax-exempt applicants, including grassroots political entities such as Tea Party groups, about their operations and donors [for background, see email update 2012-38]. In addition to the unanswered questions from my October 6, 2011, letter, I have additional questions relating to the IRS' oversight of applications for tax exemption for new organizations.

In particular, I am seeking additional information as it relates to the IRS review of new applications for section 501(c)(3) and (c)(4) tax-exempt status, including answers to the questions detailed below. Please provide your responses no later than March 15, 2012.

1. How many new tax-exempt organizations has the IRS recognized each year since 2008?

2. How many new applications for 501(c)(3) and (c)(4) tax-exempt status have been received by the IRS since 2008? Provide a breakdown by year and type of organization.
3. What is the IRS process for reviewing each tax-exempt status application? Is this process the same for entities applying for section 501(c)(3) and (c)(4) tax-exempt status? Please describe the process for both section 501(c)(3) and (c)(4) applications in detail.
4. Your preliminary response in my October 6, 2011, letter stated that, “if the application is substantially complete, the IRS may retain the application and request additional information as needed.” How does the IRS determine that an application for tax-exempt status is “substantially complete?” Please provide guidelines or any other materials used in this process.
5. Does the IRS have standard procedures or forms it uses to “request additional information as needed” from applicants seeking tax-exempt status? Please provide any forms and related materials used.
6. Does the IRS select applications for “follow-up” on an automated basis or is there an office or individual responsible for selecting incomplete applications? Please explain and provide details on any automated system used for these purposes. If decisions are made on an individual basis, please provide the guidelines and any related materials used.
7. How many tax-exempt applications since 2008 have been selected for “follow-up”? How many entities selected for follow-up were granted tax-exempt status?

Should you have any questions regarding this request, please contact *** or *** at [REDACTED].

Sincerely,

/s/ Charles Boustany, Jr., MD
Chairman
Subcommittee on Oversight
Committee on Ways and Means
House of Representatives
Washington, D.C.

IRS Battling Tea Party Groups Over Tax-Exempt Status

By Alan Fram, *Huff Post Politics*, March 1, 2012

WASHINGTON -- The Internal Revenue Service is embroiled in battles with tea party and other conservative groups who claim the government is purposely frustrating their attempts to gain tax-exempt status. The fight features instances in which the IRS has asked for voluminous details about the groups' postings on social networking sites like Twitter and Facebook, information on donors and key members' relatives, and copies of all literature they have distributed to their members, according to documents provided by some organizations.

While refusing to comment on specific cases, IRS officials said they are merely trying to gather enough information to decide whether groups qualify for the tax exemption. Most organizations are applying under section 501(c)(4) of the federal tax code, which grants tax-exempt status to certain groups as long as they are not primarily involved in activity that could influence an election, a determination that is up to the IRS. The tax agency would seem a natural target for tea party groups, which espouse smaller and less intrusive government and lower taxes. Yet over the years, the IRS has periodically been accused of political vendettas by liberals and conservatives alike, usually without merit, tax experts say.

The latest dispute comes early in an election year in which the IRS is under pressure to monitor tax-exempt groups -- like the Republican-leaning Crossroads GPS and Democratic-leaning Priorities USA -- which can shovel unlimited amounts of money to allies to influence campaigns, even while not being required to disclose their donors.

Conservatives say dozens of groups around the country have recently had similar experiences with the IRS and say its information demands are intrusive and politically motivated. They complain that the sheer size and detail of material the agency wants is designed to prevent them from achieving the tax designations they seek. "It's intimidation," said Tom Zawistowski, president of the Ohio Liberty Council, a coalition of tea party groups in the state. "Stop doing what you're doing, or we'll make your life miserable."

Authorities on the laws governing tax-exempt organizations expressed surprise at some of the IRS's requests, such as the volume of detail it is seeking and the identity of donors. But they said it is the agency's job to learn what it can to help decide whether tax-exempt status is warranted. "These tea party groups, a lot of their material makes them look and sound like a political party," said Marcus S. Owens, a lawyer who advises tax-exempt organizations and who spent a decade heading the IRS division that oversees such groups. "I think the IRS is trying to get behind the rhetoric and figure out whether they are, at their core, a political party," or a group that would qualify for tax-exempt status.

The tea party was first widely emblazoned on the public's mind for their noisy opposition to President Barack Obama's health care overhaul at congressional town hall meetings in the summer of 2009. Support from its activist members has since helped nominate and elect conservative candidates around the country, though group leaders say they are chiefly educational organizations.

They say they mostly do things like invite guests to discuss issues and teach members about the Constitution and how to request government documents under the Freedom of Information Act. Some say they occasionally endorse candidates and seek to register voters. "We're doing nothing more than what the average citizen does in getting involved," said Phil Rapp, executive director of the Richmond Tea Party in Virginia. "We're not supporting candidates; we are supporting what we see as the issues."

One group, the Kentucky 9/12 Project, said it applied for tax-exempt status in December 2010. After getting a prompt IRS acknowledgement of its application, the organization heard nothing until it got an IRS letter two weeks ago requesting more information, said the project's director, Eric Wilson. That letter, which Wilson provided to the AP, asked 30 questions, many with multiple parts, and gave the group until March 6 to respond.

Information requested included "details regarding all of your activity on Facebook and Twitter" and whether top officials' relatives serve in other organizations or plan to run for elective office. The IRS also sought the political affiliation of every person who has provided the group with educational services and minutes of every board meeting "since your creation."

"This is a modern-day witch hunt," said Wilson, whose 9/12 group and others around the country were inspired by conservative activist Glenn Beck. Other conservative organizations described similar experiences.

A January IRS letter to the Richmond Tea Party requests the names of donors, the amounts each contributed and details on how the funds were used. The Ohio Liberty Council received an IRS letter last month seeking the credentials of speakers at the group's public events. In a February letter, the IRS asked the Waco Tea Party of Texas whether its officials have a "close relationship" with any candidates for office or political parties, and was asked for events they plan this year. "The crystal ball I was issued can't predict the future," and future events will depend on factors like what Congress does this year, said Toby Marie Walker, president of the Waco group.

The IRS provided a five-paragraph written response to a reporter's questions about its actions. It noted that the tax code allows tax-exempt status to "social welfare" groups, which are supposed to promote the common good of the community. Groups can engage in some political activities "so long as, in the aggregate, these non-exempt activities are not its primary activities," the IRS statement said. "Career civil servants make all decisions on exemption applications in a fair, impartial manner and do so without regard to political affiliation or ideology," the agency said.

There were 139,000 groups in the U.S. with 501(c)(4) tax-exempt status in 2010, the latest year of available IRS data. More than 1,700 organizations applied for that designation in 2010 while over 1,400 were approved. Such volume means it might take months for the IRS to assign applications to agents, said Lloyd Hitoshi Mayer, a Notre Dame law professor who specializes in election and tax law.

Ever since a 2010 Supreme Court decision allowing outside groups to spend unlimited funds in elections, such organizations have been under scrutiny. Two nonpartisan campaign finance watchdogs called on the IRS last fall to strip some large groups of tax-exempt status, claiming they engage in so much political activity that they don't qualify for the designation. Last month, seven Democratic senators asked the IRS to investigate whether some groups were improperly using tax-exempt status -- they didn't name any organizations -- because those groups are "improperly engaged in a substantial or even a predominant amount of campaign activity."

From: Ruth.Madrigal [REDACTED]
Sent: Thursday, June 14, 2012 3:10 PM
To: Judson Victoria A; Cook Janine; Lerner Lois G; Marks Nancy J
Subject: 501(c)(4)s - From the Nonprofit Law Prof Blog

Don't know who in your organizations is keeping tabs on c4s, but since we mentioned potentially addressing them (off-plan) in 2013, I've got my radar up and this seemed interesting...

Bad News for Political 501(c)(4)s: 4th Circuit Upholds "Major Purpose" Test for Political Committees

In a case with potentially major ramifications for politically active section 501(c)(4) organizations, the U.S. Court of Appeals for the Fourth Circuit has upheld the Federal Election Commission's "major purpose" test for determining whether an organization is a political committee or PAC and so subject to extensive disclosure requirements. As described in the opinion, under the major purpose test "the Commission first considers a group's political activities, such as spending on a particular electoral or issue-advocacy campaign, and then it evaluates an organization's 'major purpose,' as revealed by that group's public statements, fundraising appeals, government filings, and organizational documents" (citations omitted). The FEC's summary of the litigation details the challenge made in this case:

A group or association that crosses the \$1,000 contribution or expenditure threshold will only be deemed a political committee if its "major purpose" is to engage in federal campaign activity. [The plaintiff] claims that the FEC set forth an enforcement policy regarding PAC status in a policy statement and that this enforcement policy is "based on an ad hoc, case-by-case, analysis of vague and impermissible factors applied to undefined facts derived through broad-ranging, intrusive, and burdensome investigations . . . that, in themselves, can often shut down an organization, without adequate bright lines to protect issue advocacy in this core First Amendment area." [The plaintiff] asks the court to find this "enforcement policy" unconstitutionally vague and overbroad and in excess of the FEC's statutory authority.

In a unanimous opinion, the court concluded that the FEC's current major purpose test is "a sensible approach to determining whether an organization qualifies for PAC status. And more importantly the Commission's multi-factor major-purpose test is consistent with Supreme Court precedent and does not unlawfully deter protected speech." In doing so, the court chose to apply the less stringent "exacting scrutiny" standard instead of the "strict scrutiny" standard because, in the wake of Citizens United, political committee status only imposes disclosure and organizational requirements but no other restrictions. While the plaintiff here (The Real Truth About Abortion, Inc., formerly known as The Real Truth About Obama, Inc.) is a section 527 organization for federal tax purposes, the same test would apply to other types of politically active organizations, including section 501(c)(4) entities.

Hat Tip: Election Law Blog

LHM

M. Ruth M. Madrigal
 Office of Tax Policy
 U.S. Department of the Treasury
 1500 Pennsylvania Ave., N.W.
 Washington, DC 20220

[REDACTED] (direct)
 [REDACTED]

Increase in (c)(3)/(c)(4) Advocacy Org. Applications

Background:

- EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
- EOD Screening identified this type of case as an emerging issue and began sending cases to a specific group if they meet any of the following criteria:
 - “Tea Party,” “Patriots” or “9/12 Project” is referenced in the case file
 - Issues include government spending, government debt or taxes
 - Education of the public by advocacy/lobbying to “make America a better place to live”
 - Statements in the case file criticize how the country is being run
- Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. Before this was identified as an emerging issue, two (c)(4) applications were approved.
- Two sample cases were transferred to EOT, a (c)(3) and a (c)(4).
 - The (c)(4) stated it will conduct advocacy and political intervention, but political intervention will be 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.
 - The (c)(3) stated it will conduct “insubstantial” political intervention and it has ties to politically active (c)(4)s and 527s. A proposed denial is being revised by TLS to incorporate the org.’s response to the most recent development letter.
- EOT is assisting EOD by providing technical advice (limited review of application files and editing of development letters).

EOD Request:

- EOD requests guidance in working these cases in order to promote uniform handling and resolution of issues.

Options for Next Steps:

- Assign cases for full development to EOD agents experienced with cases involving possible political intervention. EOT provides guidance when EOD agents have specific questions.
- EOT composes a list of issues or political/lobbying indicators to look for when investigating potential political intervention and excessive lobbying, such as reviewing website content, getting copies of educational and fundraising materials, and close scrutiny of expenditures.
- Establish a formal process similar to that used in healthcare screening where EOT reviews each application on TEDS and highlights issues for development.
- Transfer cases to EOT to be worked.
- Include pattern paragraphs on the political intervention restrictions in all favorable letters.
- Refer the organizations that were granted exemption to the ROO for follow-up.

Cautions:

- These cases and issues receive significant media and congressional attention.
- The determinations process is representational, therefore it is extremely difficult to establish that an organization will intervene in political campaigns at that stage.

From: Paz Holly O
Sent: Thursday, January 31, 2013 4:15 AM
To: Paterson Troy D TIGTA
Cc: Lerner Lois G
Subject: RE: E-Mail Retention Question

Troy,

I'm sorry we won't get to see you today. We have reached out to determine the appropriate contact regarding your question below and have been told that, if this data request is part of e-Discovery, the coordination needs to go through Chief Counsel. The person to contact regarding e-Discovery requests is Glenn Melcher. His email address is [REDACTED] and his phone number is [REDACTED]

Holly

From: Paterson Troy D TIGTA [REDACTED]
Sent: Thursday, January 24, 2013 8:51 AM
To: Paz Holly O
Subject: E-Mail Retention Question

Holly,

Good morning.

During a recent briefing, I mentioned that we do not have the original e-mail from May 2010 stating that "Tea Party" applications should be forwarded to a specific group for additional review. After thinking it through, I was wondering about the IRS's retention or backup policy regarding e-mails. Do you know who I could contact to find out if this e-mail may have been retained?

Troy
[REDACTED]

From: Paz Holly O
Sent: Wednesday, June 20, 2012 1:14 PM
To: Lerner Lois G
Subject: FW: Additional procedures on cases with advocacy issues - before issuing any favorable or initial denial ruling

FYI

From: Seto Michael C
Sent: Wednesday,

June 20, 2012 2:11 PM
To: McNaughton Mackenzie P; Salins Mary J;

Shoemaker Ronald J; Lieber Theodore R
Cc: Grodnitzky Steven; Megosh

Andy; Giuliano Matthew L; Fish David L; Paz Holly O
Subject:

Additional procedures on cases with advocacy issues - before issuing any favorable or initial denial ruling

Please

inform the reviewers and staff in your groups that before issuing any favorable or initial denial rulings on any cases with advocacy issues, the reviewers must notify me and you via e-mail and get our approval. No favorable or initial denial rulings can be issued without your and my approval. The e-mail notification includes the

May 7, 2014

name of the case, and a synopsis of facts and denial rationale. I may require a short briefing depending on the facts and circumstances of the particular case.

If you have any questions, please let me know.

Thanks,

Mike

From: Lerner Lois G
Sent: Wednesday, May 02, 2012 9:40 AM
To: Miller Steven T
Subject: A Question

I'm wondering if you might be able to give me a better sense of your expectations regarding roles and responsibilities for the c4 matters. I understand you have asked Nan to take a deep look at the what is going on and make recommendations. I'm fine with that. Then there was the discussion yesterday about how we plan to approach the issues going forward. That is where the confusion lies. What are your expectations as to who is implementing the plan?

Prior to that meeting, unbeknownst to me, Cathy had made comments regarding the guidance--which Nan knew about. Nan then directed one of my staff to meet with Cathy and start moving in a new direction. The staff person came to me and I talked to Nan, suggesting before we moved, we needed to hear from you, which is where we are now.

We're all on good terms and we all want to do the best, but I fear that unless there's a better

understanding of roles, we may step on each others toes without intending to.

Your thoughts
please. Thanks

Lais G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Tuesday, May 17, 2011 10:37 AM
To: Urban Joseph J
Subject: Re: BNA - IRS Answers Few Questions Regarding Audits Of Donors Giving to Section 501(c)(4) Groups

The constitutional issue is the big Citizens United issue. I'm guessing no one wants that going forward Lois G. Lerner-----
 ----- Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Joseph Urban
To: Lois Call in Number
Subject: RE: BNA - IRS Answers Few Questions Regarding Audits Of Donors Giving to Section 501(c)(4) Groups
Sent: May 17, 2011 10:39 AM

The Counsel function with jurisdiction over the gift tax, Passthroughs and Special Industries, is going to have to come up with a legal position on what type of transfers of money or property to a section 501(c)(4) organization are subject to the gift tax. There is also a constitutional angle that has been raised - whether imposing the tax on a contribution for political purposes is an infringement on donors' First Amendment free speech rights, as well as an attack on section 501(c)(4) organizations engaged in permissible political activities. The PS&I lawyers have called a meeting for Friday with their boss, and perhaps other higher-ups in Counsel. Judy, Justin and I are going. Susan Brown and Don Spellman will be there from TE/GE Counsel, as will Nan Marks. There are some tough issues for the gift tax people to work through, and I am sure they will be running their conclusions past the Chief Counsel, if not Treasury. It would certainly be an interesting result if a self-interested earmarked donation to a (c)(4) for a political campaign would not subject to the gift tax, but a donation for the selfless general support of a (c)(4)s public interest work would be.
 Stay tuned.

-----Original Message-----

From: Lerner Lois G
Sent: Tuesday, May 17, 2011 10:04 AM
To: Urban Joseph J
Subject: Re: BNA - IRS Answers Few Questions Regarding Audits Of Donors Giving to Section 501(c)(4) Groups

So. What's your take on where this will go? Reminds me of Marv's staff draft on governance

Lois G. Lerner-----

-----Original Message Truncated-----

To: Eldridge Michelle L; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

I will now be speaking somewhere between 11-11:30 depending on when previous speaker finishes. I may or may not be adding some remarks that are being discussed at a higher level. If approved, I have not been told whether those remarks will be in the written speech, or I will simply give them orally. There may be a desire to get the speech up ASAP if the new proposed language is added to the draft--these are Nikole questions. Right now, though, we're simple on hold.

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, April 23, 2013 9:55 AM
To: Lerner Lois G; Zarin Roberta B; Lemons Terry L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

I'm sorry--I've lost track. What time is your speech? Given timing of other stuff that day--we may be looking at posting both in the afternoon. I'm sure this will continue to be discussed...as I hear more details, I will pass it along. Please let me know what you are hearing as well. Thanks. --Michelle

From: Lerner Lois G
Sent: Monday, April 22, 2013 6:49 PM
To: Zarin Roberta B; Lemons Terry L; Eldridge Michelle L; Burke Anthony
Cc: Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown
Importance: High

Hmm--I was thinking the speech would go up right after I speak and the report would go up later in the afternoon. Will that work?

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Monday, April 22, 2013 1:32 PM
To: Lemons Terry L; Eldridge Michelle L; Burke Anthony
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

Thanks, but Melaney deserves credit for that one! We are planning to post Lois' speech, along with the report, Thursday afternoon

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
[REDACTED]

From: Lemons Terry L
Sent: Monday, April 22, 2013 1:10 PM
To: Zarin Roberta B; Eldridge Michelle L; Burke Anthony
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: RE: Georgetown

Bobby – good catch on the news release. Think we should try doing a short one since we did the interim one. Think text should track what we did before (below.) Anthony Burke will be reaching out to you. Think we need text by mid-day Tuesday so we can get through clearance channels on third floor and Treasury.

Also possible we may post text of Thursday speech on IRS.gov.

Thanks.

From: Zarin Roberta B
Sent: Monday, April 22, 2013 11:09 AM
To: Lemons Terry L; Eldridge Michelle L
Cc: Lerner Lois G; Partner Melaney J; Marx Dawn R
Subject: FW: Georgetown

Fun for the week:

Do you know if we have language Lois can use re: the furlough? (see below.) I'm sure other IRS speakers are facing the same issue.

Also, as you know, she'll be announcing that the College and University Report that afternoon. We never discussed a press release (you did one for the interim report), and it may be too late now, but should it be considered?

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
[REDACTED]

From: Flax Nikole C
Sent: Friday, April 19, 2013 11:44 AM
To: Lerner Lois G; Lemons Terry L
Cc: Grant Joseph H; Zarin Roberta B
Subject: Re: Georgetown

We will pull something together - can you let me know when/if you are open later today to discuss other topics?

From: Lerner Lois G
Sent: Friday, April 19, 2013 11:37 AM Eastern Standard Time
To: Flax Nikole C; Lemons Terry L
Cc: Grant Joseph H; Zarin Roberta B
Subject: Georgetown

We have numerous speakers over 2 days at the conference, starting on Wed. I am sure we will be asked about the furloughs. There is already press out there on the NTEU issue, so I don't

think we can avoid saying something. I'm thinking it would be best for me to lead off with some statement at the beginning before I get into my formal written speech to respond before the question comes. That way, all that follow me can either say exactly what I say or refer the questioner back to my earlier remarks. Otherwise I fear we may have someone get nervous and say more than we planned. Does that sound like a plan? If so, can we get parameters of what my statement should look like? Sorry, but this isn't one we can skate by. Thanks

Leis J. Lerner

Director of Exempt Organizations

From: Kall Jason C
Sent: Tuesday, January 10, 2012 9:09 PM
To: Lerner Lois G
Cc: Ghougasian Laurice A; Fish David L; Paz Holly O; Downing Nanette M
Subject: Workplan and background on how we started the self declarer project

Lois.

I found the string of e-mails that started us down the path of what has become the c-4, 5, 6 self declarer project. Our curiosity was not from looking at the 990 but rather data on c-4 self declarers.

Jason Kall

Manager, EO Compliance Strategies and Critical Initiatives
 [REDACTED]

From: Chasin Cheryl D
Sent: Thursday, September 16, 2010 8:59 AM
To: Lerner Lois G; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

That's correct. These are all status 36 organizations, which means no application was filed.

Cheryl Chasin
 [REDACTED]

From: Lerner Lois G
Sent: Thursday, September 16, 2010 9:58 AM
To: Chasin Cheryl D; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: Re: EO Tax Journal 2010-130

Ok guys. We need to have a plan. We need to be cautious so it isn't a per se political project. More a o4 project that will look at levels of lobbying and pol. activity along with exempt activity. Cheryl- I assume none of those came in with a 1024?
 Lois G. Lerner-----
 Sent from my BlackBerry Wireless Handheld

From: Chasin Cheryl D
To: Lerner Lois G; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Sent: Wed Sep 15 14:54:38 2010
Subject: RE: EO Tax Journal 2010-130

It's definitely happening. Here are a few organizations (501(c)(4), status 36) that sure sound to me like they are engaging in political activity:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I've also found (so far) 94 homeowners and condominium associations, a VEBA, and legal defense funds set up to benefit specific individuals.

Cheryl Chasin
[REDACTED]

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 1:51 PM
To: Kindell Judith E; Chasin Cheryl D; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

I'm not saying this is correct--but there is a perception out there that that is what is happening. My guess is most who conduct political activity never pay the tax on the activity and we surely should be looking at that. Wouldn't that be a surprising turn of events. My object is not to look for political activity--more to see whether self-declared c4s are really acting like c4s. Then we'll move on to c5,c6,c7--it will fill up the work plan forever!

Lois G. Lerner
Director, Exempt Organizations

From: Kindell Judith E
Sent: Wednesday, September 15, 2010 1:03 PM
To: Lerner Lois G; Chasin Cheryl D; Ghougasian Laurice A
Cc: Lehman Sue
Subject: RE: EO Tax Journal 2010-130

My big concern is the statement "some (c)(4)s are being set up to engage in political activity" - if they are being set up to engage in political campaign activity they are not (c)(4)s. I think that Cindy's people are keeping an eye out for (c)(4)s set up to influence political campaigns, but we might want to remind them. I also agree that it is about time to start looking at some of those organizations that file Form 990 without applying for recognition -whether or not they are involved in politics.

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 12:27 PM

To: Chasin Cheryl D; Ghougasian Laurice A; Kindell Judith E
Cc: Lehman Sue
Subject: FW: EO Tax Journal 2010-130

Not sure you guys get this directly. I'm really thinking we do need a c4 project next year

Lois J. Lerner

Director, Exempt Organizations

From: paul streckfus [REDACTED]
Sent: Wednesday, September 15, 2010 12:20 PM
To: paul streckfus
Subject: EO Tax Journal 2010-130

*From the Desk of Paul Streckfus,
 Editor, EO Tax Journal*

Email Update 2010-130 (Wednesday, September 15, 2010)
 Copyright 2010 Paul Streckfus

Yesterday, I asked, "Is 501(c)(4) Status Being Abused?" I can hardly keep up with the questions and comments this query has generated. As noted yesterday, some (c)(4)s are being set up to engage in political activity, and donors like them because they remain anonymous. Some commenters are saying, "Why should we care?", others say these organizations come and go with such rapidity that the IRS would be wasting its time to track them down, others say (c)(3) filing requirements should be imposed on (c)(4)s, and so it goes.

Former IRSer Conrad Rosenberg seems to be taking a leave them alone view:

"I have come, sadly, to the conclusion that attempts at revocation of these blatantly political organizations accomplish little, if anything, other than perhaps a bit of *in terrorem* effect on some other (usually much smaller) organizations that may be contemplating similar behavior. The big ones are like balloons -- squeeze them in one place, and they just pop out somewhere else, largely unscathed and undaunted. The government expends enormous effort to win one of these cases (on very rare occasion), with little real-world consequence. The skein of interlocking 'educational' organizations woven by the fabulously rich and hugely influential Koch brothers to foster their own financial interests by political means ought to be Exhibit One. Their creations operate with complete impunity, and I doubt that potential revocation of tax exemption enters into their calculations at all. That's particularly true where deductibility of contributions, as with (c)(4)s, is not an issue. Bust one, if you dare, and they'll just finance another with a different name. I feel for the IRS's dilemma, especially in this wildly polarized election year."

A number of individuals said the requirements for (c)(4)s to file the Form 1024 or the Form 990 are a bit of a muddle. My understanding is that (c)(4)s need not file a Form 1024, but generally the IRS won't accept a Form 990 without a Form 1024 being filed. The result is that attorneys can create new (c)(4)s every year to exist for a short time and never file a 1024 or 990. However, the IRS can claim the organization is subject to tax (assuming it becomes aware of its existence) and then the organization must prove it is exempt (by essentially filing the information required by Form 1024 and maybe 990). Not being sure of the correctness of my understanding, I went to the only person who may know more about EO tax law than Bruce Hopkins, and got this response from Marc Owens:

"You are sort of close. It's not quite accurate to state that a (c)(4) 'need not file a Form 1024.' A (c)(4) is not subject to IRC 508, hence it is not required to file an application for tax-exempt status within a particular period of time after its formation. Such an organization is subject, however, to Treas. Reg. Section 1.501(a)-1(a)(2) and (3) which set forth the general requirement that in order to be exempt, an organization must file an application, but for which no particular time period is specified. Once a would-be (c)(4) is formed and it has completed one fiscal year of life, and assuming that it had revenue during the fiscal year, it is required to file a tax return.

“There is no exemption from the return filing requirement for would-be (c)(4)s and failing to file anything is flirting with serious issues. Obviously, few, if any, organizations elect to file a Form 1120 and so file a Form 990 as an alternative and because it comports with the intended tax-exempt status. When such a Form 990 arrives in Ogden, it goes ‘unpostable,’ i.e., there is no pre-existing master file account to which to ‘post’ receipt of the return.

“Master file accounts for tax exempts are created by Cincinnati when an application is filed, hence no prior application, no master file account and no place for Ogden to record receipt of the subsequent 990. Such unpostable returns are kicked out of the processing system and sent to a resolution unit that analyzes the problem (there are many reasons a return might be unpostable, such as a typo in an EIN). The processing unit might create a ‘dummy’ master file account to which to post the return, it might correspond with the filing organization to ascertain the correct return to be filed, or it might refer the matter to TE/GE where it would be assigned to an agent to analyze, essentially instigating the process you describe.”

My query today: So where are we? Should the IRS ignore the whole mess? Or should the IRS be concerned with the integrity of the tax exemption system?

I think the IRS needs to keep track of new (c)(4)s as they appear. I’m assuming most political ads identify who is bringing them to you. That’s true of the ones I’ve seen. When the IRS can not identify on its master file a new organization engaged in politicking, it should send a letter of inquiry, saying “Who are you? What is your claimed tax status?” In other words, what I’m saying is that the IRS needs to be more pro-active, and not await the filing of a Form 1024 or 990. I recognize that most of these (c)(4)s may have little income if they spend what they take in, but the EO function has never been about generating revenue. If (c)(4) status is being abused, the IRS needs to take action. If the IRS does not have the tools to get at the problems, then we need for Congress to step in and strengthen the filing requirements.

My biggest concern is that these political (c)(4)s are operating in tandem with (c)(3)s so that donors can claim 170 deductions. Here the IRS needs to have an aggressive audit program in coordination with the Income Tax Division so that 170 deductions are disallowed if a (c)(3) is being used as a conduit to a (c)(4).

I’ve probably raised new issues, and I’ve said nothing about section 527. Anyone who wants to fill in some of the blanks, please do so.

From: Marks Nancy J
Sent: Monday, April 01, 2013 12:16 PM
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: Re: HMMMM?

Well we'd all like to see some good solid light of day court resolution so hope so

 Sent using BlackBerry

From: Lerner Lois G
Sent: Monday, April 01, 2013 12:34 PM Eastern Standard Time
To: Marks Nancy J; Paz Holly O; Fish David L
Subject: RE: HMMMM?

It's the one that will be next that is "the one."

Lois G. Lerner

Director of Exempt Organizations

From: Marks Nancy J
Sent: Monday, April 01, 2013 12:21 PM
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: Re: HMMMM?

Some not all would be my guess

 Sent using BlackBerry

From: Lerner Lois G
Sent: Monday, April 01, 2013 09:55 AM Eastern Standard Time
To: Marks Nancy J; Paz Holly O; Fish David L
Subject: Re: HMMMM?

Sorry. These guys are itching for a Constitutional challenge. Not you father's EO

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Marks Nancy J
Sent: Friday, March 29, 2013 05:55 PM Eastern Standard Time
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: Re: HMMMM?

I guess I'd never assume that. Court is an expensive crap shoot with the potential for a public record the org might not want. This changes the odds some not sure it is a lot (unless most have no liability)

Sent using BlackBerry

From: Lerner Lois G
Sent: Friday, March 29, 2013 05:43 PM Eastern Standard Time
To: Marks Nancy J; Paz Holly O; Fish David L
Subject: RE: HMMMM?

When we were talking, we were thinking they would all want to go to court--so we figured, why not get there sooner and save Appeals some time--they will be dying with these cases. We were thinking c3 rules. As to taxes owed--if IRS hasn't assessed, it's hard to get to court without paying yourself and making a claim

Lois G. Lerner
Director of Exempt Organizations

From: Marks Nancy J
Sent: Friday, March 29, 2013 5:37 PM
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: RE: HMMMM?

I may be missing something. Designating them would not guarantee litigation because no one can force the taxpayer into court but assuming they have some tax liability resulting from the loss of exempt status litigation is certainly possible and the designation would have cut off appeals time right? (I'll admit I have not looked at designation procedures in some time). I agree release of denials is unlikely to create a public record because of redaction; there will probably be some record arising from taxpayers self disclosing but that issue is no different here than in many places.

From: Lerner Lois G
Sent: Friday, March 29, 2013 5:16 PM
To: Marks Nancy J; Paz Holly O; Fish David L
Subject: HMMMM?

I was talking to Tom Miller about the redaction process in an effort to give Nikole a feel for how long it takes form a proposed denial to something being public with regard to the denial--a long time. As we talked I had been thinking of ways to shorten things up--such as designating the case for litigation and cutting out the Appeals time. It occurred to me though, that these are c4s, not c3s, so they have no right to go to court unless they owe tax. Without an exam, we can't tell whether they owe tax, and once we deny them, we don't have any ability to examine them--they are on the other side of the IRS. If they want to go to court, I guess they could file and pay taxes for previous years and then claim a refund(maybe?)

Bottom line, am I right that designating a c4 for court doesn't work and that we probably won't see any of these denials publicly other than the redacted copies of the denials when the process is complete? That really won't be helpful as I'm guessing many of these will have to be redacted so heavily that they won't have much information left once that is done.

Am I correct?

Lois G. Lerner

Director of Exempt Organizations



From: Lerner Lois G
Sent: Friday, May 03, 2013 9:30 AM
To: Flax Nikole C
Subject: RE: Aba

It's just the plain vanilla "what's new from the IRS?" with Ruth and Janine---ordinarily, I'd give snippets of several topics--status of auto-rev, the 2 questionnaire projects, the interactive 1023--stuff we talked about at Georgetown. May 10, 9-10--immediately followed by me on a panel re C & U Report with Lorry Spitzer and someone else--maybe Suzie McDowell.

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----

From: Flax Nikole C
Sent: Friday, May 03, 2013 9:42 AM
To: Lerner Lois G
Subject: Aba

What time is your panel friday and what are the topics?

From: Flax Nikole C
Sent: Tuesday, April 23, 2013 11:59 AM
To: Lerner Lois G
Subject: FW: Draft remarks
Attachments: draft c4 comments 4-22-13.doc

see what you think.

Recent section 501(c)(4) activity
PRELIMINARY DRAFT 4-22-13

So I think it's important to bring up a matter that came up over the last year or so concerning our determination letter process, some section 501(c)(4) organizations and their political activity. Some of this has been discussed publicly already. But I thought it would make sense to do just a couple of minutes on what we did, what we didn't do, and where we are today on the grouping of advocacy organizations in our determination letter inventory.

I will start with a summary. As you know, the number of c4 applications increased significantly starting after 2010. In particular, we saw a large increase in the volume of applications from organizations that appeared to be engaged or planning to engage in advocacy activities. At that time, we did not have good enough procedures or guidance in place to effectively work these cases. We also have the factual difficulty of separating politics from education in these cases – it's not always clear. Complicating matters is the sensitivity of these cases. Before I get into more detail, let me say that the IRS should have done a better job of handling the review of the c4 applications. We made mistakes, for which we apologize. But these mistakes were not due to any political or partisan reason. They were made because of missteps in our process and insufficient sensitivity to the implications of some our decisions. We believe we have fixed these issues, and our entire team will do a much better job going forward in this area. And I want to stress that our team - all career civil servants – will continue to do their work in a fair, non-partisan manner.

So let me start again and provide more detail. Centralizing advocacy cases for review in the determination letter process made sense. Some of the ways we centralized did not make sense. But we have taken actions to fix the errors. What we did here, along with other mistakes that were made along the way, resulted in some cases being in inventory far longer than they should have.

Our front-line people in Cincinnati – who do the reviews – took steps to coordinate the handling of the uptick in cases to ensure consistency. We take this approach in areas where we want to promote consistency. Cases involving credit counseling are the best example of this sort of situation.

Here's where a problem occurred. In centralizing the cases in Cincinnati, my review team placed too much reliance on the particular name of an organization; in this case, relying on names in organization titles like "tea party" or "patriot," rather than looking deeper into the facts to determine the level of activity under the c4 guidelines. Our Inspector General is looking at this situation, but I believe and the IRS leadership team believe this to be an error -- not a political vendetta. The error was of a mistaken desire for too much efficiency on the applications without sufficient sensitivity to the situation.

We also made some errors in our development letters, asking for more than was needed. You may recall the publicity around donor lists. That resulted from insufficient

guidance being provided to our people working these cases. There was also an issue about whether we could do a guidesheet for these cases, an effort that took too long before we realized the diversity of the cases prevented success on such a document.

Now, we have remedied this situation — both systemically for the IRS and for the taxpayers who were impacted. I think we have done a good job of turning the situation around to help prevent this from occurring again.

Let me walk you through the steps we have taken.

Systemically, decisions with respect to the centralized collection of cases must be made at a higher level. So what happened here will not happen again.

With respect to the specific c4 cases in inventory, we took a number of steps to move things along. First, we had a team review the cases to determine the necessary scope of our review. Now make no mistake, some need that review, some have or had endorsements in public materials, for example. But many did not.

We worked to move the inventory. We closed those cases that were clear and are working on those that are less certain.

With respect to what we agree may have been overbroad requests for information, we engaged in a process of an active back and forth with the taxpayer. With respect to donor names, we informed organizations that if they could provide information requested in an alternative manner, we would work with them. In cases in which the donor names were not used in making the determination, the donor information was expunged from the file.

We now have a process where each revenue agent assigned these cases works in coordination with a specific technical expert.

And we have made significant progress on these cases. Of the nearly 300 c4 advocacy cases, we have approved more than 120 to date. We have had more than 30 (?) withdrawals. And obviously some cases take longer than others depending on the issues raised, including the level of political activity compared with social welfare activity. Let me make another important point that shouldn't be lost in all of this. We remain committed to making sure that we properly review determinations where there are questions. We hope to wrap the remaining cases up relatively soon.

So I wanted to raise this situation today with you. You and I know the IRS does make mistakes. And I also think you agree that our track record shows that our decisions are based on the law — not political affiliation. When we do make mistakes, we need to acknowledge it and work toward a better result. We also need to put in place safeguards to ensure the errors do not happen again. I think we have tried to do that here.

These cases will help us, along with the self-declarer questionnaire, to better understand the state of play on political activities in today's environment, the gaps in

guidance, and where we need to head into the future.

From: Lerner Lois G
Sent: Wednesday, March 27, 2013 12:39 PM
To: Flax Nikole C; Sinno Suzanne; Barre Catherine M; Landes Scott S; Amato Amy; Vozne Jennifer L
Subject: RE: UPDATE - FW: Hearing

As I mentioned yesterday--there are several groups of folks from the FEC world that are pushing tax fraud prosecution for c4s who report they are not conducting political activity when they are(or these folks think they are). One is my ex-boss Larry Noble(former General Counsel at the FEC), who is now president of Americans for Campaign Reform. This is their latest push to shut these down. One IRS prosecution would make an impact and they wouldn't feel so comfortable doing the stuff.

So, don't be fooled about how this is being articulated--it is ALL about 501(c)(4) orgs and political activity

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Wednesday, March 27, 2013 1:31 PM
To: Sinno Suzanne; Lerner Lois G; Barre Catherine M; Landes Scott S; Amato Amy; Vozne Jennifer L
Subject: RE: UPDATE - FW: Hearing

thanks - this is helpful. Can we regroup internally before we get back to the Hill?

So sounds like their interest in 7206 is not 501c4 specific?

From: Sinno Suzanne
Sent: Wednesday, March 27, 2013 1:19 PM
To: Flax Nikole C; Lerner Lois G; Barre Catherine M; Landes Scott S; Amato Amy
Subject: UPDATE - FW: Hearing

I just spoke with Ayo. He told me that DOJ said the IRS does the initial investigations into violations of IRC section 7206 (fraud and false statements) and DOJ prosecutes IRS referrals. DOJ said they have not gotten any referrals from the IRS.

The Subcommittee is interested in an IRS witness to testify on:

- the process of an investigation before a case is turned over to DOJ
- how a determination is made
- how different elements of the offense are interpreted under IRC section 7206

Please let me know your thoughts.

Thanks,
Suzie

From: Sinno Suzanne
Sent: Wednesday, March 27, 2013 12:51 PM
To: Griffin, Ayo (Judiciary-Dem)
Subject: RE: Hearing

Ayo,

I do remember meeting with you on 501(c)(4)s last July and I hope you are well too.

Regarding the hearing, this is very short notice and I am not sure that we can properly prepare a witness in time and clear testimony. I will need to check with the subject matter experts and get back to you.

What would be most helpful is if you can tell me specifically what the Subcommittee wants the IRS to address, as we cannot comment on any specific cases/taxpayers. Are there questions that DOJ cannot answer that you want the IRS to answer instead?

Feel free to call me directly at [REDACTED] if you would like to discuss over the phone

Thank you,
Suzie

Suzanne R. Sinno, J.D., LL.M. (Tax)
Legislative Counsel
Office of Legislative Affairs
Internal Revenue Service
[REDACTED]
[REDACTED] (fax)
[REDACTED]

From: Griffin, Ayo (Judiciary-Dem) [REDACTED]
Sent: Tuesday, March 26, 2013 7:44 PM
To: Sinno Suzanne
Subject: Hearing

Hi Suzanne,

I hope you're well. You may recall we met last summer during a couple of very helpful IRS briefings that you put together for staff for several Senators relating to political spending by 501(c)(4) groups.

I wanted to get in touch because Sen. Whitehouse is convening a hearing in the Judiciary Subcommittee on Crime and Terrorism on criminal enforcement of campaign finance law on April 9, which I think you may have already have heard about from Bill Erb at DoJ. One of the topics actually involves enforcement of tax law. Specifically, Sen. Whitehouse is interested in the investigation and prosecution of material false statements to the IRS regarding political activity by 501(c)(4) groups on forms 990 and 1024 under 26 U.S.C. § 7206.

Sen. Whitehouse would like to invite an IRS witness to testify on these issues. Could you please let me know if it would be possible for you to provide a witness?

I sincerely apologize for the late notice. We had been hoping that a DoJ witness could discuss all of the topics that Sen. Whitehouse was interested in covering at this hearing, but we were recently informed that they would not be able to speak about enforcement of § 7206 in this context.

I have attached an official invitation in case you require one two weeks prior to the hearing date (as DoJ does).

Perhaps we can discuss all of this on the phone tomorrow if you have time.

Thanks very much,

Ayo

Ayo Griffin
Counsel
Subcommittee on Crime and Terrorism
Senator Sheldon Whitehouse, Chair
U.S. Senate Committee on the Judiciary
[REDACTED]

From: Lerner Lois G
Sent: Wednesday, October 17, 2012 9:28 AM
To: Lowe Justin; Zarin Roberta B; Paz Holly O; Partner Melaney J
Subject: RE: Politico Article on the IRS, Disclosure, and (c)(4)s

I never understand why they don't go after Congress to change the law!

Lois G. Lerner

Director of Exempt Organizations

From: Lowe Justin
Sent: Wednesday, October 17, 2012 10:21 AM
To: Zarin Roberta B; Lerner Lois G; Paz Holly O; Partner Melaney J
Subject: Politico Article on the IRS, Disclosure, and (c)(4)s

A fairly critical article from Politico on Monday, touching on (c)(4)s, responses to information requests, and application processing: <http://www.politico.com/news/stories/1012/82387.html>

From: Lerner Lois G
Sent: Wednesday, July 25, 2012 7:47 PM
To: Miller Steven T
Subject: Re: thank you

Glad it turned out to be far more boring than it might have. Happy to be able to help.
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Miller Steven T
Sent: Wednesday, July 25, 2012 11:16 AM
To: Lowe Justin; Urban Joseph J; Mistr Christine R; Flax Nikole C; Barre Catherine M; Norton William G Jr; Richardson Virginia G; Daly Richard M; Lerner Lois G; Paz Holly O
Subject: thank you

**For all the help on
the hearing. Please thank others who were involved in what I know was a
time consuming effort to quench my thirst for details.**

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 10:40 AM
To: Paz Holly O; Megosh Andy; Fish David L; Park Nalee; Williams Melinda G
Cc: Flax Nikole C
Subject: C4

I know you all have received messages independently, but I wanted all to hear same message at same time. Regardless whether language has previously been approved, NO responses related to c4 stuff go out without an affirmative message, in writing from Nikole. Thanks Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 10:36 AM
To: Flax Nikole C
Subject: Re: c4 letters

That is why I told them every letter had to go thru you. Don't know why this didn't, but have now told all involved, I hope! Sorry for all the noise. It is just stupid, but not welcome, I'm sure.

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Tuesday, July 24, 2012 11:13 AM
To: Lerner Lois G
Subject: RE: c4 letters

I know it is the same language, but this one has created a ton of issues including from Treasury and timing not ideal.

From: Lerner Lois G
Sent: Tuesday, July 24, 2012 11:07 AM
To: Flax Nikole C
Subject: Re: c4 letters

Sorry for that. I previously told the \$m everything on c4 had to go to you first for approval.

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Tuesday, July 24, 2012 10:08 AM
To: Lerner Lois G; Paz Holly O; Megosh Andy; Park Nalee; Urban Joseph J
Subject: c4 letters

We need to hold up on sending any more responses to any public/congressional letters until we all talk. Thanks

From: Kindell Judith E
Sent: Wednesday, July 18, 2012 10:54 AM
To: Lerner Lois G
Cc: Light Sharon P
Subject: Bucketed cases

Of the 84 (c)(3)

cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

Of the 199 (c)(4)

cases, approximately 3/4 appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

From: Lerner Lois G
Sent: Tuesday, July 10, 2012 9:31 AM
To: Light Sharon P
Subject: Re: this morning on NPR

Perhaps the FEC will save the day
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Light Sharon P
Sent: Tuesday, July 10, 2012 08:44 AM
To: Paz Holly O; Lerner Lois G
Subject: this morning on NPR

Democrats Say Anonymous Donors Unfairly Influencing Senate Races

Karen Bleier /AFP/Getty Images

In Senate races, Democrats are fighting to preserve their thin majority. Their party campaign committee wants the Federal Election Commission to crack down on some of the Republicans' wealthiest allies — outside money groups that are using anonymous contributions to finance a multimillion-dollar onslaught of attack ads.

At the Democratic Senatorial Campaign Committee, Director Matt Canter says the pro-Republican groups aren't playing by the rules. The committee plans to file [a complaint](#) with the FEC accusing a trio of "social welfare" groups of actually being political committees, abusing the rules to hide the identities of their donors.

"These are organizations that are allowing right-wing billionaires and corporations to essentially get special treatment," says Canter.

Democrats don't have high-roller groups like these. Canter says that while ordinary donors in politics have to disclose their contributions, "these right-wing billionaires and corporations that are likely behind the ads that these organizations are running don't have to adhere to any of those laws."

The complaint cites Crossroads GPS, co-founded by Republican strategist Karl Rove; Americans For Prosperity, supported by the billionaire industrialists David and Charles Koch; and 60 Plus, which bills itself as the senior citizens' conservative alternative to AARP.

The three groups have all told the IRS they are social welfare organizations, just like thousands of local civic groups and definitely not political committees.

Canter said they've collectively spent about \$22 million attacking Democrats in Senate races this cycle.

The Obama campaign [filed a similar complaint](#) against Crossroads GPS last month. Watchdog groups have also repeatedly complained to the FEC and IRS.

At Crossroads GPS, spokesman Jonathan Collegio said their ads talk about things like unemployment and government overspending. "Those are all issues and advertising that's protected by the First Amendment, and it would ... be de facto censorship for the government to stop that type of advocacy from taking place," says Collegio.

And on Fox News recently, Rove said the Crossroads organization is prepared to defend itself and its donors' anonymity.

"We have some of the best lawyers in the country, both on the tax side and on the political side, political election law, to make certain that we never get close to the line that would push us into making GPS a political group as opposed to a social welfare organization," says Rove.

But it's possible that the legal ground may be shifting slowly beneath the social welfare organizations.

They've been a political vehicle of choice for big donors who want to stay private, especially as the Supreme Court loosened the rules for unlimited money.

But last month, a federal appeals court in Richmond, Va., said the FEC has the power to tell a social welfare organization that it's advertising like a political committee and it has to play by those rules.

Campaign finance lawyer Larry Noble used to be the FEC's chief counsel. He says that court ruling won't put anyone out of business this year.

"But it will have a chilling effect on these groups of billionaire-raised contributions, because it will call into question whether or not they're really going to be able to keep their donors confidential," says Noble.

The first obstacle to that kind of enforcement is the FEC itself, a place where controversial issues routinely end in a partisan deadlock.

From: Lerner Lois G
Sent: Monday, June 25, 2012 5:00 PM
To: Daly Richard M; Ingram Sarah H; Marx Dawn R; Urban Joseph J; Marks Nancy J
Cc: Paz Holly O; Fish David L
Subject: RE: 201210022 Engagement Letter

It is what it is. Although the original story isn't as pretty as we'd like, once we learned this were off track, we have done what we can to change the process, better educate our staff and move the cases. So, we will get dinged, but we took steps before the "dinging" to make things better and we have written procedures. So, it is what what it is.

Lois G.

Lerner

Director of Exempt Organizations

From: Daly Richard M
Sent: Friday,
June 22, 2012 5:10 PM
To: Ingram Sarah H; Lerner Lois G; Marx Dawn R;

Urban Joseph J; Marks Nancy J

Subject: FW: 201210022 Engagement

Letter

Importance: High

TIGTA is going to look at how we deal with the applications from (c)(4)s. Among other things they will look at our consistency, and whether we had a reasonable basis for asking for information from the applicants. The engagement letter bears a close reading. To my mind, it has a more skeptical tone than usual.

Among the documents they want to look at are the following:

-

All documents and correspondence (including e-mail) concerning the Exempt Organizations function's response to and decision-making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.

TIGTA expects to issue its report in the spring.

From: Rutstein Joel S
Sent: Friday,

June 22, 2012 3:01 PM
To: Daly Richard M
Subject: FW:

201210022 Engagement Letter

Importance: High

Mike, please see below and attached. Given that
TIGTA sent this to Joseph Grant and cc'ed Lois and Moises, do you still need me
to circulate this under a cover memo and distribute it to all my liaisons
including you? Thanks, Joel

Joel S. Rutstein, Esq.

Program Manager,

GAO/TIGTA Audits

Legislation and

Reports Branch

Office of

Legislative Affairs

[Redacted]

[Redacted]

[Redacted]

(fax)

Email: [Redacted]

Web: <http://irweb.irs.gov/About/IRS/bu/ci/la/laqt/default.aspx>

From: Price Emma W TIGTA

[Redacted]

Sent: Friday, June 22, 2012 2:56

PM

To: Grant Joseph H

Cc: Davis Jonathan M (Wash DC); Miller

May 7, 2014

Steven T; Medina Moises C; Lerner Lois G; Rutstein Joel S; Holmgren R David

TIGTA; Denton Murray B TIGTA; Coleman Amy L TIGTA; McKenney Michael E TIGTA;

Stephens Dorothy A TIGTA

Subject: 201210022 Engagement

Letter

Importance: High

FYI – Engagement Letter – *Consistency in Identifying and*

Reviewing Applications for Tax-Exempt Status Involving Political Advocacy

Issues.

Thanks,

Emma Price

From: Lerner Lois G
Sent: Wednesday, June 13, 2012 12:48 PM
To: Downing Nanette M
Subject: FW: Mother Jones on (c)(4)s

6103

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Wednesday, June 13, 2012 8:34 AM
To: Lerner Lois G; Urban Joseph J; Kindell Judith E; Medina Moises C; Grant Joseph H; Ingram Sarah H; Partner Melaney J; Paz Holly O; Fish David L; Marks Nancy J
Cc: Marx Dawn R
Subject: FW: Mother Jones on (c)(4)s

very interesting reading.

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities

From: Burke Anthony
Sent: Wednesday, June 13, 2012 7:35 AM
To: Zarin Roberta B
Cc: Lemons Terry L
Subject: Mother Jones on (c)(4)s

I don't think we'll include this in the clips, but I thought you might be interested:

Mother Jones

How Dark-Money Groups Sneak By the Taxman

Gavin Aronsen

June 13, 2012

Here at Mother Jones we talk about "dark money" to broadly describe the flood of unlimited spending behind this year's election. But the truly dark money in 2012 is being raised and spent by tax-exempt groups that aren't required to disclose their financial backers even as they funnel anonymous cash to super-PACs and run election ads.

By Internal Revenue Service rules, these 501(c)(4)s exist as nonpartisan "social welfare" organizations. They can engage in political activity so long as that's not their primary purpose, but skirt that rule by running issue-based "electioneering communications" that can mention candidates so long as they don't directly tell you to vote for or against them (wink, wink), or by giving grants to other politically active 501(c)(4)s. (Super-PACs, on the other hand, can spend all their money endorsing or attacking candidates, but must disclose their donors.)

Some overtly partisan dark-money groups are better at dancing around these rules than others. Last month, the IRS stripped an organization called Emerge America of its 501(c)(4) status. As it informed the group, which explicitly works to elect Democratic women, "You are not operated primarily to promote social welfare because your activities are conducted primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole." Sure enough, Emerge America's mission statement on its 2010 tax form made no attempt to hide this fact: "By providing women across America with a top-notch training and a powerful, political network, we are getting more Democrats into office and changing the leadership-and politics-of America." D'oh!

Emerge America certainly isn't the only 501(c)(4) to walk the line between promoting social welfare and promoting a political party. It just wasn't savvy or subtle enough to not get busted. Other dark-money groups tend to describe their missions in broad terms that are unlikely to raise an auditor's eyebrows. But how they spend their money suggests their actual agendas. A few examples:

American Action Network

What it is: Conservative dark-money group cofounded by former Sen. Norm Coleman (R-Minn.).

Mission statement (as stated on tax forms): "The American Action Network is a 501(c)(4) 'action tank' that will create, encourage, and promote center-right policies based on the principles of freedom, limited government, American exceptionalism, and strong national policy."

How it walks the line: AAN spent \$20 million in the 2010 election cycle targeting Democrats, including producing ads that were pulled from local airwaves for making "unsubstantiated" claims, but \$15 million of that went toward issue ads. Last week, Citizens for Responsibility and Ethics in Washington claimed that from July 2009 through June 2011 AAN spent 66.8 percent of its budget on political activity, an apparent violation of its tax-exempt status. CREW is calling for an investigation, suggesting that "significant financial penalties might prod AAN to learn the math."

Crossroads GPS

What it is: The 501(c)(4) of Karl Rove's American Crossroads super-PAC

Mission statement: "Crossroads Grassroots Policy Strategies is a non-profit public policy advocacy organization that is dedicated to educating, equipping, and engaging American citizens to take action on important economic and legislative issues that will shape our nation's future. The vision of Crossroads GPS is to empower private citizens to determine the direction of government policymaking rather than being the disenfranchised victims of it. Through issue research, public communications, events with policymakers, and outreach to interested citizens, Crossroads GPS seeks to elevate understanding of consequential national policy issues, and to build grassroots support for legislative and policy changes that promote private sector economic growth, reduce needless government regulations, impose stronger financial discipline and accountability on government, and strengthen America's national security."

How it walks the line: The campaign-finance reform group Democracy 21 has called Crossroad GPS' tax-exempt status a "farce," pointing to \$10 million anonymously donated to finance GPS' anti-Obama ads. Likewise, the Campaign Legal Center wants the IRS to audit GPS. According to its tax filings, between June 2010 and December 2011 GPS spent \$17.1 million on "direct political spending"-just 15 percent of its total spending. Yet it also spent another 42 percent of its total spending, or \$27.1 million, on "grassroots issue advocacy," which included issue ads.

Americans for Prosperity

What it is: Dark-money group of the Americans for Prosperity Foundation (which was founded by David Koch).

Mission statement: "Educate U.S. citizens about the impact of sound economic policy on the nation's economy and social structure, and mobilize citizens to be involved in fiscal matters."

How it walks the line: Since 2010, Americans for Prosperity has officially spent about \$1.4 million on election ads. However, the group's 2010 tax filing shows that \$11.2 million of its \$24 million in expenses went toward "communications, ads, [and] media." In May, an anonymous donor gave AFP \$6.1 million to spend on an issue ad attacking the president's energy policy. Just before Wisconsin's recent recall election, AFP sponsored a bus tour to rally conservative voters. But its state director said the tour had nothing to do the recall: "We're not dealing with any candidates, political parties, or ongoing races. We're just educating folks on the importance of [Gov. Scott Walker's] reforms."

FreedomWorks

What it is: Dark-money arm of former House Majority Leader Dick Armey's Tea Party-aligned super-PAC of the same name

Mission statement: "Public policy, advocacy, and educational organization that focuses on fiscal on economic issues."

How it walks the line: FreedomWorks' 501(c)(4) hasn't spent any money on electioneering this election, but it has funneled \$1.7 million into its super-PAC, which has spent \$2.4 million supporting Republican campaigns. FreedomWorks has focused its past efforts on organizing anti-Obama Tea Party protests and encouraging conservatives to disrupt Democratic town hall meetings to protest the party's health care and renewable energy policies.

Citizens United

What it is: Conservative nonprofit that sued the Federal Election Commission in 2008, resulting in the Supreme Court's infamous Citizens United ruling.

Mission statement: "Citizens United is dedicated to restoring our government to citizens [sic] control. Through a combination of education, advocacy, and grass roots organization, the organization seeks to reassert the traditional American values of limited government, freedom of enterprises, strong families, and national sovereignty and security. The organization's goal is to restore the founding fathers [sic] vision of a free nation, guided by honesty, common sense, and goodwill of its citizens."

How it walks the line: Since its formation in 1988, the nonprofit has released 19 right-wing political documentaries, including films narrated by Newt Gingrich and Mike Huckabee, a rebuttal to Michael Moore's Fahrenheit 9/11, and a pro-Ronald Reagan production (plus the upcoming Occupy Unmasked). On its 2010 tax filing, Citizens United reported spending more than half of its \$15.2 million budget on "publications and film" and "advertising and promotion."

From: Seto Michael C
Sent: Wednesday, February 02, 2011 12:39 PM
To: Lieber Theodore R; Salins Mary J; Seto Michael C; Shoemaker Ronald J; Smith Danny D
Subject: FW: SCR Table for Jan. 2011 & SCR items
Attachments: SCR table Jan 2011.doc; SCR Jan 2011 [REDACTED] MD.doc; SCR Jan 2011 [REDACTED] MD.doc; SCR Jan 2011 [REDACTED] MD.doc; SCR Jan 2011 [REDACTED].doc; SCR Jan 2011 [REDACTED] MD.doc; SCR Jan 2011 Newspaper Cases Update MD.DOC; SCR Jan 2011 [REDACTED] MD.DOC; SCR Jan 2011 Medical Marijuana.doc; SCR Jan 2011 Mortgage Foreclosure.doc; SCR Jan 2011 Foreign Lobby Cases.doc; SCR Jan 2011 [REDACTED].doc; SCR Jan 2011 [REDACTED].doc

Below is Lois' and Holly's directions on certain technical areas, such as newspapers, health care case, etc. Please do not allow any cases to go out before we have brief Lois and Holly.

Attached is the SCR table and the SCRs. The SCRs that went to Mike Daly ends with "MD." I will forward the other SCRs that didn't went Mike as fyi.

These reports are for your eyes only . . . not to be distributed.

Thanks,

Mike

From: Lerner Lois G
Sent: Wednesday, February 02, 2011 11:17 AM
To: Paz Holly O; Seto Michael C
Cc: Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E; Light Sharon P
Subject: RE: SCR Table for Jan. 2011

Thanks--even if we go with a 4 on the Tea Party cases, they may want to argue they should be 3s, so it would be great if we can get there without saying the only reason they don't get a 3 is political activity.

I'll get with Nan Marks on the [REDACTED] piece.

I'm just antsy on the churchy stuff--Judy--thoughts on whether we should go to Counsel early on this--seems to me we may want to answer all questions they may have earlier rather than later, but I may be being too touchy. I'll defer to you and Judy.

[REDACTED]--I thought the elevated to TEGE Commish related to whether we ever had--that's why I asked. Perhaps the block is wrong--maybe what we need is some notation that the issue is one we would elevate?

I hear you about you and Mike keeping track, but I would like a running history. that's the only way I can speak to what we're doing and progress in a larger way. Plus we've learned from Exam--if they know I'm looking, they don't want to have to explain--so they

move things along. the 'clean" sheet doesn't give me any sense unless I go back to previous SCR's.

I've added Sharon so she can see what kinds of things I'm interested in.

Lois G. Lerner

Director, Exempt Organizations

From: Paz Holly O
Sent: Wednesday, February 02, 2011 11:02 AM
To: Lerner Lois G; Seto Michael C
Cc: Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E
Subject: RE: SCR Table for Jan. 2011

Tea Party - Cases in Determs are being supervised by Chip Hull at each step - he reviews info from TPs, correspondence to TPs, etc. No decisions are going out of Cincy until we go all the way through the process with the c3 and c4 cases here. I believe the c4 will be ready to go over to Judy soon.

HMO case (██████████) - When you say to push for the next Counsel meeting, with whom in Counsel are you referring? The plan had been for Sarah to meet with Wilkins and Nan on this. We think this has not happened but have not heard directly (unless Sarah has responded to your recent email on this case). I don't know that we at this level can drive that meeting.

██████████ - I will reach out to Phil to see if Nan has seen it. She was involved in the past but I don't know about recently.

On ██████████ (religious order), proposed denials typically do not go to Counsel. Proposed denial goes out, we have conference, then final adverse goes to Counsel before that goes out. We can alter that in this case and brief you after we have Counsel's thoughts.

██████████ was not elevated at Mike Daly's direction. He had us elevate it twice after the litigation commenced but said not to continue after that unless we are changing course on the application front and going forward with processing it.

████████████████████ - Our general criteria as to whether or not to elevate an SCR to Sarah/Joseph and on up is to only elevate when there has been action. ██████████ was elevated this month because it was just received. We will now begin to review the 1023 but won't have anything to report for sometime. We will elevate again once we have staked out a position and are seeking executive concurrence.

We (Mike and I) keep track of whether estimated completion dates are being moved by means of a track changes version of the spread sheet. When next steps are not reflected as met by the estimated time, we follow up with the appropriate managers or Counsel to determine the cause for the delay and agree on a due date.

From: Lerner Lois G
Sent: Tuesday, February 01, 2011 6:28 PM
To: Seto Michael C
Cc: Paz Holly O; Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E
Subject: RE: SCR Table for Jan. 2011

Thanks--a couple comments

1. Tea Party Matter very dangerous. This could be the vehicle to go to court on the issue of whether Citizen's United overturning the ban on corporate spending applies to tax exempt rules. Counsel and Judy Kindell need to be in on this one please needs to be in this. Cincy should probably NOT have these cases--Holly please see what exactly they have please.

2. We need to push for the next Counsel meeting re: the HMO case Justin has. Reach out and see if we can set it up.

3. ██████--has that gone to Nan Marks? It says Counsel, but we'll need her on board. In all cases where it says Counsel, I need to know at what level please.

4. I assume the proposed denial of the religious or will go to Counsel before it goes out and I will be briefed?

5. I think no should be yes on the elevated to TEGE Commissioner slot for the Jon Waddel case that's in litigation--she is well aware.

6. Case involving healthcare reconciliation Act needs to be briefed up to my level please.
7. SAME WITH THE NEWSPAPER CASES--NO GOING OUT WITHOUT BRIEFING UP PLEASE.

8. The 3 cases involving ██████████ should be briefed up also.

9. ██████ case--why "yes-for this month only" in TEGE Commissioner block?

Also, please make sure estimated due dates and next step dates are after the date you send these. On a couple of these I can't tell whether stuff happened recently or not.

Question--if you have an estimated due date and the person doesn't make it, how is that reflected? My concern is that when Exam first did these, they just changed the date so we always looked current, rather than providing a history of what occurred. perhaps it would help to sit down with me and Sue Lehman--she helped develop the report they now use.

From: Seto Michael C
Sent: Tuesday, February 01, 2011 5:33 PM
To: Lerner Lois G
Cc: Paz Holly O; Trilli Darla J; Douglas Akaisha; Letourneau Diane L
Subject: SCR Table for Jan. 2011

Here is the Jan. SCR summary.

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, February 28, 2012 3:26 PM
To: Lerner Lois G
Subject: RE: 501c4 response for AP

please hold off. Steve had some suggestions on that. I am in a meeting, but can get back to you soon.

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 3:04 PM
To: Flax Nikole C; Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Thanks--I want to use it to respond to the Congressional/TAS inquiry so I will-

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, February 28, 2012 3:01 PM
To: Eldridge Michelle L; Lerner Lois G; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

The change is fine, but I don't think we need to update the response just for the one addition. Just include it next time we use it.

From: Eldridge Michelle L
Sent: Tuesday, February 28, 2012 1:22 PM
To: Lerner Lois G; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Yes--I think that is better. Works for us if it works for you. Thanks --Michelle

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 12:29 PM
To: Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

2/29/2012
Appendix 59

I think the point Steve was trying to make is--it doesn't harm you that we take a long time. You don't get that unless you add the red language.. I don't think the rest of the paragraph does go to this. Is says you can hold yourself out if you meet all the requirements. If you aren't sure you do meet them, you may want the IRS letter. would you be more comfortable if we say:

While the application is pending, the organization must file a Form 990, like any other tax-exempt organization, and is otherwise able to operate.

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, February 28, 2012 12:23 PM
To: Lerner Lois G; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Any chance that we can delete the language at the end -- and just say: While the application is pending, the organization must file a Form 990, like any other tax-exempt organization. I am concerned that the phrase "operate without material barrier" is a bit challenging for a statement. Given the context of the rest of the paragraph, I think the message gets across without it.

While the application is pending, the organization must file a Form 990, like any other tax-exempt organization, and is otherwise able to operate without material barrier.

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 12:02 PM
To: Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Subject: FW: 501c4 response for AP
Importance: High

Let me know if the addition (in bold red) does what you want. I'd like to share this with doc. on a Congressional coming in through TAS.

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Monday, February 27, 2012 06:17 PM
To: Miller Steven T; Davis Jonathan M (Wash DC); Lerner Lois G; Grant Joseph H; Flax Nikole C; Keith Frank; Lemons Terry L; Zarin Roberta B

2/29/2012
Appendix 60

Subject: FW: 501c4 response for AP

OK--Here is final I'm using. Edits were incorporated. Thanks. --Michelle

By law, the IRS cannot discuss any specific taxpayer situation or case. Generally however, when determining whether an organization is eligible for tax-exempt status, including 501(c)(4) social welfare organizations, all the facts and circumstances of that specific organization must be considered to determine whether it is eligible for tax-exempt status. To be tax-exempt as a social welfare organization described in Internal Revenue Code (IRC) section 501(c)(4), an organization must be primarily engaged in the promotion of social welfare.

The promotion of social welfare does not include any unrelated business activities or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, the law allows a section 501(c)(4) social welfare organization to engage in some political activities and some business activities, so long as, in the aggregate, these non-exempt activities are not its primary activities. Even where the non-exempt activities are not the primary activities, they may be taxed. Unrelated business income may be subject to tax under section 511-514, and expenditures for political activities may be subject to tax under section 527(f). For further information regarding political campaign intervention by section 501(c) organizations, see Election Year Issues, Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations, and Revenue Ruling 2004-6.

Unlike 501(c)(3) organizations, 501(c)(4) organizations are not required to apply to the IRS for recognition of their tax-exempt status. Organizations may self-declare and if they meet the statutory and regulatory requirements they will be treated as tax-exempt. If they do want reliance on an IRS determination of their status, they can file an application for exemption. **While the application is pending, the organization must file a Form 990, like any other tax-exempt organization, and is otherwise able to operate without material barrier.**

In cases where an application for exemption under 501 (c)(4) present issues that require further development before a determination can be made, the IRS engages in a back and forth dialogue with the applicant. For example, if an application appears to indicate that the organization has engaged in political activities or may engage in political activities, the IRS will request additional information about those activities to determine whether they, in fact, constitute political activity. If so, the IRS will look at the rest of the organization's activities to determine whether the primary activities are social welfare activities or whether they are non-exempt activities. In order to make this determination, the IRS must build an administrative record of the case. That record could include answers to questions, copies of documents, copies of web pages and any other relevant information.

Career civil servants make all decisions on exemption applications in a fair, impartial manner and do so without regard to political party affiliation or ideology.

From: Cook Janine
Sent: Tuesday, July 19, 2011 3:06 PM
To: Spellmann Don R
Cc: Griffin Kenneth M
Subject: RE: Advocacy orgs

Categories: NUUU

T thanks Don. Can you get updates on these 2 cases just so we know where we are on them before we meet with Lois and Holly? Thanks

From: Spellmann Don R
Sent: Tuesday, July 19, 2011 4:05 PM
To: Cook Janine
Subject: RE: Advocacy orgs

I believe Amy (with Ken and David) have the 2 cases. [REDACTED] 6103 and [REDACTED] 6103.

From: Cook Janine
Sent: Tuesday, July 19, 2011 3:53 PM
To: Paz Holly O
Cc: Marks Nancy J; Spellmann Don R
Subject: RE: Advocacy orgs

Thanks Holly. Do you know who in counsel has the one (c)(4) below? (Or if you give me TP name, I'll check on our end).

From: Paz Holly O [REDACTED]
Sent: Tuesday, July 19, 2011 10:25 AM
To: Cook Janine
Cc: Marks Nancy J
Subject: RE: Advocacy orgs

Below is some background on what we are seeing:

Background:

- EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
 - Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. Before this was identified as an emerging issue, two (c)(4) applications were approved.
- Two sample cases were transferred to EOT, a (c)(3) and a (c)(4).
- The (c)(4) stated it will conduct advocacy and political intervention, but political intervention will be 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.

1 The (c)(3) stated it will conduct "insubstantial" political intervention and it has ties to politically active (c)(4)s and 527s. A proposed denial is being revised by TLS to incorporate the org.'s response to the most recent development letter.

Lois would like to discuss our planned approach for dealing with these cases. We suspect we will have to approve the majority of the c4 applications. Given the volume of applications and the fact that this is not a new issue (just an increase in frequency of the issue), we plan to EO Determinations work the cases. However, we plan to have EO Technical compose some informal guidance re: development of these cases (e.g., review websites, check to see whether org is registered with FEC, get representations re: the amount of political activity, etc.). EO Technical will also designate point people for Determs to consult with questions. We will also refer these organizations to the Review of operations for follow-up in a later year.

From: Cook Janine [REDACTED]
Sent: Monday, July 18, 2011 3:08 PM
To: Paz Holly O
Subject: Advocacy orgs

Holly,

Do you have any additional background for meeting next week with Lois and Nan about increase in exemption requests from advocacy orgs? Thanks!

Janine

From: Lerner Lois G
Sent: Wednesday, February 03, 2010 11:25 AM
To: [REDACTED]@fec.gov'
Cc: Fish David L
Subject: Your request

Per your request, we have checked our records and there are no additional filings at this time. [REDACTED] 6103
[REDACTED] Hope that helps.

Lois G. Lerner
Director, Exempt Organizations

From: Thomas Cindy M
Sent: Monday, April 05, 2010 12:26 PM
To: Muthert Gary A
Cc: Shafer John H; Camarillo Sharon L; Shoemaker Ronald J; Grodnitzky Steven
Subject: Tea Party Cases -- ACTION
Importance: High

Gary,

Since you are acting for John and I believe the tea party cases are being held in your group, would you be able to gather information, as requested in the email below, and provide it to Ron Shoemaker so that EO Technical can prepare a Sensitive Case Report for these cases? Thanks in advance.

From: Grodnitzky Steven
Sent: Monday, April 05, 2010 12:14 PM
To: Thomas Cindy M
Cc: Shoemaker Ronald J; Shafer John H
Subject: RE: two cases

Cindy,

Information would be the number of cases and the code sections in which they filed under. Also, if there is anything that makes one stand out over the other, like a high profile Board member, etc., then that would be helpful. Really thinking about possible media attention on a particular case. Just want to make sure that Lois and Rob are aware that there are other cases out there, etc.....

I think once the cases are assigned here in EOT and we have drafted a development letter, we should coordinate with you guys so that you can at least start developing them. However, we would still need to let Rob know before we resolve any of these cases as this is a potential high media area and we are including them on an SCR.

Ron-- once you assign the cases and we have drafted a development letter, please let me know so that we can coordinate with Cindy's folks.

Thanks.

Steve

From: Thomas Cindy M
Sent: Monday, April 05, 2010 11:59 AM
To: Grodnitzky Steven
Cc: Shoemaker Ronald J; Shafer John H
Subject: RE: two cases

What information would you like? We are "holding" the cases pending guidance from EO Technical because Holly Paz didn't want all of the cases sent to D.C.

From: Grodnitzky Steven
Sent: Monday, April 05, 2010 11:56 AM
To: Shoemaker Ronald J; Thomas Cindy M
Subject: RE: two cases

Thanks. Can you assign the cases to one person and start an SCR for this month on the cases? Also, need to coordinate with Cincy as they have a number of Tea Party cases as well.

Cindy -- Could someone provide information on the Tea Party cases in Cincy to Ron so that he can include in the SCR each month? Thanks.

From: Shoemaker Ronald J
Sent: Monday, April 05, 2010 11:30 AM
To: Elliot-Moore Donna; Grodnitzky Steven
Subject: RE: two cases

One is a c4 and one is a c3.

From: Elliot-Moore Donna
Sent: Friday, April 02, 2010 8:38 AM
To: Grodnitzky Steven; Shoemaker Ronald J
Subject: RE: two cases

The Tea Party movement is covered in the Post almost daily. I expect to see more applications.

From: Grodnitzky Steven
Sent: Thursday, April 01, 2010 4:04 PM
To: Elliot-Moore Donna; Shoemaker Ronald J
Subject: RE: two cases

These are high profile cases as they deal with the Tea Party so there may be media attention. May need to do an SCR on them.

From: Elliot-Moore Donna
Sent: Thursday, April 01, 2010 7:43 AM
To: Grodnitzky Steven; Shoemaker Ronald J
Subject: RE: two cases

I looked briefly and it looks more educational but with a republican slant obviously. Since they're applying under (c)(4) they may qualify.

From: Grodnitzky Steven
Sent: Wednesday, March 31, 2010 5:30 PM
To: Elliot-Moore Donna; Shoemaker Ronald J
Subject: RE: two cases

Thanks. Just want to be clear -- what are the specific activities of these organizations? Are they engaging in political activities, education, or what?

Ron -- can you let me know who is getting these cases?

From: Elliot-Moore Donna
Sent: Wednesday, March 31, 2010 10:30 AM
To: Grodnitzky Steven
Subject: two cases

Steve:

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. I've 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.

http://www.washingtonpost.com/business/irs-apologizes-for-inappropriately-targeting-conservative-political-groups-in-2012-election/2013-05-10/5afe7b8-b980-11e2-b568-6912f6ac6d9d_story.html?hpid=hp_hp-top-table-main-irs-apology%3Ahomepage%2Fstory&hpid=hp_hp-top-table-main-irs-apology%3Ahomepage%2Fstory

<http://www.usato.gov/agencynews/policies/2013/05/10/irs-apology-conservative-groups-2012-election/2149939/>

<http://www.wjvt.com/news/local-news/cincinnati/irs-cincinnati-workers-singled-out-conservative-groups-for-review/13549970/260962701.xcui.ae1/index.html>

From: Lerner Lois G
Sent: Monday, January 28, 2013 10:06 AM
To: Klein Richard T
Subject: RE: personnel info

OK--questions already. I see at the bottom what my CSRS repayment amount would be should I decide to repay. It looks like the calculation at the tops assumes I am repaying--is that correct? Can I see what the numbers look like if I decide not to repay? Also, how do I go about repaying, if I choose to? Where would I find that information? Would you mind running a calculation for a retirement date of October 1, 2013? Also, the definition of monthly social security offset seems to say that at age 62(which I am) my monthly annuity will be offset by social security even if I don't apply. First--what the heck does that mean? Second, I don't see an offset on the chart--please explain. Thank you.

Lois G. Lerner
 Director of Exempt Organizations

From: Klein Richard T
Sent: Monday, January 28, 2013 6:23 AM
To: Lerner Lois G
Subject: personnel info
Importance: Low

Here are your reports you requested.....set your sick leave at 1360 for the first report and bumped it up to 1700 for the second.....redeposit amount and hi three used are shown on the bottom right.....call or email if you need any thing else please.

This e-mail and any attachments contain information intended solely for the use of the named recipient(s). This e-mail may contain privileged communications not suitable for forwarding to others. If you believe you have received this e-mail in error, please notify me immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments

Richard T. Klein
Benefits Specialist



TOD 6:30 am to 3:15 EST

Address:
IRS Cincinnati BeST

Cincinnati, OH 45202

From: Cook Janine
Sent: Monday, October 10, 2011 2:58 PM
To: Judson Victoria (Vicki)
Subject: Letter illustrating 501(c)(4) issue and elections

Vicki, you have probably heard of this very hot button issue floating around. I wanted to share the recent letter to Commissioner and Lois, copied below. I haven't gotten it formally.

The only things pending here with us in counsel is being on standby to assist EO as they work through background of c4s and gift tax issue and general exempt status AND helping them come up with uniform questions/guidance for the determinations function in processing the uptick in c4 and c3 applications tied to election season.

Joe Urban in EO is key technician on these issues and I just checked in with him for updates and will let you know if any interesting developments
 Sent by my Blackberry

From: paul streckfus [REDACTED]
To: paul streckfus [REDACTED]
Sent: Mon Oct 03 04:32:00 2011
Subject: EO Tax Journal 2011-163

*From the Desk of Paul Streckfus,
 Editor, EO Tax Journal*

Email Update 2011-163 (Monday, October 3, 2011)
 Copyright 2011 Paul Streckfus

1 - IRS Phone Numbers

Please toss last Thursday's list of IRS phone numbers for the enclosed list. A number of the Office of Chief Counsel phone numbers were incorrect, as that office has combined its two former EO branches into one. Now they all have the same phone number, so you can't possibly dial the wrong number!

2 - Section 501(c)(4) Status of Groups Questioned

Will the persistence of Democracy 21 and the Campaign Legal Center pay off? (See their latest letter, reprinted *infra*.) Will the IRS even look at these suspect 501(c)(4) organizations? Did the regulations make a grievous error in redefining "exclusively" to mean "primarily"? (My answers: probably not, probably not. yes)

Rick Cohen, in *The Nonprofit Quarterly Newswire*, asks: "Do you think that Karl Rove is operating his organization Crossroads GPS 'primarily to further the common good and general welfare' rather than as a way to collect and spend money to help elect his favorite politicians? Do you believe that Bill Burton and the other former Obama aides who created Priorities USA are engaged only secondarily in political activities while its primary program is devoted to 'civic betterment and social improvements?' If so, are you up for buying a bridge that spans the East River in New York City between Brooklyn and Manhattan? ... Why are these organizations choosing to organize as 501(c)(4)s instead of as political organizations under section 527? The most likely explanation is because 527s have to disclose their donors, while 'social welfare' 501(c)(4)s, like 501(c)(3) public charities, can keep the sources of their money secret.... Do you think that Rove's Crossroads GPS has some sort of hidden social welfare purpose beyond what every sentient person knows is its first and foremost purpose: to elect candidates that Rove supports (and to oppose candidates Rove opposes)? The same goes for Burton's Priorities USA. The [Democracy 21] letter to the IRS isn't news. What is news is why the IRS and the Federal Elections Commission haven't been more diligent about going after these (c)(4)s that camouflage their intensely political activity behind some inchoate definition of 'social welfare.' The skilled nonprofit lawyers for these (c)(4)s will surely gin up some folderol about their social welfare activities. They'll say that they don't specifically endorse candidates. They'll work in some arcane calculation to show that their political activities are 'insubstantial' (defined as comprising no more than 49 percent of their activities).

Testimony of Michael Seto
Manager of EO Technical Unit
July 11, 2013

- A. She sent me email saying that when these cases need to go through multi-tier review and they will eventually have to go to Miss Kindell and the chief counsel's office.
- Q. Miss Lerner told you this in an email?
- A. That's my recollection.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Have you ever sent a case to Ms. Kindell before?

A. Not to my knowledge.

Q. This is the only case you remember?

A. Uh-huh.

Q. Correct?

A. This is the only case I remember sending directly to Judy.

Q. And did you send her the whole case file as well?

A. Yes.

Q. Did Ms. Kindell indicate to you whether she agreed with your recommendations?

A. She did not say whether she agreed or not. She said it should go to Chief Counsel.

Q. The IRS Chief Counsel?

A. The IRS Chief Counsel.

Testimony of Elizabeth Hofacre
Revenue Agent in EO Determinations Unit
May 31, 2013

- Q. Okay. Do you always need to go through EO Technical to get assistance on how to draft these kind of letters?
- A. No, it was demeaning.
- Q. What do you mean by “demeaning”?
- A. Well, I might be jumping ahead of myself, but essentially -- typically, no. As a grade 13, one of the criteria is to work independently and do research and make decisions based on your experience and education, whereas in this case, I had no autonomy at all through the process.
- Q. So it was unusual for you to have to go through EO Technical to get these letters?
- A. Exactly. I mean, exactly, because once he provided me with his letters I used his letters and his questions as a basis for my letters. I didn't cut and paste or cookie cut. So then once I developed my letters from the information in the application, I would email him the letters. And at the same time he instructed me to fax copies of the 1024 so he could review my letters to make sure that they were consistent with the 1024 application.
- Q. Was that practice consistent with any other Emerging Issue?
- A. I never have done that before or since then.
- Q. So even for other Emerging Issues or difficult or challenging applications, you would still have discretion in terms of how to handle them?
- A. Yes. Typically, yes.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

- Q. Sir, as you sit here today, do you know the status of those two test cases?
- A. Only from hearsay, sir.
- Q. What do you know?
- A. That the (c)(3) dropped, they decided they didn't want to go any further, and the (c)(4) is still open.
- Q. Still open as far as today?
- A. As far as I know. I do not know for certain.
- Q. So for 3 years since they filed application?
- A. Yes, sir.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

- Q. What did you understand the meeting to be about when you were invited to the meeting?
- A. The one thing I remember was Lois Lerner saying someone mentioned Tea Party, and she said no, we are not referring to Tea Parties anymore. They are all now advocacy organizations.
- Q. Who called them Tea Party cases?
- A. I'm not sure who mentioned Tea Party, but at that point Lois I remember breaking in and saying no, no, we don't refer to those as Tea Parties anymore. They are advocacy organizations.
- Q. And what was her tone when saying that?
- A. Very firm.
- Q. Did she explain why she wanted to change the reference?
- A. She said that the Tea Party was just too pejorative.
- Q. So she felt the term Tea Party was a pejorative term?
- A. Yes. Let me put it this way: I may be – the way she didn't say that's a pejorative term that should not be used. She said no, we will use advocacy organizations. But pejorative is more my word than hers.

Testimony of Lucinda Thomas
Manager of EO Determinations Unit
June 28, 2013

Q. Do you think Lois Lerner is a political person?

A. Is she apolitical person?

Q. A, space, political person?

A. I believe that she cares about power and that it's important to her maybe to be more involved with what's going on politically and to me we should be focusing on working the determination cases and closing the cases and it shouldn't matter what type of organization it is. We should be looking at the merits of that case. And it's my understanding that the Washington office has made comments like they would like for – Cincinnati is not as politically sensitive as they would like us to be, and frankly I think that maybe they need to be not so politically sensitive and focus on the cases that we have and working a case based on the merits of those cases.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Did you meet with Ms. Franklin about the cases?

A. We met after she had made her determinations.

Q. After she reviewed the case files?

A. Yes.

Q. And when was this meeting, do you recall?

A. No, I am not sure.

Q. Was it still in 2010?

A. Probably in 2011.

Q. Okay. At some point in 2011?

A. Yes.

Q. Do you recall if it was early 2011, mid-2011?

A. Early-mid.

Q. Okay.

A. Maybe in July.

Q. Of 2011.

A. Of 2011. July or August.

- Q. Okay. And was this meeting just with you and Ms. Franklin?
- A. No, there were other people present.
- Q. Others in the counsel's office?
- A. Two others from the counsel's office.
- Q. Anyone else present?
- A. Ms. Kastenberg was there. I believe Ms. Goehausen was there. I think there was another TLS there –
- Q. I am sorry, another –
- A. Another tax law specialist.
- Q. Okay.
- A. And I can't recall other people that may have been there.
- Q. Lois Lerner?
- A. I don't think Lois was there.
- Q. Holly Paz?
- A. I don't think Holly was there. I think Judy was there.
- Q. Judy Kindell.
- A. Yes.
- Q. Do you recall who the two others were from the Chief Counsel's office?
- A. One was a manager of Ms. Franklin, and the other guy had been there for years and I keep forgetting his name. I don't know why.

have a block against his name. . . . Yes, he was there. There was another tax law specialist there, Justin Lowe.

Q. Justin Lowe. He is in EO Technical?

A. He was representing the Commissioner, Assistant Commissioner.

Q. Who was at the time Mr. Miller?

A. I think it was Mr. Grant.

Q. Joseph Grant.

A. Yes.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

- Q. Do you know how long the Chief Counsel's office had the case before it made its recommendation?
- A. I am not sure of the timeframe at this point.
- Q. Okay. Did they give you any feedback on these two cases?
- A. Yes, they did.
- Q. What did they say?
- A. I needed more information. I needed more current information.
- Q. What do you mean, more current information?
- A. They had it for a while and the information wasn't as current as it should be. They wanted more current information.
- Q. So because the cases had been going up this chain for the last year, they needed more current information?
- A. Yes, sir.
- Q. And what does that mean practically for you?
- A. That means that probably I should send out another development letter.
- Q. A second development letter?
- A. A second development letter. I think also at that time there was a discussion of having a template made up so that all the cases could be worked in the same manner. And my reviewer and I both said a template makes absolutely no difference because these organizations, all of them are different. A template would not work.

- Q. You and Ms. Kastenberɡ agreed that a template wouldn't help?
- A. But Mr. Justin Lowe said he would prepare it, along with Don Spellman and whoever else was from Chief Counsel. I never saw it.

Testimony of Steven Miller
Acting Commissioner
November 13, 2013

- Q. So, sir, just to get the timeline right, you had a meeting with Ms. Lerner and her staff in or around February 2012?
- A. One or more meetings.
- Q. One or more meetings. Thank you. And then in mid-March you sit down with your staff and decide that something more needs to be done?
- A. Wanted to find out why the cases were there and what was going on.
- Q. And did you bat around ideas with your staff about how to find out that information?
- A. Yeah, we talked about, okay, who should go out, and the suggestions were, you know, they could have been from the deputy's staff, they could have been from Joseph's staff, they could have been from Lois' staff, and how would we do that.
- Q. I see. And who were the candidates to go out there and do the investigation?
- A. Really, it came down to Nan Marks, who I had tremendous respect and comfort with. She was – she had been my lawyer in TEGE Counsel, and she knew the area well. She had a wonderful way with talking to people, and she was a natural. And she was out of Joseph's shop, and we thought that it should be outside of Lois' shop, and Nan was the perfect person to lead that.
- Q. And, sir, why did you think it should be outside of Ms. Lerner's shop?
- A. Just in terms of perception. I didn't think she would whitewash it, but I didn't want any thought that that could happen.
- Q. So you wanted to have someone more independent –

A. Right.

Q. – to do the review?

A. Right.

Q. When you say you didn't want any thought that that would happen, who were you worried would think that it was –

A. It doesn't matter. It's just the way we operated.

Testimony of Ruth Madrigal
Attorney Advisor in Treasury Department
February 3, 2014

- Q. And ma'am, you wrote, "potentially addressing them." Do you know what you meant by, quote, "potentially addressing them?"
- A. Well, at this time, we would have gotten the request to do guidance of general applicability relating to (c)(4)s. And while I can't – I don't know exactly what was in my mind at the time I wrote this, the "them" seems to refer back to the (c)(4)s. And the communications between our offices would have had to do with guidance of general applicability.
- Q. So, sitting here today, you take the phrase, "potentially addressing them" to mean issuing guidance of general applicability of 501(c)(4)s?
- A. I don't know exactly what was in my head at the time when I wrote this, but to the extent that my office collaborates with the IRS, it's on guidance of general applicability.
- Q. And the recipients of this email, Ms. Judson and Ms. Cook are in the Chief Counsel's Office, is that correct?
- A. That's correct.
- Q. And Ms. Lerner and Ms. Marks are from the Commissioner side of the IRS?
- A. At the time of this email, I believe that Nan Marks was on the Commissioner's side, and Ms. Lerner would have been as well, yes.
- Q. So those are the two entities involved in rulemaking process or the guidance process for tax exempt organizations, is that right?
- A. Correct.
- Q. Did you review this document in preparation for appearing here today?

- A. I reviewed it briefly, yes.
- Q. What did the term “off plan” mean in your email?
- A. Again, I don’t have a recollection of doing – of writing this email at the time. I can’t say with certainty what was meant at the time.
- Q. Sitting here today, what do you take the term “off plan” to mean?
- A. Generally speaking, off plan would refer to guidance that is not on – or the plan that is mentioned there would refer to the priority guidance plan. And so off plan would be not on the priority guidance plan.
- Q. And had you had discussions with the IRS about issuing guidance on 501(c)(4)s that was not placed on the priority guidance plan?
- A. In 2012, we – yes, in 2012, there were conversations between my office, Office of Tax Policy, and the IRS regarding guidance relating to qualifications for tax exemption under (c)(4).
- Q. And this guidance was in response to requests from outside parties to issue guidance?
- A. Yes. Generally speaking, our priority guidance plan process starts with – includes gathering suggestions from the public and evaluating suggestions from the public regarding guidance, potential guidance topics, and by this point, to the best of my recollection, we had had requests to do guidance on this topic.

Testimony of Janine Cook
Deputy Division Counsel/Deputy Associate Chief Counsel
August 23, 2013

- Q. I think part of my question comes to the fact that by reading the face of the email, it doesn't appear that it's actually an explicit email about having a conversation about it being on plan or off plan. It just looks like it's a conversation where someone says since we mentioned potentially addressing this, and then in parentheses off plan, because it at that time would have been off plan in 2013, I have got my radar up and look at this. Am I misunderstanding that? Is that accurate or —
- A. I think in fairness, again, to understand the term, when it says off plan, it means working it. Working on it, but not listing it on the plan. It doesn't mean that we are not in a plan — you are looking at a timing question I think. That's not what the term means. The term — I mean it's a loose term, obviously, it's a coined term, the term means the idea of spending some resources on working it, getting legal issues together, things like that, but not listing it on the published plan as an item we are working. That's what the term off plan means. It's not a timing of the conversation.

Testimony of Victoria Ann Judson
Division Counsel/ Associate Chief Counsel
August 29, 2013

Q. You mentioned a little while ago the Treasury Department. Could you explain the relationship between your position and the Treasury Department?

A. I don't understand that question.

Q. I believe you mentioned that you work with Treasury on guidance, guidance projects?

A. Yes, we do.

Q. Could you explain how that working relationship –

A. Well, when we are working on guidance, first, there is often work at the beginning of each plan year to develop a guidance plan, in which you help decide what your priorities are and what projects you would like to work on during the year. Unfortunately, there is a lot more that we need to do than we can possibly accomplish in a year, so we try to prioritize and talk about what items would be useful to work on and most needed.

We also have items we work on that are off-plan, and there are reasons we don't want to solicit comments. For example, if they might relate to a desire to stop behavior that we feel is inappropriate under the tax law, we might not want to publicize that we are working on that before we come out with the guidance.

So we have a plan, and in developing that plan we will reach out to the field to see if there is guidance they think we need. We solicit comments from practitioners. We talk amongst ourselves and with Treasury. And then we have long lists and everyone goes through them and analyzes them, and then we have meetings to discuss which ones to have on. And often we have meetings with our colleagues at Treasury to do that and then come up with a guidance plan.

When we have items, we then formulate working groups to work on the guidance. And so then we will have staff attorneys from different offices, from the Treasury Department, from my office, with my team, and from people on the Commissioner's side, as well. And they will work together on the guidance. They will discuss issues, hypotheticals, how to structure it.

If they find questions that they think are particularly challenging or they need a call on how to go in their different directions, they will often formulate a briefing paper. Or, in the qualified plan area, we have a weekly time slot set for what we call large group. And in health care, we also have a large group meeting set. And so the staff can present those issues to the large group, often with papers identifying issues and calls that need to be made.

And then individuals, executives from the different areas, both Treasury, the Commissioner's side, and Chief Counsel, will all attend those meetings. We will discuss the issues, often hear a presentation from the working group, and talk about the issues, and decide on the calls or decide that we need more information or analysis, ask questions. So sometimes a decision will be made at that meeting, and sometimes a decision will be made for the working group to do more work and come back again at a subsequent meeting.

Testimony of Nikole Flax
Chief of Staff to Steven Miller
October 22, 2013

Q. And you said before that Mr. Grant wasn't the best witness for that hearing. Was there any discussion about having Ms. Lerner be a witness for that hearing?

A. No.

Q. Why not?

A. Lois is unpredictable. She's emotional. I have trouble talking negative about someone. I think in terms of a hearing witness, she's not the ideal selection.

Testimony of Lucinda Thomas
Manager of EO Determinations Unit
June 28, 2013

Q. And what was your reaction to hearing the news?

A. I was really, really mad.

Q. Why?

A. I feel as though Cincinnati employees and EO Determinations was basically thrown under a bus and that the Washington office wasn't taking any responsibility for knowing about these applications, having been involved in them and being the ones to basically delay processing of the cases.

Q. And that's why you took Ms. Lerner to say at that panel event?

A. When, well, my understanding was that she referred to Cincinnati employees as low level workers and that really makes me mad. It's not the first time that she has used derogatory comments about the employees working determination cases and she has done it before. It really makes me mad because the employees in Cincinnati – first of all we haven't gotten that many other, 2009 was our basic last year of hiring any revenue agents except for I believe it was 2012 we were given five revenue agents. And over 400 some thousand organizations have had their exemption revoked and we were given – have been given five revenue agents and we have received I think it's like over 40,000 applications coming in as a result of the audit revocation. There's no way five people are going to be able to handle that, and that's not to mention all of the employees that we've lost because of attrition.

Q. Sure.

A. So we are given no employees to work this. Our employees in EO Determinations are, they are so flexible in doing what is asked of them and working cases and being flexible and moving and doing whatever they're asked to do to try to get more cases closed with no

additional resources and not getting guidance. And it makes me really mad that she would refer to our employees as low level workers.

And also when the folks from D.C. have been in Cincinnati in April of 2012 and when the team met with our folks involved and they were basically reassured that there were mistakes that were made, yes, there were mistakes that were made by folks in Cincinnati as well D.C. but the D.C. office is the one who delayed the processing of the cases. And so they said we're a team, we're in this together. Nobody is going to be thrown under the bus because there were mistakes at all different angles. And then Joseph Grant had a town hall meeting on I believe it was May the 1st or May the 2nd with all of the determinations employees and then he met with a managers and again reassuring everybody that we're not, we're not using any scapegoats here, we're not throwing anybody under the bus, we're a team, there were mistakes made by a lot of different folks.

And then when this information came out on May the 10th, it's like, you weren't going to throw us under the bus?

Testimony of Lucinda Thomas
Manager of EO Determinations Unit
June 28, 2013

Q. And you said that this was not the first time that you had heard Ms. Lerner use derogatory terms to refer to Cincinnati employees, is that correct?

A. Yes.

Q. Can you tell us about the other times that she referred to Cincinnati employees in a derogatory manner?

A. I know she referred to us as backwater before. I don't remember when that was. But it's like, there is information when she speaks, there is an individual who writes to EO Issues and puts information in an EO tax journal, it's like a daily release that comes out, and so all of our specialists have access to that. So when she goes out and speaks and then that information is sent through email to all of our employees then people in the office start getting all worked up over these comments.

And here I have employees trying to you know do what they can to help our operation to move forward, and I've got somebody referring to workers in that way when they're trying really hard to close cases, and it's frustrating like how am I supposed to keep them motivated when our so-called leader is referring to people in that direction.

She also makes comments like, well, you're not a lawyer. And excuse me, I'm not a lawyer but that doesn't mean that I don't have something to bring to the table. I know a lot more about IRS operations than she ever will. And just because I'm not a lawyer doesn't mean I'm any less of a person or not as good a worker.



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

November 19, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

Attention: Katy Rother

Dear Mr. Chairman:

I am responding to your letter dated September 30, 2013. You asked about our plans to evaluate our policy on IRS employee use of non-official email accounts to conduct official business. You also requested a briefing and asked for specific documents.

While the Privacy Act ordinarily protects from disclosure some of the information we are providing in this letter, we are providing you with the requested information under Title 5 of the United States Code section 552a(b)(9). This provision authorizes disclosures of Privacy Act protected information to either house of the Congress or a congressional committee or subcommittee acting under its oversight authority. The enclosed information covers the period of January 1, 2009, through present. Due to employee safety and security concerns, we would appreciate it if you would withhold employee names and, for sensitive positions, position descriptions, if you distribute this information further. We are happy to work with your staff on appropriate redactions if you decide to distribute the information.

Regarding the use of email accounts, the IRS prohibits using non-official email accounts for any government or official purposes (See relevant portions of the enclosed Internal Revenue Manual (IRM) 10.8.1 and 1.10.3, Enclosure 1a and 1b). We teach and reinforce this policy in new employee orientation, core training classes, annual mandatory briefings for managers and employees, and continual service wide communications (see Enclosures 1e, 1f, 1g, 1h for policies and training information). We do not permit IRS officials to send taxpayer information to their personal email addresses. **An IRS employee should not send taxpayer information to his or her personal email address in any form, including redacted.**

IRS employees use their agency email accounts to transmit sensitive but unclassified (SBU) and they use the IRS Secure Messaging (SM) system to encrypt such emails.

(See IRM 11.3.1.14.2, Enclosure 1c). SBU information includes taxpayer data, Privacy Act protected information, some law enforcement information, and other information protected by statute or regulation.

If an employee violates the policy prohibiting the use of non-official email accounts for any government or official purpose, the penalty ranges from a written reprimand to a 5-day suspension on first offense and up to removal depending on prior offenses. (See *IRS Manager's Guide to Penalty Determinations: Failure to observe written regulations, orders, rules, or IRS procedures and Misuse/abuse/loss or damage to government property or vehicle*, Enclosure 1d). We identified three past disciplinary actions involving employee misuse of personal email to conduct official business. (See Enclosures 2a, 2b, and 2c.)

You also discuss use of non-official email accounts by four senior IRS officials. The IRS Accountability Review Board, charged with determining potential personnel action based on employee conduct, continues to research potential misuse of personal email by those still employed at the IRS.

The IRS is working diligently to respond to requests for documents for your ongoing investigation. As we have come across official documents sent to non-official email accounts, we have produced them to you and will continue to do so. Additionally, we are happy to arrange a briefing on this subject if you have further questions.

I hope this information is helpful. I am also writing Congressman Jordan. If you have any questions, please contact me, or a member of your staff may contact Scott Landes, Acting Director, Legislative Affairs, at (202) 622-3720.

Sincerely,



Daniel I. Werfel
Acting Commissioner

Enclosures (11)

U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman

**Debunking the Myth that the IRS Targeted Progressives:
How the IRS and Congressional Democrats Misled America about
Disparate Treatment**

Staff Report
113th Congress

April 7, 2014

Table of Contents

Table of Contents i

Executive Summary 1

Findings..... 4

Coordinated and misleading Democratic claims of bipartisan IRS targeting..... 6

 The IRS acknowledges that portions of its BOLO lists included liberal-oriented entries..... 6

 Ways and Means Committee Democrats allege bipartisan IRS targeting 7

 Acting IRS Commissioner volunteers to testify at the Oversight Committee’s July 17, 2013
subcommittee hearing 8

 Democrats attack the Inspector General during the Oversight Committee’s July 18, 2013
hearing 9

 The IRS reinterprets legal protections for taxpayer information to bolster Democratic
allegations 11

 Recent Democratic efforts to perpetuate the myth of bipartisan IRS targeting..... 12

The Truth: The IRS engaged in disparate treatment of conservative applicants 13

 The Committee’s evidence shows the IRS sought to identify and scrutinize Tea Party
applications 14

 The initial “test” cases were exclusively Tea Party applications..... 14

 The initial screening criteria captured exclusively Tea Party applications..... 19

 The IRS continued to target Tea Party groups after the BOLO criteria were broadened 22

 The IRS’s own retrospective review shows the targeted applications were predominantly
conservative-oriented..... 26

 The IRS treated Tea Party applications differently from other applications 27

Myth versus fact: How Democrats’ claims of bipartisan targeting are not supported by the
evidence 31

 BOLO entries for liberal groups and terms only appear on lists used for awareness and were
never used as a litmus test for enhanced scrutiny 31

 The IRS identified some liberal-oriented groups due to objective, non-political concerns, but
not because of their political beliefs 32

 Substantially more conservative groups were caught in the IRS application backlog 33

 The IRS treated Tea Party applicants differently than “progressive” groups..... 35

 The IRS treated Tea Party applicants differently than ACORN successor groups 40

 The IRS treated Tea Party applicants differently than Emerge affiliate groups..... 42

 The IRS treated Tea Party applicants differently than Occupy groups 44

Conclusion 45

Executive Summary

In the immediate aftermath of Lois Lerner's public apology for the targeting of conservative tax-exempt applicants, President Obama and congressional Democrats quickly denounced the IRS misconduct.¹ But later, some of the same voices that initially decried the targeting changed their tune. Less than a month after the wrongdoing was exposed, prominent Democrats declared the "case is solved" and, later, the whole incident to be a "phony scandal."² As recently as February 2014, the President explained away the targeting as the result of "bone-headed" decisions by employees of an IRS "local office" without "even a smidgeon of corruption."³

To support this false narrative, the Administration and congressional Democrats have seized upon the notion that the IRS's targeting was not just limited to conservative applicants. Time and again, they have claimed that the IRS targeted liberal- and progressive-oriented groups as well – and that, therefore, there was no political animus to the IRS's actions.⁴ These Democratic claims are flat-out wrong and have no basis in any thorough examination of the facts. Yet, the Administration's chief defenders continue to make these assertions in a concerted effort to deflect and distract from the truth about the IRS's targeting of tax-exempt applicants.

The Committee's investigation demonstrates that the IRS engaged in disparate treatment of conservative-oriented tax-exempt applicants. Documents produced to the Committee show that initial applications transferred from Cincinnati to Washington were filed by Tea Party groups. Other documents and testimony show that the initial criteria used to identify and hold Tea Party applications captured conservative organizations. After the criteria were broadened in July 2012 to be cosmetically neutral, material provided to the Committee indicates that the IRS still intended to target only conservative applications.

A central plank in the Democratic argument is the claim that liberal-leaning groups were identified on versions of the IRS's "Be on the Look Out" (BOLO) lists.⁵ This claim ignores significant differences in the placement of the conservative and liberal entries on the BOLO lists

¹ See, e.g., The White House, Statement by the President (May 15, 2013) (calling the IRS targeting "inexcusable"); *"The IRS: Targeting Americans for their Political Beliefs": Hearing before the H. Comm. on Oversight & Gov't*, 113th Cong. (2013) (statement of Ranking Member Elijah E. Cummings) ("The inspector general has called the action by IRS employees in Cincinnati, quote, "inappropriate," unquote, but after reading the IG's report, I think it goes well beyond that. I believe that there was gross incompetence and mismanagement in how the IRS determined which organizations qualified for tax-exempt status."); Press Release, Rep. Nancy Pelosi, Pelosi Statement on Reports of Inappropriate Activities at the IRS (May 13, 2013) ("While we look forward to reviewing the Inspector General's report this week, it is clear that the actions taken by some at the IRS must be condemned. Those who engaged in this behavior were wrong and must be held accountable for their actions.").

² *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Rep. Elijah E. Cummings); *Fox News Sunday* (Fox News television broadcast July 28, 2013) (interview with Treasury Secretary Jacob Lew).

³ "Not even a smidgeon of corruption": Obama downplays IRS, other scandals, FOX NEWS, Feb. 3, 2014.

⁴ See, e.g., Lauren French & Rachael Bade, *Democratic Memo: IRS Targeting Was Not Political*, POLITICO, July 17, 2013.

⁵ See *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013).

and how the IRS used the BOLO lists in practice. The Democratic claims are further undercut by testimony from IRS employees who told the Committee that liberal groups were not subject to the same systematic scrutiny and delay as conservative organizations.⁶

The IRS's independent watchdog, the Treasury Inspector General for Tax Administration (TIGTA), confirms that the IRS treated conservative applicants differently from liberal groups. The inspector general, J. Russell George, wrote that while TIGTA found indications that the IRS had improperly identified Tea Party groups, it "did not find evidence that the criteria [Democrats] identified, labeled 'Progressives,' were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited."⁷ He concluded that TIGTA "found no indication in any of these other materials that 'Progressives' was a term used to refer cases for scrutiny for political campaign intervention."⁸

An analysis performed by the House Committee on Ways and Means buttresses the Committee's findings of disparate treatment. The Ways and Means Committee's review of the confidential tax-exempt applications proves that the IRS systematically targeted conservative organizations. Although a small number of progressive and liberal groups were caught up in the application backlog, the Ways and Means Committee's review shows that the backlog was 83 percent conservative and only 10 percent were liberal-oriented.⁹ Moreover, the IRS approved 70 percent of the liberal-leaning groups and only 45 percent of the conservative groups.¹⁰ The IRS approved every group with the word "progressive" in its name.¹¹

In addition, other publicly available information supports the analysis of the Ways and Means Committee. In September 2013, *USA Today* published an independent analysis of a list of about 160 applications in the IRS backlog.¹² This analysis showed that 80 percent of the applications in the backlog were filed by conservative groups while less than seven percent were filed by liberal groups.¹³ A separate assessment from *USA Today* in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve a single tax-exempt application filed by a Tea Party group.¹⁴ During that same period, the IRS approved "perhaps dozens of applications from similar liberal and progressive groups."¹⁵

The IRS, over many years, has undoubtedly scrutinized organizations that embrace different political views for varying reasons – in many cases, a just and neutral criteria may have

⁶ See, e.g., Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013); Transcribed interview of Stephen Daejin Seok, Internal Revenue Serv., in Wash., D.C. (June 19, 2013); Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).

⁷ Letter from J. Russell George, Treasury Inspector Gen. for Tax Admin., to Sander M. Levin, H. Comm. on Ways & Means (June 26, 2013).

⁸ *Id.*

⁹ *Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 113th Con. (2013) (opening statement of Chairman Charles Boustany) [hereinafter "Ways and Means Committee September 18th Hearing"].

¹⁰ *Id.*

¹¹ *Id.*

¹² See Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.

¹³ *Id.*

¹⁴ Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo,* USA TODAY, May 15, 2013.

¹⁵ *Id.*

been fairly utilized. This includes the time period when Tea Party organizations were systematically screened for enhanced and inappropriate scrutiny. But the concept of *targeting*, when defined as a systematic effort to select applicants for scrutiny simply because their applications reflected the organizations' political views, only applied to Tea Party and similar conservative organizations. While use of term "targeting" in the IRS scandal may not always follow this definition, the reality remains that there is simply no evidence that any liberal or progressive group received enhanced scrutiny because its application reflected the organization's political views.

For months, the Administration and congressional Democrats have attempted to downplay the IRS's misconduct. First, the Administration sought to minimize the fallout by preemptively acknowledging the misconduct in response to a planted question at an obscure Friday morning tax-law conference. When that strategy failed, the Administration shifted to blaming "rogue agents" and "line-level" employees for the targeting. When those assertions proved false, congressional Democrats baselessly attacked the character and integrity of the inspector general. Their attempt to allege bipartisan targeting is just another effort to distract from the fact that the Obama IRS systematically targeted and delayed conservative tax-exempt applicants.

Findings

- The IRS treated Tea Party applications distinctly different from other tax-exempt applications.
- The IRS selectively prioritized and produced documents to the Committee to support misleading claims about bipartisan targeting.
- Democratic Members of Congress, including Ranking Member Elijah Cummings, Ranking Member Sander Levin, and Representative Gerry Connolly, made misleading claims that the IRS targeted liberal-oriented groups based on documents selectively produced by the IRS.
- The IRS's "test" cases transferred from Cincinnati to Washington were exclusively filed by Tea Party applicants: the Prescott Tea Party, the American Junto, and the Albuquerque Tea Party.
- The IRS's initial screening criteria captured exclusively Tea Party applications.
- Even after Lois Lerner broadened the screening criteria to maintain a veneer of objectivity, the IRS still sought to target and scrutinize Tea Party applications.
- The IRS targeting captured predominantly conservative-oriented applications for tax-exempt status.
- Myth: IRS "Be on the Lookout" (BOLO) entries for liberal groups meant that the IRS targeted liberal and progressive groups. Fact: Only Tea Party groups on the BOLO list experienced systematic scrutiny and delay.
- Myth: The IRS targeted "progressive" groups in a similar manner to Tea Party applicants. Fact: The IRS treated "progressive" groups differently than Tea Party applicants. Only seven applications in the IRS backlog contained the word "progressive," all of which were approved by the IRS. The IRS processed progressive applications like any other tax-exempt application.
- Myth: The IRS targeted ACORN successor groups in a similar manner to Tea Party applicants. Fact: The IRS treated ACORN successor groups differently than Tea Party applicants. ACORN successor groups were not subject to a "sensitive case report" or reviewed by the IRS Chief Counsel's office. The central issue for the ACORN successor groups was whether the groups were legitimate new entities or part of an "abusive" scheme to continue an old entity under a new name.
- Myth: The IRS targeted Emerge affiliate groups in a similar manner to Tea Party applicants. Fact: The IRS treated Emerge affiliate groups differently than Tea Party

applicants. Emerge applications were not subjected to secondary screening like the Tea Party cases. The central issue in the Emerge applications was private benefit, not political speech.

- Myth: The IRS targeted Occupy groups in a similar manner to Tea Party applicants.
Fact: The IRS treated Occupy groups differently than Tea Party applicants. No applications in the IRS backlog contained the words “Occupy.” IRS employees testified that they were not even aware of an Occupy entry on the BOLO list.

Coordinated and misleading Democratic claims of bipartisan IRS targeting

As the IRS targeting scandal grew, the Administration and congressional Democrats began peddling the allegation that the IRS targeting was not just limited to conservative tax-exempt application, but that the IRS had targeted liberal-leaning groups as well. These assertions kick-started when Acting IRS Commissioner Daniel Werfel told reporters that IRS “Be on the Look Out” lists included entries for liberal-oriented groups. Congressional Democrats seized upon his announcement and immediately began feeding the false narrative that liberal groups received the same systematic scrutiny and delay as conservative applicants. In the ensuing months, the IRS even reconsidered its previous redactions to provide congressional Democrats with additional fodder to support their assertions. Although TIGTA and others have rebuffed the Democratic argument, senior members of the Administration and in Congress continue this coordinated narrative that the IRS targeting was broader than conservative applicants.

The IRS acknowledges that portions of its BOLO lists included liberal-oriented entries

On June 24, 2013, Acting IRS Commissioner Daniel Werfel asserted during a conference call with reporters that the IRS’s misconduct was broader than just conservative applicants.¹⁶ Werfel told reporters that “[t]here was a wide-ranging set of categories and cases that spanned a broad spectrum.”¹⁷ Although Mr. Werfel refused to discuss details about the “inappropriate criteria that was *[sic]* in use,” the IRS produced to Congress hundreds of pages of self-selected documents that supported his assertion.¹⁸ The IRS prioritized producing these documents over other material, producing them when the Committee had received less than 2,000 total pages of IRS material. Congressional Democrats had no qualms in putting these self-selected documents to use.

Virtually simultaneous with Mr. Werfel’s conference call, Democrats on the House Ways and Means Committee trumpeted the assertion that the IRS targeted liberal groups similarly to conservative organizations.¹⁹ Ranking Member Sander Levin (D-MI) released several versions of the IRS BOLO list.²⁰ Because these versions included an entry labeled “progressives,” Ranking Member Levin alleged that “[t]he [TIGTA] audit served as the basis and impetus for a wide range of Congressional investigations and **this new information shows that the**

¹⁶ See Alan Fram, *Documents show IRS also screened liberal groups*, ASSOC. PRESS, June 24, 2013.

¹⁷ *Id.*

¹⁸ See Letter from Leonard Oursler, Internal Revenue Serv., to Darrell Edward Issa, H. Comm. on Oversight & Gov’t Reform (June 24, 2013).

¹⁹ Press Release, H. Comm. on Ways & Means Democrats, New IRS Information Shows “Progressives” Included on BOLO Screening List (June 24, 2013).

²⁰ *Id.*

foundation of those investigations is flawed in a fundamental way.²¹ (emphasis added). These documents would initiate a sustained campaign designed to falsely allege that the IRS engaged in bipartisan targeting.

Ways and Means Committee Democrats allege bipartisan IRS targeting

During a hearing of the Ways and Means Committee on June 27, 2013, Democrats continued to spin this false narrative, arguing that liberal groups were mistreated similarly to conservative groups. Ranking Member Levin proclaimed during his opening statement:

This week we learned for the first time the three key items, one, the screening list used by the IRS included the term “progressives.” Two, progressive groups were among the 298 applications that TIGTA reviewed in their audit and received heightened scrutiny. And, three, the inspector general did not research how the term “progressives” was added to the screening list or how those cases were handled by a different group of specialists in the IRS. The failure of the I.G.’s audit to acknowledge these facts is a fundamental flaw in the foundation of the investigation and the public’s perception of this issue.²²

Other Democratic Members picked up this thread. While questioning the hearing’s only witness, Acting IRS Commissioner Werfel, Representative Charlie Rangel (D-NY) raised the specter of bipartisan targeting. He stated:

Mr. RANGEL: You said there’s diversity in the BOLO lists. And you admit that conservative groups were on the BOLO list. Why is it that we don’t know whether or not there were progressive groups on the BOLO list?

Mr. WERFEL: Well, we do know that – that the word “progressive” did appear on a set of BOLO lists. We do know that. When I was articulating the point about diversity, I was trying to capture that the types of political organizations that are on these BOLO lists are wide ranging. But they do include progressives.²³

Similarly, Representative Joseph Crowley (D-NY) alleged that the IRS mistreated progressive groups identically to Tea Party groups. He said:

As the weeks have gone on, we have seen that there is a culture of intimidation, but not from the White House, but rather from my Republican colleagues. **We know for a fact that there has been targeting of both tea party and**

²¹ *Id.*

²² *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (statement of Ranking Member Sander Levin).

²³ *Id.* (question and answer with Representative Charlie Rangel).

progressive groups by the IRS. . . . Then, as we see, the progressive groups were targeted side by side with their tea party counterpart groups.²⁴
(emphasis added).

Acting IRS Commissioner volunteers to testify at the Oversight Committee's July 17, 2013 subcommittee hearing

On July 17, 2013, the Oversight Committee convened a joint subcommittee hearing on ObamaCare security concerns, featuring witnesses from the federal agencies involved in the law's implementation.²⁵ The Chairmen invited Sarah Hall Ingram, the Director of the IRS ObamaCare office, to testify.²⁶ Prior to the hearing, however, Acting IRS Commissioner Werfel personally intervened and volunteered himself to testify as the IRS witness in Ms. Ingram's place. Committee Democrats used Mr. Werfel's appearance as an opportunity to continue pushing their false narrative of bipartisan IRS targeting.

During the hearing, Ranking Member Elijah Cummings (D-MD) used the majority of his five-minute period to question Mr. Werfel not on the subject matter of the hearing, but rather on the IRS's treatment of liberal tax-exempt applicants. They engaged in the following exchange:

Mr. CUMMINGS. I would like to ask you about the ongoing investigation into the treatment of Tea Party applicants for tax exempt status. During our interviews, we have been told by more than one IRS employee that there were progressive or left-leaning groups that received treatment similar to the Tea Party applicants. As part of your internal review, have you identified non-Tea Party groups that received similar treatment?

Mr. WERFEL. Yes.

Mr. CUMMINGS. We were told that one category of applicants had their applications denied by the IRS after a 3-year review; is that right?

Mr. WERFEL. Yes, that's my understanding that there is a group or seven groups that had that experience, yes.²⁷

²⁴ *Id.* (question and answer with Representative Joseph Crowley).

²⁵ "Evaluating Privacy, Security, and Fraud Concerns with ObamaCare's Information Sharing Apparatus": *J. Hearing before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Gov't Reform and the Subcomm. on Cybersecurity, Infrastructure Protection, and Security Technologies of the H. Comm. on Homeland Security*, 113th Cong. (2013) [hereinafter "July 17th Hearing"].

²⁶ See Letter from James Lankford, H. Comm. on Oversight & Gov't Reform, & Patrick Meehan, H. Comm. on Homeland Security, to Sarah Hall Ingram, Internal Revenue Serv. (July 10, 2013).

²⁷ July 17th Hearing, *supra* note 25.

It is certain that Ranking Member Cummings would not have had the opportunity to ask these questions had Ms. Ingram testified as originally requested.

The circumstances of Mr. Werfel's statements are striking. He volunteered to replace the undisputed IRS expert on ObamaCare at a hearing focusing on ObamaCare security, after being at the IRS for less than two months. He volunteered to testify at a subcommittee the day before the Committee convened a hearing that would feature testimony about the IRS's targeting of conservative applicants. By all indications, Mr. Werfel's testimony allowed congressional Democrats to continue to perpetuate the myth of bipartisan IRS targeting.

Democrats attack the Inspector General during the Oversight Committee's July 18, 2013 hearing

Unsurprisingly, Democrats on the Oversight Committee highlighted Mr. Werfel's assertions as their main narrative during a Committee hearing on the IRS targeting the following day. During his opening statement, Ranking Member Cummings criticized Treasury Inspector General for Tax Administration J. Russell George, accusing him of ignoring liberal groups targeted by the IRS.²⁸ Ranking Member Cummings stated:

I also want to ask the Inspector General why he was unaware of documents we have now obtained showing that the IRS employees were also instructed to screen for progressive applicants and why his office did not look into the treatment of left-leaning organizations, such as Occupy groups. I want to know how he plans to address these new documents. Again, we represent conservative groups on both sides of the aisle, and progressives and others, and so all of them must be treated fairly.²⁹

Representative Danny Davis (D-IL) utilized Mr. Werfel's testimony from the day before to also criticize the inspector general. Representative Davis said:

Yesterday, the principal deputy commissioner of the Internal Revenue Service, Danny Werfel, testified before this committee that progressive groups received treatment from the IRS that was similar to Tea Party groups when they applied for tax exempt status. In fact, Congressman Sandy Levin, who is the ranking member of the Ways and Means Committee, explained these similarities in more detail. He said the IRS took years to resolve these cases, just like the Tea Party cases. And he said the IRS, one, screened for these groups, transferred them to the Exempt Organizations Technical Unit, made them the subject of a sensitive case report, and had them reviewed by the Office of Chief Counsel. According to the information provided to the Committee on Ways and Means, some of these progressive groups actually had their applications denied

²⁸ *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform, 113th Cong. (2013) (statement of Ranking Member Elijah E. Cummings) [hereinafter "July 18th Hearing"]*.

²⁹ *Id.*

after a 3-year wait, and the resolution of these cases happened during the time period that the inspector general reviewed for its audit.³⁰ (emphasis added).

Inspector General George testified at the hearing to defend his work and debunk Democratic myths of bipartisan targeting. Committee Democrats took the opportunity to harshly interrogate Mr. George, using Mr. Werfel's testimony. Representative Gerry Connolly (D-VA) said to him:

Well, so I want to make sure—you're under oath, again—it is your testimony today, as it was in May, but let's limit it to today, that at the time you testified here in May you had absolutely no knowledge of the fact that in any screening, BOLOs or otherwise, the words "Progressive," "Democrat," "MoveOn," never came up. You were only looking at "Tea Party" and conservative-related labels. You were unaware of any flag that could be seen as a progressive—the progressive side of things.³¹

Similarly, Representative Jackie Speier (D-CA) told Mr. George:

Now, that seems completely skewed, Mr. George, if you are indeed an unbiased, impartial watch dog. It's as if you only want to find emails about Tea Party cases. These search terms do not include any progressive or liberal or left-leaning terms at all. Why didn't you search for the term "progressive"? It was specifically mentioned in the same BOLO that listed Tea Party groups.³²

Representative Carolyn Maloney (D-NY) said:

How in the world did you get to the point that you only looked at Tea Party when liberals and progressives and Occupy Wall Street and conservatives are just as active, if not more active, and would certainly be under consideration. That is just common plain sense. And I think that some of your statements have not been—it defies—it defies logic, it defies belief that you would so limit your statements and write to Mr. Levin and write to Mr. Connolly that of course no one was looking at any other area.³³

Armed with self-selected IRS documents and Mr. Werfel's testimony, congressional Democrats vehemently attacked TIGTA in an attempt to undercut its findings that the IRS had targeted conservative tax-exempt applicants. Their *ad hominen* attacks on an independent inspector general sought to distract and deflect from the real misconduct perpetrated by the IRS.

³⁰ *Id.* (question and answer with Representative Danny Davis).

³¹ *Id.* (question and answer with Representative Gerry Connolly).

³² *Id.* (question and answer with Representative Jackie Speier).

³³ *Id.* (question and answer with Representative Carolyn Maloney).

The IRS reinterprets legal protections for taxpayer information to bolster Democratic allegations

The IRS was not an unwilling participant in spinning this false narrative. Section 6103 of federal tax law protects confidential taxpayer information from public dissemination.³⁴ Under the tax code, however, the IRS may release confidential taxpayer information to the House Ways and Means Committee and the Senate Finance Committee.³⁵ The IRS cited this provision of law to withhold vital details about the targeting scandal from the American public. The prohibition did not stop the IRS from releasing information helpful to its cause.

In August 2013, the IRS suddenly reversed its interpretation of the law. In a letter to Ways and Means Ranking Member Levin – who already had access to confidential taxpayer information – Acting IRS Commissioner Werfel wrote: “Consistent with our continuing efforts to provide your Committee and the public with as much information as possible regarding the Service’s treatment of tax exempt advocacy organizations, we are re-releasing certain redacted documents that had been previously provided to your Committee.”³⁶ Mr. Werfel explained the reversal as the result of “our continuing review of the documents” and “a thorough section 6103 analysis.”³⁷ The reinterpretation allowed the IRS to release information related to “ACORN Successors” and “Emerge” groups.³⁸

Congressional Democrats embraced the IRS’s sudden reversal. Releasing new IRS documents, Ranking Member Levin and Ranking Member Cummings issued a joint press release announcing that “**new information from the IRS that provides further evidence that progressive groups were singled out for scrutiny in the same manner as conservative groups.**”³⁹ (emphasis added). Ranking Member Levin proclaimed: “These new documents make it clear the IRS scrutiny of the political activity of 501(c)(4) organizations covered a broad spectrum of political ideology and was not politically motivated.”⁴⁰ Ranking Member Cummings similarly intoned: “This new information should put a nail in the coffin of the Republican claims that the IRS’s actions were politically motivated or were targeted at only one side of the political spectrum.”⁴¹

The IRS’s sudden reinterpretation of section 6103 allowed congressional Democrats to continue their assault on the truth. Again using documents self-selected by the IRS, these defenders of the Administration carried on their rhetorical campaign to convince Americans that the IRS treated liberal applicants identically to Tea Party applicants.

³⁴ I.R.C. § 6103.

³⁵ *Id.* § 6103(f).

³⁶ Letter from Daniel I. Werfel, Internal Revenue Serv., to Sander Levin, H. Comm. on Ways & Means (Aug. 19, 2013), available at <http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/IRS%20Letter%20to%20Levin%20August%2019%2C%202013.pdf>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov’t Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).

⁴⁰ *Id.*

⁴¹ *Id.*

Recent Democratic efforts to perpetuate the myth of bipartisan IRS targeting

Democratic efforts to spin the IRS targeting continue through the present. On January 29, 2014, Senator Chris Coons raised the allegation while questioning Attorney General Eric Holder about the Administration's investigation into the IRS's targeting. Senator Coons stated:

Well, thank you, Mr. Attorney General. I -- I join a number of colleagues in urging and hoping that the investigation into IRS actions is done in a balanced and professional and appropriate way. And I assume it is, unless demonstrated otherwise. **And what I've heard is that there were progressive groups, as well as tea party groups, that were perhaps allegedly on the receiving end of reviews of the 501(c)(3) applications.** And it's my expectation that we'll hear more in an appropriate and timely way about the conduct of this investigation.⁴² (emphasis added).

On February 3, 2014, during his daily briefing, White House Press Secretary Jay Carney echoed the Democratic line that the IRS targeted liberal groups in the same manner in which it targeted conservative groups. In defending the President's comments about "not even a smidgeon of corruption," Mr. Carney said:

Q Jay, in the President's interview with Bill O'Reilly last night, he said that there was "not even a smidgeon of corruption," regarding the IRS targeting conservative groups. Did the President misspeak?

A No, he didn't. But I can cite -- I think have about 20 different news organizations that cite the variety of ways that that was established, including by the independent IG, who testified in May and, as his report said, that **he found no evidence that anyone outside of the IRS had any involvement in the inappropriate targeting of conservative -- or progressive, for that matter -- groups in their applications for tax-exempt status.** So, again, I think that this is something --⁴³ (emphasis added).

During debate on the House floor on H.R. 3865, the Stop Targeting of Political Beliefs by the IRS Act of 2014, Ways and Means Committee Ranking Member Levin spoke in opposition to the bill. He said:

On a day when the Chairman of the Ways and Means Committee, Mr. Camp, is unveiling a tax measure that requires serious bipartisanship to be successful, we are here on the floor considering a totally political bill in an attempt to resurrect an alleged scandal that never existed. . . . **And what have we learned? That**

⁴² "Oversight of the U.S. Department of Justice": Hearing before the S. Comm. on the Judiciary, 113th Cong. (2014) (question and answer with Senator Chris Coons).

⁴³ The White House, Press Briefing by Press Secretary Jay Carney, 2/3/14, <http://www.whitehouse.gov/photos-and-video/video/2014/02/03/press-briefing#transcript>.

both progressive and conservative groups were inappropriately screened out by name and not by activity.⁴⁴ (emphasis added).

As recently as early March 2014, Democrats have been spreading the myth that liberal-oriented groups were targeted in the same manner as conservative organizations. Appearing on *The Last Word with Lawrence O'Donnell*, Representative Gerry Connolly continued the Democratic allegations of bipartisan targeting. Representative Connolly said:

You know, that's true, but I think we need to back up. This is not an honest inquiry. This is a Star Chamber operation. **This is cherry picking information, deliberately colluding with a Republican idea in the IRS to make sure the investigation is solely about tea party and conservative groups even though we know that the tilt is included progressive titles as well as conservative titles and that they were equally stringent.** It was a foolish thing to do. And it's wrong, but it was not just targeted at conservatives. But Darrell Issa wants to make sure that information does not get out.⁴⁵ (emphasis added).

The Democratic myth of bipartisan IRS targeting simply will not die. Working hand in hand with the Obama Administration's IRS, congressional Democrats vigorously asserted that the IRS mistreated liberal tax-exempt applicants in a manner identical to Tea Party groups. The IRS – the very same agency under fire for its actions – assisted these efforts by producing self-selected documents and volunteering helpful information. The result has been a fundamental misunderstanding of the truth about the IRS's targeting of conservative tax-exempt applicants.

The Truth: The IRS engaged in disparate treatment of conservative applicants

Contrary to Democratic claims, substantial documentary and testimonial evidence shows that the IRS systematically engaged in disparate treatment of conservative tax-exempt applicants. The Committee's investigation shows that the initial applications sent to the Washington as "test" cases were all filed by Tea Party-affiliated groups. The IRS screening criteria used to identify and separate additional applications also initially captured exclusively Tea Party organizations. Even after the criteria were changed, documents show the IRS intended to identify and separate Tea Party applications for review.

No matter how hard the Administration and congressional Democrats try to spin the facts about the IRS targeting, it remains clear that the IRS treated conservative tax-exempt applicants differently. As detailed below, the IRS treated Tea Party and other conservative tax-exempt applicants unlike liberal or progressive applicants.

⁴⁴ Press Release, H. Comm. on Ways & Means Democrats, Levin Floor Statement on H.R. 3865 (Feb. 26, 2014).

⁴⁵ *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).

The Committee's evidence shows the IRS sought to identify and scrutinize Tea Party applications

To date, the Committee has reviewed over 400,000 pages of documents produced by the IRS, TIGTA, the IRS Oversight Board, and others. The Committee has conducted transcribed interviews of 33 IRS employees, totaling over 217 hours. From this exhaustive undertaking, one fundamental finding is certain: the IRS sought to identify and scrutinize Tea Party applications separate and apart from any other tax-exempt applications, including liberal or progressive applications.

The initial “test” cases were exclusively Tea Party applications

From documents produced by the IRS, the Committee is aware that the initial test cases transferred to Washington in spring 2010 to be developed as templates were applications filed by Tea Party-affiliated organizations. According to one document entitled “Timeline for the 3 exemption applications that were referred to [EO Technical] from [EO Determinations],” the Washington office received the 501(c)(3) application filed by the Prescott Tea Party, LLC on April 2, 2010.⁴⁶ The same day, the Washington office received the 501(c)(4) application filed by the Albuquerque Tea Party, Inc.⁴⁷ After Prescott Tea Party did not respond to an IRS information request, the IRS closed the application “FTE” or “failure to establish.” The Washington office asked for a new 501(c)(3) application, and it received the application filed by American Junto, Inc., on June 30, 2010.⁴⁸

Testimony provided by veteran IRS tax law specialist Carter Hull, who was assigned to work the test cases in Washington, confirms that they were exclusively Tea Party applications. He testified:

Q Now, sir, in this period, roughly March of 2010, was there a time when someone in the IRS told you that you would be assigned to work on two Tea Party cases?

A Yes.

Q Do you recall when precisely you were told that you would be assigned two Tea Party cases?

A When precisely, no.

Q Sometime in –

⁴⁶ Internal Revenue Serv., Timeline from the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]

⁴⁷ *Id.*

⁴⁸ *Id.*

A Sometime in the area, but I did get, they were assigned to me in April.

Q Okay, and just to be clear, April of 2010?

A Yes.

Q And sir, were they cases 501(c)(3)s, or 501(c)(4)s?

A One was a 501(c)(3), and one was a 501(c)(4).

Q So one of each?

A One of each.

Q What, to your knowledge, was it intentional that you were sent one of each?

A Yes.

Q Why was that?

A I'm not sure exactly why. I can only make assumptions, but those are the two areas that usually had political possibilities.

Q The point of my question was, no one ever explained to you that you were to understand and work these cases for the purpose of working similar cases in the future?

A All right, I -- I was given -- they were going to be test cases to find out how we approached (c)(4), and (c)(3) with regards to political activities.

Q Mr. Hull, before we broke, you were talking about these two cases being test cases, is that right? Do you recall that?

A I realized that there were other cases. I had no idea how many, but there were other cases. And they were trying to find out how we should approach these organizations, and how we should handle them.

Q And when you say these organizations, you mean Tea Party organizations?

A The two organizations that I had.⁴⁹

Hull's testimony also confirms that the Washington IRS office requested a similar 501(c)(3) application to replace the Prescott Tea Party's application. He testified:

Q Did you send out letters to both organizations the 501(c)(3) and 501(c)(4)?

A I did.

Q Did you get responses from both organizations?

A I got response from only one organization.

Q Which one?

A The (c)(4).

Q (C)(4). What did you do with the case that did not respond?

A I tried to contact them to find out whether they were going to submit anything.

Q By telephone?

A By telephone. And I never got a reply.

Q Then what did you do with the case?

A I closed it, failure to establish.

Q So at this time, when the (c)(3) became the FTE, did you begin to work only on the (c)(4)?

⁴⁹ Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

A I notified my supervisor that I would need another (c)(3) if they wanted me to work one of each.

Q How did you phrase the request to Ms. Hofacre? Was it -- were you asking for another (c)(3) Tea Party application?

A I was asking for another (c)(3) application in the lines of the first one that she had sent up. I'm not sure if I asked her for a particular organization or a particular type of organization. I needed a (c)(3) that was maybe involved in political activities.

Q And the first (c)(3), it was a Tea Party application?

A Yes, it was.⁵⁰

⁵⁰ Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

Fig. 1: IRS Timeline of Tea Party “test” cases⁵¹

A. Timeline for the 3 exemption applications that were referred to EOT from EOD		
1. Prescott Tea Party, LLC	2. American Junto, Inc.	3. Albuquerque Tea Party, Inc.
<p>The Applicant sought exemption under §501(c)(3) formed to educate the public on current political issues, constitutional rights, fiscal responsibility, and support for a limited government. It planned to undertake this educational activity through rallies, protests, educational videos and through its website. The organization also intended to engage in legislative activities. The case was closed FTE on May 26, 2010.</p>	<p>The organization applied for exemption under §501(c)(3), stating it was formed to educate voters on current social and political issues, the political process, limited government, and free enterprise. It also indicated it would be involved in political campaign intervention and legislative activities. The case was closed FTE on January 4, 2012.</p>	<p>The organization applied for exemption under §501(c)(4) as a social welfare organization for purposes of issue advocacy and education. A proposed adverse is being prepared on the basis that the organization’s primary activity is political campaign intervention supporting candidates associated with a certain political faction, its educational activities are partisan in nature, and its activities are intended to benefit candidates associated with a specific political faction as opposed to benefiting the community as a whole.</p>
<p>Timeline:</p> <p>2009</p> <ul style="list-style-type: none"> • 11/09/2009 → Application received by EOD. • 12/18/2009 → Case assigned to EOD specialist. <p>2010</p> <ul style="list-style-type: none"> • 3/08/2010 → Date the case was referred to EOT. Case pulled from 	<p>Timeline:</p> <p>2010</p> <ul style="list-style-type: none"> • 2/11/2010 → Application was received by EOD. 	<p>Timeline:</p> <p>2010</p> <ul style="list-style-type: none"> • 1/4/2010 → Application was received by EOD.
<p>EOD files to send to EOT for review.</p> <ul style="list-style-type: none"> • 3/11/2010 → EOD prepared a memo to transfer the case to EOT as part of EOT’s review of some of the “advocacy organization” cases being received in EOD. • 4/02/2010 → Case assigned to EOT. • 4/14/2010 → 1st development letter mailed to Taxpayer (Response due by 5/06/2010). • 5/26/2010 → Case closed FTE (90-day suspense date ended on 8/26/2010). 	<ul style="list-style-type: none"> • 4/11/2010 → Case assigned to a specialist in EOD. • 4/25/2010 → EOD emailed EOT (Manager Steve Grodnitzky) regarding who EOD should contact for help on “advocacy organization” cases being held in screening. • 5/25/2010 → EOT requested a §501(c)(3) “advocacy organization” case be transferred from EOD to replace Prescott Tea Party, LLC, a §501(c)(3) advocacy organization applicant that had been closed FTE. • 6/25/2010 → Memo proposing to transfer the case to EOT was prepared by EOD specialist. • 6/30/2010 → Date the case was referred to EOT. • 7/7/2010 → 1st development letter sent (Response due by 7/28/2010). • 7/28/2010 → EOT received Taxpayer’s response to 1st development letter. 	<ul style="list-style-type: none"> • 2/22/2010 → Case assigned to EOD specialist. • 3/11/2010 → EOD prepared memo to transfer the case to EOT as part of EOT’s help reviewing the “advocacy organization” cases received in EOD. • 4/02/2010 → Case assigned to EOT. • 4/21/2010 → 1st development letter sent (Response due by 5/12/2010). • 4/29/2010 → Taxpayer requested extension for time to respond to 1st development letter. TLS granted extension until 6/11/2010. • 6/8/2010 → EOT received the Taxpayer’s response to 1st development letter.

⁵¹ Internal Revenue Serv., Timeline from the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]

The initial screening criteria captured exclusively Tea Party applications

Documents and testimony provided to the Committee show that the IRS's initial screening criteria captured only conservative organizations. According to a briefing paper prepared for Exempt Organizations Director Lois Lerner in July 2011, the IRS identified applications and held them if they met any of the following criteria:

- “Tea Party,” “Patriots” or “9/12 Project” is referenced in the case file
- Issues include government spending, government debt or taxes
- Education of the public by advocacy/lobbying to “make America a better place to live”
- Statements in the case file criticize how the country is being run.⁵²

Based on these criteria, which skew toward conservative ideologies, the IRS sent applications to a specific group in Cincinnati.

Fig. 2: IRS Briefing Document Prepared for Lois Lerner⁵³

Background:

- EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
- EOD Screening identified this type of case as an emerging issue and began sending cases to a specific group if they meet any of the following criteria:
 - “Tea Party,” “Patriots” or “9/12 Project” is referenced in the case file
 - Issues include government spending, government debt or taxes
 - Education of the public by advocacy/lobbying to “make America a better place to live”
 - Statements in the case file criticize how the country is being run

Testimony presented by the two Cincinnati employees shows that the initial applications in the growing IRS backlog were exclusive Tea Party applications. Elizabeth Hofacre, who oversaw the cases from April 2010 to October 2010, testified during her transcribed interview that “we were looking at Tea Parties.” She testified:

Q And you mentioned the Tea Party cases. Do you have an understanding of whether the Tea Party cases were part of that grouping of organizations with political activity, or were they separate?

A That was the group of political cases.

Q So why do you call them Tea Parties if it includes more than –

⁵² Justin Lowe, Internal Revenue Serv., Increase in (c)(3)/(c)(4) Advocacy Org. Applications (2011). [IRSR 2735]

⁵³ *Id.*

A Well, at that time that's all they were. That's all that we were -- that's how we were classifying them.

Q In 2010, you were classifying any organization that had political activity as a Tea Party?

A No, it's the latter. I mean, we were looking at Tea Parties. I mean, political is too broad.

Q What do you mean when you say political is too broad?

A No, because when -- what do you mean by "political"?

Q Political activity -- if an application has an indication of political activity in it.

A I mean, I was tasked with Tea Party, so that's all I'm aware of. So I wasn't tasked with political in general.

Q Was there somebody who was tasked with political in general?

A Not that I'm aware of.⁵⁴ (emphasis added).

During the Committee's July 2013 hearing about the IRS's systematic scrutiny of Tea Party applications, Hofacre specifically rejected claims that liberal-oriented groups were part of the IRS backlog. She testified:

Mr. MICA. Okay, the beginning of 2010. And you—this wasn't a targeting by a group of your colleagues in Cincinnati that decided we're going to go after folks. And most of the cases you got, were they "Tea Party" or "Patriot" cases?

Ms. HOFACRE. Sir, they were all "Tea Party" or "Patriot" cases.

Mr. MICA. Were there progressive cases? How were they handled?

Ms. HOFACRE. **Sir, I was on this project until October of 2010, and I was only instructed to work "Tea Party"/ "Patriot"/"9/12" organizations.**⁵⁵ (emphasis added)

Ron Bell, who replaced Hofacre in overseeing the growing backlog of applications in Cincinnati, similarly testified during a transcribed interview that he only received Tea Party applications from October 2010 until July 2011. He testified:

⁵⁴ Transcribed interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. (May 31, 2013).

⁵⁵ July 18th Hearing, *supra* note 28.

Q Okay. So at this point between October 2010 and July 2011, were all the Tea Party cases going to you?

A Correct.

Q And to your knowledge, during this same time period, was it only Tea Party cases that were being assigned to you or were there other advocacy cases that were part of this group?

A Does that include 9/12 and Patriot?

Q Yes, yes.

A Yes.

Q Okay. So it was just those type of cases, not other type of advocacy cases that maybe had a different -- a different political -- a liberal or progressive case?

A Correct.

Q Okay. And to your knowledge, when you were first assigned these cases in October 2010 and through July 2011, do you know what criteria the screening unit was using to identify the cases to send to you?

A Yes.

Q And what was that criteria?

A It was solicited on the Emerging Issues tab of the BOLO report.

Q And what did that say? What did that Emerging Issue tab on the BOLO say?

A In July 20 --

Q In October 2010 we'll start.

A I don't know exactly what it said, but it just -- Tea Party cases, 9/12, Patriot.

Q And do you recall how many cases you inherited from Ms. Hofacre?

A 50 to 100.

Q And were those only Tea Party-type cases as well?

A To the best of my knowledge.⁵⁶

The IRS continued to target Tea Party groups after the BOLO criteria were broadened

From material produced to the Committee, it is apparent that Exempt Organizations Director Lois Lerner began orchestrating in late 2010 a “c4 project that will look at levels of lobbying and pol[itical] activity” of nonprofits, careful that the effort was not a “*per se* political project.”⁵⁷ Consistent with this goal, Lerner ordered the implementation of new screening criteria for the Tea Party cases in summer 2011, broadening the BOLO language to “advocacy organizations.” According to testimony received by the Committee, Lerner ordered the language changed from “Tea Party” because she viewed the term to be “too pejorative.”⁵⁸ While avoiding *per se* political scrutiny, other documents obtained by the Committee suggest that Lerner’s change was merely cosmetic. These documents show that the IRS still intended to target and scrutinize Tea Party applications, despite the facial changes to the BOLO criteria.

An internal “Significant Case Report” summary chart prepared in August 2011 illustrates that Lerner’s change was merely cosmetic (figures 3A and 3B). While the name of entry was changed “political advocacy organizations,” the description of the issue continued to reference the Tea Party movement.⁵⁹ The issue description read: “Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4).”⁶⁰

⁵⁶ Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

⁵⁷ E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin et al., Internal Revenue Serv. (Sept. 16, 2010). [IRSR 191030]

⁵⁸ Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

⁵⁹ Internal Revenue Serv., Significant Case Report (Aug. 31, 2011). [IRSR 151653]

⁶⁰ *Id.*

Fig. 3A: IRS Significant Case Report Summary, August 2011⁶¹

A. Open SCs:									
	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	Political Advocacy Organizations	T2/Ron Shoemaker	E	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)	Crip Hull & Hilary Goetzhausen	3/31/2011 (Org) 05/31/2011 (Rev) 07/31/2011 (Rev) 10/30/2011 (Rev) 12/31/2011 (Rev)	Developing both a (c)(3) and (c) (4) cases. Proposed (c)(4) favorable is currently being reviewed. Proposed denial currently being reviewed on (c)(3). Cases were discussed with Judy Kneal on 04/06/11. Judy requests staff to get additional information from taxpayers regarding certain activities. Development letters were sent. Proposed favorable (c)(4) ruling forwarded to Chief Counsel for comments on 05/04/11. Information from (c)(3) organizations regarding activities due on 05/18/2011. Waiting on taxpayer response. Met with Director EO on June 22, 2011. Met with Counsel on 8/10/11 to discuss the cases. Counsel recommended further development of the cases by getting information on the organizations' 2010 activities. Counsel gave us directions on the type of information needed. Next Action: [REDACTED]	No

Fig. 3B: IRS Significant Case Report Summary, August 2011 (enlarged)⁶²

	Name of Org/Group	Group #/Manager	EIN	Received	Issue
1.	Political Advocacy Organizations	T2/Ron Shoemaker	E	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)

Likewise, in comparing the individual sensitive case report prepared for the Tea Party cases in June 2011 with the report prepared in September 2012, it is apparent that the BOLO criteria changed was superficial. The reports' issue summaries are nearly identical, except for replacing "Tea Party" with "advocacy organizations."⁶³ The June 2011 sensitive case report (figure 4A) identified the issue as: "The various 'tea party' organizations are separately organized, but appear to be a part of a national political movement that may be involved in political activities. The 'tea party' organizations are being followed closely in national newspapers (such as The Washington Post) almost on a regular basis."⁶⁴

⁶¹ *Id.*

⁶² *Id.*

⁶³ Compare Internal Revenue Serv., Sensitive Case Report (June 17, 2011) [IRSR 151687-88], with Internal Revenue Serv., Sensitive Case Report (Sept. 18, 2012). [IRSR 150608-09]

⁶⁴ Internal Revenue Serv., Sensitive Case Report (June 17, 2011). [IRSR 151687-88]

Fig. 4A: IRS Sensitive Case Report for Tea Party cases, June 17, 2011⁶⁵**CASE OR ISSUE SUMMARY:**

The various "tea party" organizations are separately organized, but appear to be a part of a national political movement that may be involved in political activities. The "tea party" organizations are being followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati is holding three applications from organizations which have applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and approximately twenty-two applications from organizations which have applied for recognition of exemption under section 501(c)(4) as social welfare organizations. Two organizations that we believe may be "tea party" organizations already have been recognized as exempt under section 501(c)(4). EOT has not seen the case files, but are requesting copies of them. The issue is whether these organizations are involved in campaign intervention or, alternatively, in nonexempt political activity.

The September 2012 sensitive case report (figure 4B) identified the issue as: "These organizations are 'advocacy organizations,' and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis."⁶⁶

Fig. 4B: IRS Sensitive Case Report for "Advocacy Organizations," Sept. 18, 2012⁶⁷**CASE OR ISSUE SUMMARY:**

These organizations are "advocacy organizations," and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati has in its inventory a number of applications from these types of organizations that applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and from organizations that applied for recognition of exemption under section 501(c)(4) as social welfare organizations.

Reading these items together, it is clear that although the BOLO language was changed to broader "political advocacy organizations," the IRS still intended to identify and single out Tea Party applications for scrutiny. Ron Bell testified that after the BOLO change in July 2011, he received more applications than just Tea Party cases. He testified:

Q And do you recall when that – when the BOLO was changed after – you said it was after the meeting [with Lerner], they changed the BOLO after the meeting, do you recall when?

A July.

Q Of 2011?

A Yes, sir.

⁶⁵ *Id.*

⁶⁶ Internal Revenue Serv., Sensitive Case Report (Sept. 18, 2012). [IRSR 150608-09]

⁶⁷ *Id.*

Q And you were going to say the BOLO became more, and then you were cut off. What were you going to say?

A It became more – they had more the advocacy, more organizations to the advocacy, like I mentioned about maybe a cat rescue that’s advocating for let’s not kill the cats that get picked up by the local government in whatever cities.⁶⁸

Bell also stated that while he could not process the Tea Party applications because he was awaiting guidance from Washington, he could process the non-Tea Party applications. He testified:

Q Mr. Bell, in July 2011, when the BOLO was changed where they chose broad language, after that point, did you conduct secondary screening on any of the cases that were being held by you?

A You mean the cases that I inherited from Liz are the ones that had already been put into the whatever timeframe, Tea Party advocacy, slash advocacy?

Q Other type, yes.

A No, these were new ones coming in that someone thought that they perhaps should be in the advocacy, slash, Tea Party inventory.

Q Okay.

A They were assigned to Group 7822, and I reviewed them, and you know, maybe some were, but a vast majority was like outside the realm we were looking for.

Q And so they were like the . . . cat type cases you were discussing earlier?

A Yes.

Q After the July 2011 change to the BOLO, how long did you perform the secondary screening?

A Up until July 2012.

Q So, for a whole year?

A Yeah.

⁶⁸ Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

- Q And you would look at the cases and see if they were not a Tea Party case, you would move that either to closing or to further development?
- A Yeah, and then the BOLO changed about midway through that timeframe.
- Q Okay.
- A To make it where we put the note on there that we don't need the general advocacy.
- Q And after the BOLO changed in January 2012, did that affect your secondary screening process?
- A There was less cases to be reviewed.
- Q Okay. **So during this whole year, the Tea Party cases remained on hold pending guidance from Washington while the other cases that you identified as non-Tea Party cases were moved to either closure or further development; is that right?**
- A **Correct.**⁶⁹ (emphasis added).

The IRS's own retrospective review shows the targeted applications were predominantly conservative-oriented

In July 2012, Lerner asked her senior technical advisor, Judith Kindell, to conduct an assessment of the political affiliation of the applications in the IRS backlog. On July 18, Kindell reported back to Lerner that of all the 501(c)(4) applications, having been flagged for additional scrutiny, at least 75 percent were conservative, “while fewer than 10 [applications, or 5 percent] appear to be liberal/progressive leaning groups based solely on the name.”⁷⁰ Of the 501(c)(3) applications, Kindell informed Lerner that “slightly over half appear to be conservative leaning groups based solely on the name.”⁷¹ Unlike Tea Party cases, the Oversight Committee’s review has received no testimony from IRS employees that any progressive groups were scrutinized because of their organization’s expressed political beliefs.

⁶⁹ *Id.*

⁷⁰ E-mail from Judith Kindell, Internal Revenue Serv., to Lois Lerner, Internal Revenue Serv. (July 18, 2012). [IRSR 179406]

⁷¹ *Id.*

Fig. 5: E-mail from Judith Kindell to Lois Lerner, July 18, 2012⁷²

From:	Kindell Judith E
Sent:	Wednesday, July 18, 2012 10:54 AM
To:	Lerner Lois G
Cc:	Light Sharon P
Subject:	Bucketed cases

Of the 84 (c)(3) cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

Of the 199 (c)(4) cases, approximately 3/4 appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

Documents and testimony obtained by the Committee demonstrate that the IRS sought to identify and scrutinize Tea Party applications. For fifteen months beginning in February 2010, the IRS systematically identified, separated, and delayed Tea Party applications – and only Tea Party applications. Even after the IRS broadened the screening criteria in the summer of 2011, internal documents confirm that that agency continued to target Tea Party groups.

The IRS treated Tea Party applications differently from other applications

Evidence obtained by the Committee in the course of its investigation proves that the IRS handled conservative applications distinctly from other tax-exempt applications. In February 2011, Lerner directed Michael Seto, the manager of Exempt Organizations Technical Unit, to put the Tea Party test cases through a “multi-tier” review.⁷³ Lerner wrote to Seto: “This could be the vehicle to go to court on the issue of whether Citizen’s [sic] United overturning ban on corporate

⁷² *Id.*

⁷³ Transcribed interview of Michael Seto, Internal Revenue Serv., in Wash., D.C. (July 11, 2013).

spending applies to tax exempt rule. Counsel and Judy Kindell need to be in on this one please.”⁷⁴

Carter Hull, an IRS specialist with almost 50 years of experience, testified that this multi-tier level of review was unusual. He testified:

Q Have you ever sent a case to Ms. Kindell before?

A Not to my knowledge.

Q This is the only case you remember?

A Uh-huh.

Q Correct?

A This is the only case I remember sending directly to Judy.

Q Had you ever sent a case to the Chief Counsel’s office before?

A I can’t recall offhand.

Q You can’t recall. So in your 48 years of experience with the IRS, you don’t recall sending a case to Ms. Kindell or a case to IRS Chief Counsel’s office?

A To Ms. Kindell, I don’t recall ever sending a case before. To Chief Counsel, I am sure some cases went up there, but I can’t give you those.

Q Sitting here today you don’t remember?

A I don’t remember.⁷⁵

Similarly, Elizabeth Hofacre, the Cincinnati-based revenue agent initially assigned to develop cases, told the Committee during a July 2013 hearing that the involvement of Washington was “unusual.”⁷⁶ She testified:

I never before had to send development letters that I had drafted to EO

⁷⁴ E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRSR 161810]

⁷⁵ Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

⁷⁶ “*The IRS’s Systematic Delay and Scrutiny of Tea Party Applications*”: *Hearing before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (2013) (statement of Elizabeth Hofacre).

Technical for review, and I never before had to send copies of applications and responses that were assigned to me to EO Technical for review. I was frustrated because of what I perceived as micromanagement with respect to these applications.⁷⁷

Hofacre's successor on the cases, Ron Bell, also told the Committee that it was "unusual" to have to wait on Washington to move forward with an application.⁷⁸ He testified:

Q So did you see something different in these Tea Party cases applying for 501(c)(4) status that was different from other organizations that had political activity, political engagement applying for 501(c)(4) status in the past?

A I'm not sure if I understand that.

Q I guess what I'm getting at is you said you had seen previous applications from an organization applying for 501(c)(4) status that had some level of political engagement, and these Tea Party groups are also applying for 501(c)(4) status and they have some level of political engagement. Was there any difference in your mind between the Tea Party groups and the other groups that you'd seen in your experience at the IRS?

A No.

Q So, do you think that Tea Party groups are treated the same as these other groups from your previous experience?

A No.

Q In your experience, was there anything different about the way that the Tea Party 501(c)(4) cases were treated that was as opposed to the previous 501(c)(4) applications that had some level of political engagement?

A Yes.

Q And what was different?

A Well, they were segregated. They seemed to have been more scrutinized. I hadn't interacted with EO technical [in] Washington on cases really before.

Q You had not?

⁷⁷ *Id.*

⁷⁸ Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

A Well, not a whole group of cases.⁷⁹

Another Cincinnati employee, Stephen Seok, testified that the type of activities that the conservative applicants conducted made them different from other similar applications he had worked in the past. He testified:

Q And to your knowledge, the cases that you worked on, was there anything different or novel about the activities of the Tea Party cases compared to other (c)(4) cases you had seen before?

A **Normal (c)(4) cases we must develop the concept of social welfare, such as the community newspapers, or the poor, that types. These organizations mostly concentrate on their activities on the limiting government, limiting government role, or reducing government size, or paying less tax. I think it[']s different from the other social welfare organizations which are (c)(4).**

Q **So the difference between the applications that you just described, the applications for folks that wanted to limit government, limit the role of government, the difference between those applications and the (c)(4) applications with political activity that you had worked in the past, was the nature of their ideology, or perspective, is that right?**

A **Yeah, I think that's a fair statement.** But still, previously, I could work, I could work this type of organization, applied as a (c)(4), that's possible, though. Not exactly Tea Party, or 9-12, but dealing with the political ideology, that's possible, yes.

Q **So you may have in the past worked on applications from (c)(4), applicants seeking (c)(4) status that expressed a concern in ideology, but those applications were not treated or processed the same way that the Tea Party cases that we have been talking about today were processed, is that right?**

A **Right.** Because that [was] way before these – these organizations were put together. So that's way before. If I worked those cases, way before this list is on.⁸⁰ (emphases added).

⁷⁹ *Id.*

⁸⁰ Transcribed interview of Stephen Daejin Seok, Internal Revenue Serv., in Wash., D.C. (June 19, 2013).

This evidence shows that the IRS treated conservative-oriented Tea Party applications differently from other tax-exempt applications, including those filed by liberal-oriented organizations. Testimony indicates that the IRS instituted new procedures and different hurdles for the review of Tea Party applications. What would otherwise be a routine review of an application became unprecedented scrutiny and delays for these Tea Party groups.

Myth versus fact: How Democrats' claims of bipartisan targeting are not supported by the evidence

In light of the evidence available to the Committee and under close examination, each Democratic argument fails. Despite their claims that liberal-leaning groups were targeted in the same manner as conservative applicants, the facts do not bear out their assertions. Instead, the Committee's investigation and public information shows the following:

- IRS BOLO entries for liberal groups and terms only appear on lists used for awareness and were never used as a litmus test for enhanced scrutiny;
- Some liberal-oriented organizations were identified for scrutiny because of objective, non-political concerns, but not because of their political beliefs;
- Substantially more conservative-leaning applicants than liberal-oriented applicants were caught in the IRS's backlog;
- The IRS treated Tea Party applicants differently from "progressive" groups;
- The IRS treated Tea Party applicants differently from ACORN successor groups;
- The IRS treated Tea Party applicants differently from Emerge affiliate groups; and
- The IRS treated Tea Party applicants differently from Occupy groups.

When carefully examined, these facts refute the myths perpetrated by congressional Democrats and the Administration that the IRS engaged in bipartisan targeting. The facts show, instead, that the IRS targeted Tea Party groups for systematic scrutiny and delay.

Perhaps most telling is the IRS's own actions. When Lois Lerner publicly apologized for the IRS's targeting of Tea Party applicants, she offered no such apology for its targeting of any liberal groups. When asked if the IRS had treated liberal groups inappropriately, Lerner responded: "I don't have any information on that."⁸¹ This admission severely undercuts Democratic *ex post* allegations of bipartisan targeting.

BOLO entries for liberal groups and terms only appear on lists used for awareness and were never used as a litmus test for enhanced scrutiny

Congressional Democrats and some in the Administration claim that the IRS targeted liberal groups because some liberal-oriented organizations appeared on entries of the IRS BOLO

⁸¹ Aaron Blake, 'I'm not good at math': The IRS's public relations disaster, WASH. POST, May 10, 2013.

lists.⁸² This claim is not supported by the facts. The presence of an organization or a group of organizations on the IRS BOLO list did not necessarily mean that the IRS targeted those groups. As the Ways and Means Committee phrased it, “being on a BOLO is different from being targeted and abused by the IRS.”⁸³ A careful examination of the evidence demonstrates that only conservative groups on the IRS BOLO lists experienced systematic scrutiny and delay.

The Democratic falsehood rests on a fundamental misunderstanding of the structure of the BOLO list. The BOLO list was a comprehensive spreadsheet document with separate tabs designed for information intended for different uses. For example, the “Watch List” tab on the BOLO document was designed to notify screeners of potential applications that the IRS has not yet received.⁸⁴ The “TAG Issues” tab listed groups with potentially fraudulent applications. The “Emerging Issues” tab, contrarily, was designed to alert screeners to groups of applications that the IRS has *already received* and that presented special problems.⁸⁵ Therefore, whereas the Watch List tab noted hypothetical applications that could be received and TAG Issues tab noted fraudulent applications, the Emerging Issues tab highlighted non-fraudulent applications that the IRS was actively processing.

The Tea Party entry on the IRS BOLO appears on the “Emerging Issues” tab, meaning that the IRS had already received Tea Party applications. The liberal-oriented groups on the BOLO list appear on either the Watch List tab, meaning that the IRS was merely notifying its screeners of the potential for those groups to apply, or the TAG Issues tab, indicating a concern for fraud. In effect, then, whereas the appearance of Tea Party groups on the BOLO signifies the *actuality* of review and subsequent delay, the appearance of the liberal groups on the BOLO signifies either the *possibility* that some group may apply in the future or the potential for fraud in a group’s application.

The differences in where the entries appear on the BOLO document manifests in the IRS’s differential treatment of the groups. According to evidence known to the Committee, only Tea Party applications appearing on the Emerging Issues tab resulted in systematic scrutiny and delay. Although some liberal groups appeared on versions of the BOLO, their mere presence on the document did not result in systematic scrutiny and delay – contrary to Democratic claims of bipartisan IRS targeting.

The IRS identified some liberal-oriented groups due to objective, non-political concerns, but not because of their political beliefs

Where the IRS identified liberal-oriented groups for scrutiny, evidence shows that it did so for objective, non-political reasons and not because of the groups’ political beliefs. For

⁸² See, e.g., *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013); The White House, Press Briefing by Press Secretary Jay Carney, 2/3/14, <http://www.whitehouse.gov/photos-and-video/video/2014/02/03/press-briefing#transcript>.

⁸³ H. Comm. on Ways & Means, *Being on a BOLO is Different from Being Targeted and Abused by the IRS* (June 24, 2013), <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=340314>.

⁸⁴ Internal Revenue Serv., *Heightened Awareness Issues*. [IRSR 6655-72]

⁸⁵ *Id.*

instance, the IRS scrutinized Emerge America applications for conveying impermissible benefits to a private entity, which is prohibited for nonprofit groups.⁸⁶ The IRS scrutinized ACORN successor groups due to concerns that the organizations were engaged in an abusive scheme to rebrand themselves under a new name.⁸⁷ Likewise, the IRS included an entry for “progressive” on its BOLO list out of concern that the groups’ partisan campaign activity “may not be appropriate” for 501(c)(3) status, under which there is an absolute prohibition on campaign intervention.⁸⁸ Unlike the Tea Party applications, which the IRS scrutinized for their social-welfare activities, the Committee has received no indication that the IRS systematically scrutinized liberal-oriented groups because of their political beliefs.

Substantially more conservative groups were caught in the IRS application backlog

Another familiar refrain from the Administration and congressional Democrats is that the IRS targeted liberal groups because left-wing groups were included in the IRS backlog along with conservative groups. Ways and Means Ranking Member Sander Levin (D-MI) alleged that the IRS engaged in bipartisan targeting because some “progressive groups were among the 298 applications that TIGTA reviewed in their audit and received heightened scrutiny.”⁸⁹ Similarly, Representative Gerry Connolly (D-VA) said that “the tilt . . . included progressive titles as well as conservative titles and that they were equally stringent.”⁹⁰ These allegations are misleading. Several separate assessments of the IRS backlog prove that substantially more conservative groups than liberal groups were caught in the IRS backlog.

An internal IRS analysis conducted for Lois Lerner in July 2012 found that 75 percent of the 501(c)(4) applications in the backlog were conservative, “while fewer than 10 [applications] appear to be liberal/progressive leaning groups based solely on the name.”⁹¹ The same analysis found that “slightly over half [of the 501(c)(3) applications] appear to be conservative leaning groups based solely on the name.”⁹² A Ways and Means examination conducted in 2013 similar found that the backlog was overwhelmingly conservative: 83 percent conservative and only 10 percent liberal.⁹³

In September 2013, *USA Today* independently analyzed a list of about 160 applications in the IRS backlog.⁹⁴ This review showed that conservative groups filed 80 percent of the

⁸⁶ Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).

⁸⁷ Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).

⁸⁸ See, e.g., Internal Revenue Serv., Be on the Look Out List (Nov. 9, 2010). [IRS 1349-64]

⁸⁹ *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (statement of Ranking Member Sander Levin).

⁹⁰ *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).

⁹¹ E-mail from Judith Kindell, Internal Revenue Serv., to Lois Lerner, Internal Revenue Serv. (July 18, 2012). [IRSR 179406]

⁹² *Id.*

⁹³ Ways and Means Committee September 18th Hearing, *supra* note 9.

⁹⁴ See Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.

applications in the backlog while liberal groups filed less than seven percent.⁹⁵ An earlier analysis from *USA Today* in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve any tax-exempt applications filed by Tea Party groups.⁹⁶ During that same period, the IRS approved “perhaps dozens of applications from similar liberal and progressive groups.”⁹⁷

Testimony received by the Committee supports this conclusion. During a hearing of the Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs, Jay Sekulow – a lawyer representing 41 groups targeted by the IRS – testified that substantially more conservative groups were targeted and that all liberal groups targeted eventually received approval.⁹⁸ In an exchange with Representative Matt Cartwright (D-PA), Sekulow testified:

Mr. CARTWRIGHT. And Mr. Sekulow, you were helpful with some statistics this morning, and I wanted to ask you about that. **You mentioned 104 conservative groups targeted. Was that the number?**

Mr. SEKULOW. This is from the report of the IRS dated through July 29th of 2013 – **104 conservative organizations in that report were targeted.**

Mr. CARTWRIGHT. Thank you. **And then seven progressive targeted groups?**

Mr. SEKULOW. **Seven progressive targeted groups, all of which received their tax exemption.**

Mr. CARTWRIGHT. Does it give the total number of applications? In other words, 104 conservative groups targeted. How many – how many applied? How many conservative groups applied?

Mr. SEKULOW. In the TIGTA report there was – I think the number was 283 that they had become part of the target. But actually, applications, a lot of the IRS justification for this, at least purportedly, was an increase in applications, and there was actually a decrease in the number.

Mr. CARTWRIGHT. Right. And does it give the number of progressive groups that applied for tax-exempt status?

⁹⁵ *Id.*

⁹⁶ Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA TODAY, May 15, 2013.

⁹⁷ *Id.*

⁹⁸ “*The IRS Targeting Investigation: What Is the Administration Doing?*”: Hearing before the Subcomm. on Economic Growth, Job Creation, and Regulatory Affairs of the H. Comm. on Oversight & Gov’t Reform, 113th Cong. (2014) (question and answer with Rep. Matt Cartwright).

Mr. SEKULOW. No, the only report that has the progressive –

Mr. CARTWRIGHT. No, no?

Mr. SEKULOW. The one that I have just is the – the report I have in front of me is the one through the – which just has the seven.

Mr. CARTWRIGHT. OK. All right, thank you.

MR. SEKULOW. None of those have been denied, though.⁹⁹ (emphases added).

Contrary to the Democratic claim that the IRS targeting of liberal groups was “equally stringent” to conservative groups,¹⁰⁰ the overwhelming majority of applications in the IRS backlog were filed by conservative-leaning organizations. This evidence further demonstrates that the IRS did not engage in bipartisan targeting.

The IRS treated Tea Party applicants differently than “progressive” groups

Democrats in Congress and the Administration argue that the IRS treated “progressive” groups in a manner similar to Tea Party applicants. Because the IRS BOLO list had an entry for “progressives,” Democrats allege that “progressive groups were singled out for scrutiny in the same manner as conservative groups,”¹⁰¹ and that “the progressive groups were targeted side by side with their tea party counterpart groups.”¹⁰² Again, the evidence available to the Committee does not support these Democratic assertions. Rather, the evidence clearly shows that the IRS did not subject “progressive” groups to the same type of systematic scrutiny and delay as conservative applicants.

Perhaps the most significant difference between the IRS’s treatment of Tea Party applicants and “progressive” groups is reflected in the IRS BOLO lists. The Tea Party entry was located on the tab labeled, “Emerging Issues,” meaning that the IRS was actively screening for similar cases.¹⁰³ The “progressive” entry, however, was located on a tab labeled “TAG historical,” meaning that the IRS interest in those cases was dormant.¹⁰⁴ Cindy Thomas, the manager of the IRS Cincinnati office, explained this difference during a transcribed interview with Committee staff.¹⁰⁵ She told the Committee that unlike the systematic scrutiny given to the

⁹⁹ *Id.*

¹⁰⁰ *The Last Word with Lawrence O’Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).

¹⁰¹ Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov’t Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).

¹⁰² *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Representative Joseph Crowley).

¹⁰³ See Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]

¹⁰⁴ *Id.*

¹⁰⁵ Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).

conservative-oriented applications as a result of the BOLO, “progressive” cases were never automatically elevated to the Washington office as a whole. She testified:

Q Ms. Thomas, is this an example of the BOLO from looks like November 2010?

A I don’t know if it was from November of 2010, but –

Q This is an example of the BOLO, though?

A Yes.

Q Okay. And, ma’am, under what has been labeled as tab 2, TAG Historical?

A Yes.

Q Let’s turn to page 1354.

A Okay.

Q Do you see that, it says -- the entry says progressive?

A Yes.

Q This is under TAG Historical, is that right?

A Yes.

Q So this is an issue that hadn’t come up for a while, is that right?

A Right.

Q And it doesn’t note that these were referred anywhere, is that correct? What happened with these cases?

A This would have been on our group as -- because of -- remember I was saying it was consistency-type cases, so it’s not necessarily a potential fraud or abuse or terrorist issue, but any cases that were dealing with these types of issues would have been worked by our TAG group.

Q **Okay. And were they worked any different from any other cases that EO Determinations had?**

- A. **No. They would have just been worked consistently by one group of agents.**
- Q Okay. And were they cases sent to Washington?
- A I'm not – I don't know.
- Q Not that you are aware?
- A I'm not aware of that.
- Q As the head of the Cincinnati office you were never aware that these cases were sent to Washington?
- A There could be cases that are transferred to the Washington office according to, like, our [Internal Revenue Manual] section. I mean, there's a lot of cases that are processed, and I don't know what happens to every one of them.
- Q Sure. But these cases identified as progressive as a whole were never sent to Washington?
- A Not as a whole.¹⁰⁶

The difference in where the entries appeared in the BOLO list resulted in disparate treatment of Tea Party and “progressive” groups. Unlike the systematic scrutiny given to Tea Party applicants, “progressive” cases were never similarly scrutinized.

The House Ways and Means Committee, with statutory authority to review confidential taxpayer information, concluded that the IRS treated conservative tax-exempt applicants differently than “progressive” groups. The Ways and Means Committee's review found that while the IRS approved only 45 percent of conservative applicants, it approved 100 percent of groups with “progressive” in their name.¹⁰⁷ Likewise, Acting IRS Commissioner Daniel Werfel testified before the Way and Means Committee:

Mr. REICHERT. Mr. Werfel, isn't it true that 100 percent of tea party applications were flagged for extra scrutiny?

Mr. WERFEL. I think that – yes. The framework from the BOLO. It's my understanding, the way the process worked is if there's “tea party” in the application it was automatically moved into -- into this area of further review, yes.

¹⁰⁶ *Id.*

¹⁰⁷ *Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways & Means, 113th Con. (2013) (opening statement of Chairman Boustany).*

- Mr. REICHERT. OK, and you – you know how many progressive groups were flagged?
- Mr. WERFEL. I do not have that number.
- Mr. REICHERT. I do.
- Mr. WERFEL. OK.
- Mr. REICHERT. Our investigation shows that there were seven flagged. Do you know how many were approved?
- Mr. WERFEL. I do not have that number at my fingertips.
- Mr. REICHERT. All of those applications were approved.¹⁰⁸

The IRS's independent inspector general has repeatedly confirmed the Ways and Means Committee's assessment. During the Oversight Committee's July 2013 hearing, TIGTA J. Russell George told Members that "progressive" groups were not subjected to the same systematic treatment as Tea Party applicants. He testified:

With respect to the 298 cases that the IRS selected for political review, as of the end of May 2012, three have the word "progressive" in the organization's name; another four were used—are used, "progress," none of the 298 cases selected by the IRS, as of May 2012, used the name "Occupy."¹⁰⁹

Mr. George also informed Congress that at least 14 organizations with "progressive" in their name were not held up and scrutinized by the IRS.¹¹⁰ "In total," Mr. George wrote, **"30 percent of the organizations we identified with the words 'progress' or 'progressive' in their names were process as potential political cases. In comparison, our audit found that 100 percent of the tax-exempt applications with Tea Party, Patriots, or 9/12 in their names were processed as potential political cases during the timeframe of our audit."**¹¹¹ (emphasis added).

Documents produced by the IRS support the finding of disparate treatment toward Tea Party groups. Notes from one training session in July 2010 reflect that the IRS ordered screeners to transfer Tea Party applications to a special group for "secondary screening."¹¹² The same notes show that the screeners were asked to "flag" progressive groups.¹¹³ But multiple

¹⁰⁸ *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Representative Dave Reichert).

¹⁰⁹ *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of J. Russell George).

¹¹⁰ Letter from J. Russell George, Treasury Inspector Gen. for Tax Admin., to Sander M. Levin, H. Comm. on Ways & Means (June 26, 2013).

¹¹¹ *Id.*

¹¹² Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

¹¹³ *Id.*

interviews with IRS employees who worked individual cases have yielded no evidence that these “flags” or frontline reviews for political activity led to enhanced scrutiny – except for Tea Party organizations. One sentence on the notes explicitly reminds screeners that “progressive” applications are not considered “Tea Parties.”¹¹⁴ These notes confirm testimony from Elizabeth Hofacre, the “Tea Party Coordinator/Reviewer,” who told the Committee that she only worked Tea Party cases.¹¹⁵

Fig. 6: IRS Screening Workshop Notes, July 28, 2010¹¹⁶

Screening Workshop Notes - July 28, 2010	2
<ul style="list-style-type: none"> • The emailed attachment outlines the overall process. • Glenn deferred additional statements and/or questions to John Shafer on yesterday’s developments: how they affect the screening process and timeline. • Concerns can be directed to Glenn for additional research if necessary. 	
<p>Current/Political Activities: Gary Muthert</p> <ul style="list-style-type: none"> • Discussion focused on the political activities of Tea Parties and the like-regardless of the type of application. • If in doubt Err on the Side of Caution and transfer to 7822. • Indicated the following names and/or titles were of interest and should be flagged for review: <ul style="list-style-type: none"> ○ 9/12 Project, ○ Emerge, ○ Progressive ○ We The People, ○ Rally Patriots, and ○ Pink-Slip Program. • Elizabeth Hofacre, Tea Party Coordinator/Reviewer <ul style="list-style-type: none"> ▪ Re-empathize that applications with Key Names and/or Subjects should be transferred to 7822 for Secondary Screening. Activities must be primary. ▪ “Progressive” applications are not considered “Tea Parties” 	

Despite creative interpretations of this individual document, the full evidence rebuts the Democratic claim that the IRS targeted “progressive” groups alongside Tea Party applicants. Although “progressive” groups were referenced in the IRS BOLO lists and internal training documents, Democrats in Congress and the Administration have repeatedly ignored critical distinctions that qualify their meaning. A careful evaluation of facts in context reveals one conclusion: the IRS treated Tea Party groups differently than “progressive” groups.

¹¹⁴ *Id.*

¹¹⁵ Transcribed interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. (May 31, 2013).

¹¹⁶ Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

The IRS treated Tea Party applicants differently than ACORN successor groups

Democratic defenders of the IRS misconduct also argue that the IRS treated Tea Party applicants similar to ACORN successor groups. ACORN endorsed President Barack Obama in his election campaign and had established deep political ties before its network of affiliates delinked and rebranded themselves following scandalous revelations about the organization in 2009.¹¹⁷ To support allegations about ACORN being targeted, Democrats have pointed to BOLO lists and training documents that “instructed [IRS] screeners to single out for heightened scrutiny . . . ACORN successors.”¹¹⁸

But allegations of targeting fall flat. First, ACORN successor groups appear on the “Watch List” tab of the BOLO list, unlike Tea Party groups, which appear on the “Emerging Issues” tab.¹¹⁹ According to IRS documents, the Watch List tab was intended to include applications “not yet received,” or “issues [that] are the result of significant world events,” or “organizations formed as a result of controversy.”¹²⁰ The Emerging Issue tab was created to spot groups of applications *already* received by the IRS. An internal IRS training document specifically cites “Tea Party cases” as an example of an emerging issue; it does not similarly cite ACORN successor groups.

Second, Robert Choi, the director of EO Rulings and Agreements until December 2010, testified to several differences between how the IRS treated ACORN successors and how the IRS treated Tea Party applicants. He told the Committee that unlike the Tea Party “test” cases, he did not recall the ACORN successor applications being subject to a “sensitive case report” or worked by the IRS Chief Counsel’s office.¹²¹ Most importantly, he explained that the IRS had objective concerns about rebranded ACORN affiliates that had nothing to do with the organization’s political views. The primary concern about the ACORN successor groups, according to Choi, was whether the groups were legitimate new entities or part of an “abusive” scheme to continue an old entity under a new name.¹²² Mr. Choi testified:

Q You said earlier in the last hour there was email traffic about the ACORN successor groups in 2010; is that right?

A That’s correct, yes.

Q But the ACORN successor groups were not subject to a sensitive case report; is that right?

¹¹⁷ Stephanie Strom, *On Obama, Acorn and Voter Registration*, N.Y. TIMES, Oct. 10, 2008; Stanley Kurtz, *Inside Obama’s Acorn*, NAT’L REVIEW ONLINE, May 29, 2008.

¹¹⁸ Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov’t Reform Democrats, *New Documents Highlight IRS Scrutiny of Progressive Groups* (Aug. 20, 2013).

¹¹⁹ See Internal Revenue Serv., *Be on the Look Out list, “Filed 112310 Tab 5 – Watch List.”* [IRSR 2562-63]

¹²⁰ Internal Revenue Serv., *Heightened Awareness Issues.* [IRSR 6655-72]

¹²¹ Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).

¹²² *Id.*

- A I don't recall if they were listed in there, in the sensitive case report.
- Q So you don't recall them being part of a sensitive case report?
- A I think what I'm saying is they may be part of a sensitive case report. I do not have a specific recollection that they were listed in a sensitive case report.
- Q But you do have a specific recollection that the Tea Party cases were on sensitive case reports in 2010.
- A Yes.
- Q To your knowledge, did any ACORN successor application go to the Chief Counsel's Office?
- A I am not aware of it.
- Q Are you aware of any ACORN successor groups facing application delays?
- A I do not know if – well, when you say “delays,” how do you –
- Q Well –
- A I mean, I'm aware of successor ACORN applications coming in, and I am aware of email traffic that talked about my concern of delays on those cases and, you know, that there was discussion about seeing an influx of these applications which appear to be related to the previous organization.
- ***
- Q And the concern behind the reason that they weren't being processed was that they were potentially the same organization that had been denied previously?
- A Not that they were denied previously. **These appeared to be successor organizations, meaning these were newly formed organizations with a new EIN, employer identification number, located at the same address as the previous organization and, in some instances, with the same officers. And it was an issue of concern as to whether or not these were, in fact, the same organizations just coming in under a new name;** whether, in fact, the previous organizations, if they were, for example, 501(c)(3) organizations, properly disposed of their assets. Did they transfer it to this new organization? Was this perhaps an abusive

scheme by these organizations to say that they went out of business and then not really but they just carried on under a different name?

Q And that's the reason they were held up?

A Yes.¹²³ (emphasis added).

Choi's testimony shows that the inclusion of ACORN successor groups on the BOLO list centered on a concern for whether the new groups were improperly standing in the shoes of the old groups. As the Committee has documented previously, ACORN groups received substantial attention in 2009 and 2010 for misuse of taxpayer funds and other fraudulent endeavors.¹²⁴ In fact, Congress even cut off funding for ACORN groups given widespread concerns about the groups' activities.¹²⁵ Six Democratic current members of the Oversight Committee and seven Democratic current members of the Ways and Means Committee voted to stop ACORN funding.¹²⁶ The IRS included ACORN successor groups on a special watch list, according to Choi, due to concern "as to whether or not these were, in fact, the same organizations just coming in under a new name."¹²⁷

This information undercuts allegations by congressional Democrats that the IRS's placement of ACORN successor groups on the BOLO list signified that those groups were targeted by the IRS in the same manner as Tea Party cases. Unlike the Tea Party applicants, ACORN successor groups were placed on the IRS BOLO out of specific and unique concern for potentially fraudulent or abusive schemes and not because of their political beliefs. Once identified, even ACORN successor groups were apparently not subjected to the same systematic scrutiny and delay as Tea Party applicants.

The IRS treated Tea Party applicants differently than Emerge affiliate groups

Congressional Democrats attempt to minimize the IRS's targeting of Tea Party applicants by alleging a false analogy to the IRS's treatment of Emerge affiliate groups. Emerge touts itself as the "premier training program for Democratic women" and states as a goal, "to increase the number of Democratic women in public office."¹²⁸ In particular, citing IRS training documents, Ranking Member Sander Levin and Ranking Member Elijah Cummings argued that "the IRS

¹²³ *Id.*

¹²⁴ See H. COMM. ON OVERSIGHT & GOV'T REFORM MINORITY STAFF, IS ACORN INTENTIONALLY STRUCTURED AS A CRIMINAL ENTERPRISE? (July 23, 2009).

¹²⁵ See H. COMM. ON OVERSIGHT & GOV'T REFORM MINORITY STAFF, FOLLOW THE MONEY: ACORN, SEIU AND THEIR POLITICAL ALLIES (Feb. 18, 2010).

¹²⁶ See 155 Cong. Rec. H9700-01 (Sept. 17, 2009). The Democratic Members who opposed ACORN funding were Representatives Maloney (D-NY); Tierney (D-MA); Clay (D-MO); Cooper (D-TN); Speier (D-CA); Welch (D-VT); Levin (D-MI); Doggett (D-TX); Thompson (D-CA); Larson (D-CT); Blumenauer (D-OR); Kind (D-WI); and Schwartz (D-PA). *Id.*

¹²⁷ Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).

¹²⁸ Emerge America, www.emergeamerica.org (last visited Apr. 2, 2014).

instructed its screeners to single out for heightened scrutiny ‘Emerge’ organizations.”¹²⁹ The evidence, once more, fails to support their contention. The IRS did not target Emerge affiliate groups in any similar manner to Tea Party applicants.

The same training documents cited by congressional Democrats as proof of bipartisan IRS targeting clearly show differences between the treatment of Tea Party applications and those filed by Emerge affiliate. The IRS ordered its screeners to transfer Tea Party applications to a special group for “secondary screening,” but it asked the screeners to merely “flag” Emerge groups.¹³⁰ While another training document specifically offers the Tea Party as an example of an emerging issue, the Emerge affiliate groups were not referenced on the document.¹³¹

Democrats cite testimony from IRS employee Steven Grodnitzky to support their argument that the IRS engaged in bipartisan targeting. Ranking Member Cummings referenced this testimony when questioning Acting IRS Commissioner Daniel Werfel during his unsolicited testimony before the Committee on July 17, 2013.¹³² Although Grodnitzky did testify that some liberal applications experienced a three-year delay,¹³³ he also gave testimony that contradicts the Democrats’ manufactured narrative. Grodnitzky testified that unlike the Tea Party cases, which were filed by unaffiliated groups with similar ideologies, the Emerge cases were affiliated entities with different “posts” in each state.¹³⁴ He also testified that unlike the Tea Party applications, where the IRS was focused on political speech, the central issue in the Emerge applications was that the groups were conveying an impermissible private benefit upon the Democratic Party.¹³⁵ Finally, Grodnitzky testified that there were far fewer Emerge cases than Tea Party applications.¹³⁶ While Grodnitzky’s testimony supports a conclusion that specific and objective concerns at the IRS led to scrutiny and delayed applications from Emerge affiliates, it does not support a parallel between these organizations and what the IRS did to Tea Party applicants.

Emerge existed as a series of affiliated organizations. One IRS employee testified that whereas the Tea Party applicants waited years for IRS action, some of the Emerge applications were approved by Cincinnati IRS employees in a “matter of hours.”¹³⁷ But the IRS eventually reversed course, out of concern about impermissible private benefit. Because Emerge affiliates were seen as essentially the same organization, the IRS wanted to flag new affiliates to ensure that these new applications were considered in a consistent manner. Testimony from IRS employee, Amy Franklin Giuliano, explains why the Emerge applicants “were essentially the same organization.”¹³⁸ She testified:

¹²⁹ Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov’t Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).

¹³⁰ Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

¹³¹ Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]

¹³² See July 17th Hearing, *supra* note 25.

¹³³ Transcribed interview of Steven Grodnitzky, Internal Revenue Serv., in Wash., D.C. (July 16, 2013).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).

¹³⁸ Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).

Q The reason that the other five cases would be revoked if that case the Counsel's Office had was denied, was that because they were affiliated entities?

A It is because they were essentially the same organization. I mean, every – the applications all presented basically identical facts and basically identical activities.

Q And the groups themselves were affiliated.

A And the groups themselves were affiliated, yes.¹³⁹

Giuliano also told the Committee that the central issue in these cases was not impermissible political speech activity – as it was with the Tea Party applications – but instead private benefit. She testified:

Q The issue in the case you reviewed in May of 2010 was private benefit.

A Yes.

Q As opposed to campaign intervention.

A We considered whether political campaign intervention would apply, and we decided it did not.¹⁴⁰

Most striking, Giuliano told the Committee that the career IRS experts recommended *denying* an Emerge application, whereas the experts recommended *approving* the Tea Party application.¹⁴¹ Even then, despite the recommended approval, the Tea Party applications still sat unprocessed in the IRS backlog.

Documents and testimony received by the Committee demonstrate that the IRS never engaged in systematic targeting of Emerge applicants as it did with Tea Party groups. IRS scrutiny of Emerge affiliates appears to have been based on objective and non-controversial concerns about impermissible private benefit. Taken together, this evidence strongly rebuts any Democratic claims that the IRS treated Emerge affiliates similarly to Tea Party applicants.

The IRS treated Tea Party applicants differently than Occupy groups

Finally, congressional Democrats defend the IRS targeting of Tea Party organization by arguing that liberal-oriented Occupy groups were similarly targeted.¹⁴² Contrary to these claims, evidence available to the Committee indicates that the IRS did not target Occupy groups.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² July 18th Hearing, *supra* note 28

TIGTA found that none of the applications in the IRS backlog were filed by groups with “Occupy” in their names.¹⁴³ Several IRS employees interviewed by the Committee testified that they were not even aware of any Occupy entry on the BOLO list until after congressional Democrats released the information in June 2013.¹⁴⁴ Further, there is no indication that the IRS systematically scrutinized and delay Occupy applications, or that the IRS subjected Occupy applicants to burdensome and intrusive information requests. To date, the Committee has not received evidence that “Occupy Wall Street” or an affiliate organization even applied to the IRS for non-profit status.

Conclusion

Democrats in Congress and the Administration have perpetrated a myth that the IRS targeted both conservative and liberal tax-exempt applicants. The targeting is a “phony scandal,” they say, because the IRS did not just target Tea Party groups, but it targeted liberal and progressive groups as well. Month after month, in public hearings and televised interviews, Democrats have repeatedly claimed that progressive groups were scrutinized in the same manner as conservative groups.¹⁴⁵ Because of this bipartisan targeting, they conclude, there is not a “smidgeon of corruption” at the IRS.

The problem with these assertions is that they are simply not accurate. The Committee’s investigation shows that the IRS sought to identify and single out Tea Party applications. The facts bear this out. The initial “test” applications were filed by Tea Party groups. The initial screening criteria identified only Tea Party applications. The revised criteria still intended to identify Tea Party activities. The IRS’s internal review revealed that a substantial majority of applications were conservative. In short, the IRS treated conservative tax-exempt applications in a manner distinct from other applications, including those filed by liberal groups.

Evidence available to the Committee contradicts Democrats’ claims about bipartisan targeting. Although the IRS’s BOLO list included entries for liberal-oriented groups, only Tea Party applicants received systematic scrutiny because of their political beliefs. Public and nonpublic analyses of IRS data show that the IRS routinely approved liberal applications while holding and scrutinizing conservative applications. Even training documents produced by the IRS indicate stark differences between liberal and conservative applications: “‘progressive’ applications are not considered ‘Tea Parties.’”¹⁴⁶ These facts show one unyielding truth: Tea Party groups were target because of their political beliefs, liberal groups were not.

¹⁴³ *The IRS’s Systematic Delay and Scrutiny of Tea Party Applications*: Hearing before the H. Comm. on Oversight & Gov’t Reform, 113th Cong. (2013) (statement of J. Russell George).

¹⁴⁴ See, e.g., Transcribed interview of Elizabeth Kastenberg, Internal Revenue Serv., in Wash., D.C. (July 31, 2013); Transcribed interview of Sharon Light, Internal Revenue Serv., in Wash., D.C. (Sept. 5, 2013); Transcribed interview of Joseph Grant, Internal Revenue Serv., in Wash., D.C. (Sept. 25, 2013); Transcribed interview of Nancy Marks, Internal Revenue Serv., in Wash., D.C. (Oct. 8, 2013); Transcribed interview of Justin Lowe, Internal Revenue Serv., in Wash., D.C. (July 23, 2013).

¹⁴⁵ Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov’t Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).

¹⁴⁶ Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

A. Timeline for the 3 exemption applications that were referred to EOT from EOD

<p>1. Prescott Tea Party, LLC</p> <p>The Applicant sought exemption under §501(c)(3) formed to educate the public on current political issues, constitutional rights, fiscal responsibility, and support for a limited government. It planned to undertake this educational activity through rallies, protests, educational videos and through its website. The organization also intended to engage in legislative activities. The case was closed FTE on May 26, 2010.</p>	<p>2. American Junto, Inc.</p> <p>The organization applied for exemption under §501(c)(3), stating it was formed to educate voters on current social and political issues, the political process, limited government, and free enterprise. It also indicated it would be involved in political campaign intervention and legislative activities. The case was closed FTE on January 4, 2012.</p>	<p>3. Albuquerque Tea Party, Inc.</p> <p>The organization applied for exemption under §501(c)(4) as a social welfare organization for purposes of issue advocacy and education. A proposed adverse is being prepared on the basis that the organization's primary activity is political campaign intervention supporting candidates associated with a certain political faction, its educational activities are partisan in nature, and its activities are intended to benefit candidates associated with a specific political faction as opposed to benefiting the community as a whole.</p>
<p><u>Timeline:</u></p> <p><u>2009</u></p> <ul style="list-style-type: none"> • 11/09/2009 → Application received by EOD. • 12/18/2009 → Case assigned to EOD specialist. <p><u>2010</u></p> <ul style="list-style-type: none"> • 3/08/2010 → <u>Date the case was referred to EOT.</u> Case pulled from 	<p><u>Timeline:</u></p> <p><u>2010</u></p> <ul style="list-style-type: none"> • 2/11/2010 → Application was received by EOD. 	<p><u>Timeline:</u></p> <p><u>2010</u></p> <ul style="list-style-type: none"> • 1/4/2010 → Application was received by EOD.

<p>EOD files to send to EOT for review.</p> <ul style="list-style-type: none"> • 3/11/2010 → EOD prepared a memo to transfer the case to EOT as part of EOT's review of some of the "advocacy organization" cases being received in EOD. • 4/02/2010 → Case assigned to EOT. • 4/14/2010 → 1st development letter mailed to Taxpayer (Response due by 5/06/2010). • 5/26/2010 → Case closed FTE (90-day suspense date ended on 8/26/2010). 	<ul style="list-style-type: none"> • 4/11/2010 → Case assigned to a specialist in EOD. • 4/25/2010 → EOD emailed EOT (Manager Steve Grodnitzky) regarding who EOD should contact for help on "advocacy organization" cases being held in screening. • 5/25/2010 → EOT requested a §501(c)(3) "advocacy organization" case be transferred from EOD to replace Prescott Tea Party, LLC, a §501(c)(3) advocacy organization applicant that had been closed FTE. • 6/25/2010 → Memo proposing to transfer the case to EOT was prepared by EOD specialist. • 6/30/2010 → <u>Date the case was referred to EOT.</u> • 7/7/2010 → 1st development letter sent (Response due by 7/28/2010). • 7/28/2010 → EOT received Taxpayer's response to 1st development letter. 	<ul style="list-style-type: none"> • 2/22/2010 → Case assigned to EOD specialist. • 3/11/2010 → EOD prepared memo to transfer the case to EOT as part of EOT's help reviewing the "advocacy organization" cases received in EOD. • 4/02/2010 → Case assigned to EOT. • 4/21/2010 → 1st development letter sent (Response due by 5/12/2010). • 4/29/2010 → Taxpayer requested extension for time to respond to 1st development letter. TLS granted extension until 6/11/2010. • 6/8/2010 → EOT received the Taxpayer's response to 1st development letter.
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	<p>2011</p> <ul style="list-style-type: none">• 4/27/2011 → 2nd development letter sent (Response due by 5/18/2011).• 5/18/2011 → EOT received Taxpayer's response to 2nd development letter.• 8/10/2011 → EOT met with Chief Counsel to discuss the "advocacy organization" cases pending in EOT, including American Junto (and Albuquerque Tea Party, discussed next). EOT and Counsel determined that additional development should be conducted on both.• 11/18/2011 → 3rd development letter sent (Response due by 12/9/2011).• 12/16/2011 → TLS left voicemail with Taxpayer to determine if the organization had responded or planned to respond to 3rd development letter.• 12/22/2011 → TLS again contacted the Taxpayer to determine if the organization was going to respond to 3rd development letter. The Taxpayer indicated it was not going to respond and that the organization had	<p>2011</p> <ul style="list-style-type: none">• 5/13/2011 → File memo forwarded to Guidance for review.• 6/27/2011 → The case file and file memo were forwarded to Chief Counsel for review and comments regarding EOT's proposed recognition of exemption.• 8/10/2011 → EOT met with Chief Counsel to discuss the "advocacy organization" cases pending in EOT including Albuquerque Tea Party (and American Junto, discussed previously). EOT and Counsel determined additional development should be conducted on both.• 11/16/2011 → 2nd development letter sent to the Taxpayer (Response due by 12/7/2011).• 11/30/2011 → TLS spoke with Taxpayer and granted a 30-day extension to respond to the 2nd development letter. Extension was granted until 1/6/2012.
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	<p>dissolved. An FTE letter was prepared.</p> <p><u>2012</u></p> <ul style="list-style-type: none"> • 1/4/2012 → FTE letter mailed to the Taxpayer (90-day suspense date ends 4/4/2012). 	<p><u>2012</u></p> <ul style="list-style-type: none"> • 1/11/2012 → EOT received Taxpayer's response to 2nd development letter. • 1/24/2012 → After review of file, TLS recommended a proposed denial. The TLS is currently drafting a proposed denial.
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B. Timeline for informal technical assistance which was provided by EOT Personnel to EOD between May 2010 to October 2010

- 5/17/2010 → EOD personnel (Liz Hofacre) contacted and referred 2 proposed development letters to an EOT personnel (Chip Hull) for informal review.
- Between May, 2010 to October 2010, EOT personnel (Chip Hull) informally reviewed approximately 26 case exemption applications and development letters on behalf of EOD. Mr. Hull provided feedback on most of the 26 exemption applications.

C. Timeline for preparation of the Advocacy Organization Guide sheet

- Late July 2011 - started drafting the guide sheet to help EOD personnel working advocacy organization cases in differentiating between the different types of advocacy and explaining the advocacy rules pertaining to various exempt organizations.
- Early November 2011 - forwarded to EOD for comments. No comments were received.

Increase in (c)(3)/(c)(4) Advocacy Org. Applications

Background:

- EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
- EOD Screening identified this type of case as an emerging issue and began sending cases to a specific group if they meet any of the following criteria:
 - "Tea Party," "Patriots" or "9/12 Project" is referenced in the case file
 - Issues include government spending, government debt or taxes
 - Education of the public by advocacy/lobbying to "make America a better place to live"
 - Statements in the case file criticize how the country is being run
- Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. Before this was identified as an emerging issue, two (c)(4) applications were approved.
- Two sample cases were transferred to EOT, a (c)(3) and a (c)(4).
 - The (c)(4) stated it will conduct advocacy and political intervention, but political intervention will be 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.
 - The (c)(3) stated it will conduct "insubstantial" political intervention and it has ties to politically active (c)(4)s and 527s. A proposed denial is being revised by TLS to incorporate the org.'s response to the most recent development letter.
- EOT is assisting EOD by providing technical advice (limited review of application files and editing of development letters).

EOD Request:

- EOD requests guidance in working these cases in order to promote uniform handling and resolution of issues.

Options for Next Steps:

- Assign cases for full development to EOD agents experienced with cases involving possible political intervention. EOT provides guidance when EOD agents have specific questions.
- EOT composes a list of issues or political/lobbying indicators to look for when investigating potential political intervention and excessive lobbying, such as reviewing website content, getting copies of educational and fundraising materials, and close scrutiny of expenditures.
- Establish a formal process similar to that used in healthcare screening where EOT reviews each application on TEDS and highlights issues for development.
- Transfer cases to EOT to be worked.
- Include pattern paragraphs on the political intervention restrictions in all favorable letters.
- Refer the organizations that were granted exemption to the ROO for follow-up.

Cautions:

- These cases and issues receive significant media and congressional attention.
- The determinations process is representational, therefore it is extremely difficult to establish that an organization will intervene in political campaigns at that stage.

EO Technical
 Significant Case Report
 (August 31, 2011)

• 21 open SCs

A. Open SCs:

	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	Political Advocacy Organizations	T2/Ron Shoemaker	[REDACTED]	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)	Chip Hull & Hilary Goehausen	3/31/2011 (Orig) 05/31/2011 (Rev) 07/31/2011 (Rev) 10/30/2011 (Rev) 12/31/2011 (Rev)	Developing both a (c)(3) and (c) (4) cases. Proposed (c)(4) favorable is currently being reviewed. Proposed denial currently being reviewed on (c)(3). Cases were discussed with Judy Kindell on 04/06/11. Judy requested staff to get additional information from taxpayers regarding certain activities. Development letters were sent. Proposed favorable (c)(4) ruling forwarded to Chief Counsel for comments on 05/04/11. Information from (c)(3) organization regarding activities due on 05/18/2011. Waiting on taxpayer response. : Met with Director EO on June 29, 2011. Met with Counsel on 8/10/11 to discuss the cases: Counsel recommended further development of the cases by getting information on the organizations' 2010 activities. Counsel gave us directions on the type of information needed. [REDACTED] Next Action: [REDACTED]	No

<p>CASE NAME: (1) [REDACTED] (501(c)(3) applicant), (2) [REDACTED] [REDACTED] (501(c)(4) applicant), (3) [REDACTED] (501(c)(3) applicant)</p> <p>TIN/EIN: [REDACTED] and [REDACTED] POA: None</p>	<p>TAX PERIODS: [REDACTED]</p> <p>EARLIEST STATUTE DATE:</p>		
<p>FUNCTION REPORTING:</p> <p>POD: Washington, D.C.</p>	<p>INITIAL REPORT X FOLLOW-UP REPORT FINAL REPORT</p>		
<p>SENSITIVE CASE CRITERIA:</p> <table border="0"> <tr> <td style="vertical-align: top;"> Likely to attract media or Congressional attention Unique or novel issue Affects large number of taxpayers </td> <td style="vertical-align: top;"> Potentially involves large dollars (\$10M or greater) Other (explain in Case Summary) </td> </tr> </table>		Likely to attract media or Congressional attention Unique or novel issue Affects large number of taxpayers	Potentially involves large dollars (\$10M or greater) Other (explain in Case Summary)
Likely to attract media or Congressional attention Unique or novel issue Affects large number of taxpayers	Potentially involves large dollars (\$10M or greater) Other (explain in Case Summary)		
<p>FORM TYPE(S): (1) Form 1023. (2) Form 1024</p>	<p>START DATE: 04/02/2010</p>		
<p>POTENTIAL DOLLARS INVOLVED (IF > \$10M): Unknown</p>	<p>CRIMINAL REFERRAL? Unknown IF YES, WHEN?</p> <p>Freeze Code TC 914 (Yes or No)</p>		
<p>CASE OR ISSUE SUMMARY:</p> <p>The various "tea party" organizations are separately organized, but appear to be a part of a national political movement that may be involved in political activities. The "tea party" organizations are being followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati is holding three applications from organizations which have applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and approximately twenty-two applications from organizations which have applied for recognition of exemption under section 501(c)(4) as social welfare organizations. Two organizations that we believe may be "tea party" organizations already have been recognized as exempt under section 501(c)(4). EOT has not seen the case files, but are requesting copies of them. The issue is whether these organizations are involved in campaign intervention or, alternatively, in nonexempt political activity.</p>			
<p>CURRENT SIGNIFICANT ACTIONS ON CASE:</p> <p>Met with J. Kindell to discuss organizations (2) and (3) and Service position. Ms. Kindell recommended additional development re: activities, then forward to Chief Council.</p> <p>Organization (1) – closed FTE for failure to respond to a development letter. Organization (2) – proposed favorable 501(c)(4) ruling forwarded to Chief Council for comment on 06/16/2011. Organization (3) – additional information was received. Proposed denial was revised and forwarded for review 07/19/2011. Coordination between HQ and Cincinnati is continuing regarding information letters to applicants for exemption under 501(c)(3) and 501(c)(4).</p>			

SIGNIFICANT NEXT STEPS, IF ANY: Organization (2) – Wait on comments from Counsel. Organization (3) Await the results of review on the revised proposed denial. .Continue coordinated review of applications in EO Determinations.	ESTIMATED CLOSURE DATE: July 31 , 2011
BARRIERS TO RESOLUTION, IF ANY: Concerns whether the organizations are involved in political activities.	
SUBMITTED BY: Carter C. Hull, SE:T:EO:RA:T:2	MANAGER: RONALD SHOEMAKER, SE:T:EO:RA:T:2
DATE: June 17, 2011	

CASE NAME: (1) [REDACTED] 6103 (501)(c)(3) applicant), Closed FTE. (2) [REDACTED] 6103 (501)(c)(4) applicant) Open. (3) [REDACTED] 6103 (501)(c)(3) applicant) Closed FTE TIN/EIN: [REDACTED] 6103 and [REDACTED] 6103 POA: None	TAX PERIODS: 2009 and forward EARLIEST STATUTE DATE:
FUNCTION REPORTING: POD: Washington, D.C.	INITIAL REPORT X FOLLOW-UP REPORT FINAL REPORT
SENSITIVE CASE CRITERIA: Likely to attract media or Congressional attention Unique or novel issue Affects large number of taxpayers Potentially involves large dollars (\$10M or greater) Other (explain in Case Summary)	
FORM TYPE(S): (1) Form 1023 (2) Form 1024	START DATE: 04/02/2010
POTENTIAL DOLLARS INVOLVED (IF > \$10M) : Unknown	CRIMINAL REFERRAL? Unknown IF YES, WHEN? Freeze Code TC 914 (Yes or No)
CASE OR ISSUE SUMMARY: These organizations are "advocacy organizations," and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati has in its inventory a number of applications from these types of organizations that applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and from organizations that applied for recognition of exemption under section 501(c)(4) as social welfare organizations.	
CURRENT SIGNIFICANT ACTIONS ON CASE: Organization (1) – [REDACTED] 6103 - [REDACTED] Organization (2) – [REDACTED] 6103 . 501(c)(4) [REDACTED]	

[REDACTED]

SIGNIFICANT NEXT STEPS, IF ANY: Organization (2): [REDACTED] 6103 - 501(c)(4) - [REDACTED] [REDACTED]	ESTIMATED CLOSURE DATE: December 31, 2012
BARRIERS TO RESOLUTION, IF ANY: Concerns are whether the organizations are primarily involved in political activities and whether substantial private benefit exists.	
SUBMITTED BY: Hilary Goehausen, SE:T:EO:RA:T:1	MANAGER: LIZ KASTENBERG, SE:T:EO:RA:T:2
DATE: September 18, 2012	

From: Kall Jason C
Sent: Tuesday, January 10, 2012 9:09 PM
To: Lerner Lois G
Cc: Ghougasian Laurice A; Fish David L; Paz Holly O; Downing Nanette M
Subject: Workplan and background on how we started the self declarer project

Lois,

I found the string of e-mails that started us down the path of what has become the c-4, 5, 6 self declarer project. Our curiosity was not from looking at the 990 but rather data on c-4 self declarers.

Jason Kall

Manager, EO Compliance Strategies and Critical Initiatives

From: Chasin Cheryl D
Sent: Thursday, September 16, 2010 8:59 AM
To: Lerner Lois G; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

That's correct. These are all status 36 organizations, which means no application was filed.

Cheryl Chasin
[Redacted] (phone)
[Redacted] (fax)

From: Lerner Lois G
Sent: Thursday, September 16, 2010 9:58 AM
To: Chasin Cheryl D; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: Re: EO Tax Journal 2010-130

Ok guys. We need to have a plan. We need to be cautious so it isn't a per se political project. More a c4 project that will look at levels of lobbying and pol. activity along with exempt activity. Cheryl- I assume none of those came in with a 1024? Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Chasin Cheryl D
To: Lerner Lois G; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Sent: Wed Sep 15 14:54:38 2010
Subject: RE: EO Tax Journal 2010-130

It's definitely happening. Here are a few organizations (501(c)(4), status 36) that sure sound to me like they are engaging in political activity:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I've also found (so far) 94 homeowners and condominium associations, a VEBA, and legal defense funds set up to benefit specific individuals.

Cheryl Chasin

[REDACTED] (phone)

[REDACTED] (fax)

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 1:51 PM
To: Kindell Judith E; Chasin Cheryl D; Ghogasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

I'm not saying this is correct--but there is a perception out there that that is what is happening. My guess is most who conduct political activity never pay the tax on the activity and we surely should be looking at that. Wouldn't that be a surprising turn of events. My object is not to look for political activity--more to see whether self-declared c4s are really acting like c4s. Then we'll move on to c5,c6,c7--it will fill up the work plan forever!

Lois G. Lerner

Director, Exempt Organizations

From: Kindell Judith E
Sent: Wednesday, September 15, 2010 1:03 PM
To: Lerner Lois G; Chasin Cheryl D; Ghogasian Laurice A
Cc: Lehman Sue
Subject: RE: EO Tax Journal 2010-130

My big concern is the statement "some (c)(4)s are being set up to engage in political activity" - if they are being set up to engage in political campaign activity they are not (c)(4)s. I think that Cindy's people are keeping an eye out for (c)(4)s set up to influence political campaigns, but we might want to remind them. I also agree that it is about time to start looking at some of those organizations that file Form 990 without applying for recognition -whether or not they are involved in politics.

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 12:27 PM

To: Chasin Cheryl D; Ghougasian Laurice A; Kindell Judith E
Cc: Lehman Sue
Subject: FW: EO Tax Journal 2010-130

Not sure you guys get this directly. I'm really thinking we do need a c4 project next year

Luis J. Lerner

Director, Exempt Organizations

From: paul streckfus [REDACTED]
Sent: Wednesday, September 15, 2010 12:20 PM
To: paul streckfus
Subject: EO Tax Journal 2010-130

*From the Desk of Paul Streckfus,
 Editor, EO Tax Journal*

Email Update 2010-130 (Wednesday, September 15, 2010)
 Copyright 2010 Paul Streckfus

Yesterday, I asked, "Is 501(c)(4) Status Being Abused?" I can hardly keep up with the questions and comments this query has generated. As noted yesterday, some (c)(4)s are being set up to engage in political activity, and donors like them because they remain anonymous. Some commenters are saying, "Why should we care?", others say these organizations come and go with such rapidity that the IRS would be wasting its time to track them down, others say (c)(3) filing requirements should be imposed on (c)(4)s, and so it goes.

Former IRSer Conrad Rosenberg seems to be taking a leave them alone view:

"I have come, sadly, to the conclusion that attempts at revocation of these blatantly political organizations accomplish little, if anything, other than perhaps a bit of *in terrorem* effect on some other (usually much smaller) organizations that may be contemplating similar behavior. The big ones are like balloons -- squeeze them in one place, and they just pop out somewhere else, largely unscathed and undaunted. The government expends enormous effort to win one of these cases (on very rare occasion), with little real-world consequence. The skein of interlocking 'educational' organizations woven by the fabulously rich and hugely influential Koch brothers to foster their own financial interests by political means ought to be Exhibit One. Their creations operate with complete impunity, and I doubt that potential revocation of tax exemption enters into their calculations at all. That's particularly true where deductibility of contributions, as with (c)(4)s, is not an issue. Bust one, if you dare, and they'll just finance another with a different name. I feel for the IRS's dilemma, especially in this wildly polarized election year."

A number of individuals said the requirements for (c)(4)s to file the Form 1024 or the Form 990 are a bit of a muddle. My understanding is that (c)(4)s need not file a Form 1024, but generally the IRS won't accept a Form 990 without a Form 1024 being filed. The result is that attorneys can create new (c)(4)s every year to exist for a short time and never file a 1024 or 990. However, the IRS can claim the organization is subject to tax (assuming it becomes aware of its existence) and then the organization must prove it is exempt (by essentially filing the information required by Form 1024 and maybe 990). Not being sure of the correctness of my understanding, I went to the only person who may know more about EO tax law than Bruce Hopkins, and got this response from Marc Owens:

"You are sort of close. It's not quite accurate to state that a (c)(4) 'need not file a Form 1024.' A (c)(4) is not subject to IRC 508, hence it is not required to file an application for tax-exempt status within a particular period of time after its formation. Such an organization is subject, however, to Treas. Reg. Section 1.501(a)-1(a)(2) and (3) which set forth the general requirement that in order to be exempt, an organization must file an application, but for which no particular time period is specified. Once a would-be (c)(4) is formed and it has completed one fiscal year of life, and assuming that it had revenue during the fiscal year, it is required to file a tax return.

move things along. the 'clean" sheet doesn't give me any sense unless I go back to previous SCR's.

I've added Sharon so she can see what kinds of things I'm interested in.

Lois G. Lerner

Director, Exempt Organizations

From: Paz Holly O
Sent: Wednesday, February 02, 2011 11:02 AM
To: Lerner Lois G; Seto Michael C
Cc: Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E
Subject: RE: SCR Table for Jan. 2011

Tea Party - Cases in Determs are being supervised by Chip Hull at each step - he reviews info from TPs, correspondence to TPs, etc. No decisions are going out of Cincy until we go all the way through the process with the c3 and c4 cases here. I believe the c4 will be ready to go over to Judy soon.

HMO case (██████████) - When you say to push for the next Counsel meeting, with whom in Counsel are you referring? The plan had been for Sarah to meet with Wilkins and Nan on this. We think this has not happened but have not heard directly (unless Sarah has responded to your recent email on this case). I don't know that we at this level can drive that meeting.

██████████ - I will reach out to Phil to see if Nan has seen it. She was involved in the past but I don't know about recently.

On ██████████ (religious order), proposed denials typically do not go to Counsel. Proposed denial goes out, we have conference, then final adverse goes to Counsel before that goes out. We can alter that in this case and brief you after we have Counsel's thoughts.

██████████ was not elevated at Mike Daly's direction. He had us elevate it twice after the litigation commenced but said not to continue after that unless we are changing course on the application front and going forward with processing it.

██████████ - Our general criteria as to whether or not to elevate an SCR to Sarah/Joseph and on up is to only elevate when there has been action. ██████████ was elevated this month because it was just received. We will now begin to review the 1023 but won't have anything to report for sometime. We will elevate again once we have staked out a position and are seeking executive concurrence.

We (Mike and I) keep track of whether estimated completion dates are being moved by means of a track changes version of the spread sheet. When next steps are not reflected as met by the estimated time, we follow up with the appropriate managers or Counsel to determine the cause for the delay and agree on a due date.

From: Lerner Lois G
Sent: Tuesday, February 01, 2011 6:28 PM
To: Seto Michael C
Cc: Paz Holly O; Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E
Subject: RE: SCR Table for Jan. 2011

Thanks--a couple comments

1. Tea Party Matter very dangerous. This could be the vehicle to go to court on the issue of whether Citizen's United overturning the ban on corporate spending applies to tax exempt rules. Counsel and Judy Kindell need to be in on this one please needs to be in this. Cincy should probably NOT have these cases--Holly please see what exactly they have please.

2. We need to push for the next Counsel meeting re: the HMO case Justin has. Reach out and see if we can set it up.

3. [REDACTED]--has that gone to Nan Marks? It says Counsel, but we'll need her on board. In all cases where it says Counsel, I need to know at what level please.

4. I assume the proposed denial of the religious or will go to Counsel before it goes out and I will be briefed?

5. I think no should be yes on the elevated to TEGE Commissioner slot for the Jon Waddel case that's in litigation--she is well aware.

6. Case involving healthcare reconciliation Act needs to be briefed up to my level please.
7. SAME WITH THE NEWSPAPER CASES--NO GOING OUT WITHOUT BRIEFING UP PLEASE.

8. The 3 cases involving [REDACTED] should be briefed up also.

9. [REDACTED] case--why "yes-for this month only" in TEGE Commissioner block?

Also, please make sure estimated due dates and next step dates are after the date you send these. On a couple of these I can't tell whether stuff happened recently or not.

Question--if you have an estimated due date and the person doesn't make it, how is that reflected? My concern is that when Exam first did these, they just changed the date so we always looked current, rather than providing a history of what occurred. perhaps it would help to sit down with me and Sue Lehman--she helped develop the report they now use.

From: Seto Michael C
Sent: Tuesday, February 01, 2011 5:33 PM
To: Lerner Lois G
Cc: Paz Holly O; Trilli Darla J; Douglas Akaisha; Letourneau Diane L
Subject: SCR Table for Jan. 2011

Here is the Jan. SCR summary.

Heightened Awareness Issues

OBJECTIVES

- What Are The Heightened Awareness Issues
- Definition and Examples of Each
- Issue Tracking and Notification
- What Happens When You See One?

What are Heightened Awareness Issues?

- TAG
- Emerging Issues
- Coordinated Issues
- Watch For Issues

Your Role

- Per IRM 1.54.1.6.1, a Front Line Employee Should Elevate the Following Matters Concerning Their Work:
 1. Unusual Issues that Prevent them from Completing Their Work.
 2. Issues Beyond Their Current Level of Training.
 3. Issues that Require Elevation in Accordance with Statute, Revenue Procedure, or Field Directive.

What are TAG Issues ?:

- Involves Abusive Tax Avoidance Transactions:
 1. Abusive Promoters
 2. Fake Determination Letters

- Activities are Fraudulent In Nature:
 1. Materially Misrepresented Operations or Finances.
 2. Conducting Activities Contrary to Tax Law (e.g. Foreign Conduits).

- Issues Involving Applicants with Potential Terrorist Connections:
 1. Cases with Direct Hits on OFAC
 2. Substantial Foreign Operations in Sanctioned Countries

- Processing is Governed by IRM 7.20.6

What Are Emerging Issues?

- Groups of Cases where No Established Tax Law or Precedent has been Established.
- Issues Arising from Significant Current Events (Doesn't Include Disaster Relief)
- Issues Arising from Changes to Tax Law
- Other Significant World Events

Emerging Issue Examples

- Tea Party Cases:
 1. High Profile Applicants
 2. Relevant Subject in Today's Media
 3. Inconsistent Requests for 501(c)(3) and 501(c)(4).
 4. Potential for Political/Legislative Activity
 5. Rulings Could be Impactful

Emerging Issue Examples Continued:

- Pension Trust 501(c)(2):
 1. Cases Involved the Same Law Firm
 2. High Dollar Amounts
 3. Presence of an Unusual Note Receivable

Emerging Issues Examples Continued

- Historical Examples:
 1. Foreclosure Assistance
 2. Carbon Credits
 3. Pension Protection Act
 4. Credit Counseling
 5. Partnership/Tax Credits
 6. Hedge Funds

What Are Coordinated Processing Issues?

- Cases with Issues Organized for Uniform Handling
- Involves Multiple Cases
- Existing Precedent or Guidance Does Exist

Coordinated Examples

- Break-up of a Large Group Ruling Where Subordinates are Seeking Individual Exemption.
- Multiple Entities Related Through a Complex Business Structure (e.g. Housing and Management Companies)
- Current Specialized Inventories

What is a Watch For Issue?

Watch For Issues:

- Typically Applications Not Yet Received
- Issues are the Result of Significant Changes in Tax Law
- Issues are the Result of Significant World Events
- Special Handling is Required when Applications are Received

Watch For Examples

Watch For Examples Continued

- Successors to Acorn
- Electronic Medical Records
- Regional Health Information Organizations
- Organizations Formed as a Result of Controversy---- Arizona Immigration Law
- Other World Events that **Could** Result in an Influx of Applications

Tracking and Notification

Combined Excel Workbook

- Will Include Tabs for TAG, TAG Historical, Emerging Issues, Coordinated, and Watch For
- Tabs Will Include the Various Issues, Descriptions, and Guidance.
- A Designated Coordinator Will Maintain the Workbook and Disseminate Alerts in One Standard E-Mail.
- Mailbox: *TE/GE-EO-Determinations Questions

When You Spot Heightened Awareness Issues

- If a TAG Issue, follow IRM 7.20.6.
- If an Emerging Issue or Coordinated Processing Case, Complete the Required Referral Form and Submit to your Manager
- Watch For Issue Cases are Referred to your Manager

File 11 9 10

Tab 1 - TAG

IRS0000001349

File 11 9 10

Tab 2 – TAG Historical

IRS0000001351

File 11 9 10

Tab 3 – Emerging Issues

IRS0000001356

	A	B	C	D	E	F	G	H
1								
2	501(c)(2)	These cases involve a commingled pension trust holding title to a high dollar note receivable secured by real estate. The application appear to be prepared from a template. The fund manager is usually [REDACTED]	x	x		Any future cases may be closed on merit if applicable. EOT determined these applications qualify under 501(c)(2). A referral was completed to address any EP concerns.	Closed	
3	Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x		Any cases should be sent to Group 7822. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open	

IRS0000001357

File 11 9 10

Tab 4 – Coordinated Processing

IRS0000001358

File 11 9 10

Tab 5 – Watch List

IRS0000001360

	A	B	C	D	E	F	G	H
1								
2	Open Source Software	These organizations are requesting either 501(c)(3) or 501(c)(6) exemption in order to collaboratively develop new software. The members of these organizations are usually the for-profit business or for-profit support technicians of the software.		1 x		The is no specific guidance at this point. If you see a case, elevate it to your manager.	Open	
3	RHIO's	Organization's setup to electronically exchange healthcare data, called Regional Health Information Organizations (RHIOs), are requesting exemption under 501(c)(3).		2 x		These cases should be transferred to EOT.	Open	
4		[REDACTED]				[REDACTED]		
5	Healthcare legislation	Per Rob Choi email dated April 20, 2010, cases impacted by the Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (HCERA) are being coordinated with EOT.		4/2010 - #1		New applications are subject to secondary screening in Group 7821. Wayne Bothe is the coordinator.	Open-4/20/10	
6		[REDACTED]				[REDACTED]		

IRS0000001361

	A	B	C	D	E	F	G	H
1	[REDACTED]							
7	[REDACTED]							
8	Medical Marijuana	Email dated 7/15/10. Look for cases involving Medical Marijuana		7 2010 - #1		Forward cases to processing who will forward the cases to Denise Tamayo, group 7888	Open-7-15-10	
9	[REDACTED]			[REDACTED]		[REDACTED]		
10	[REDACTED]			[REDACTED]		[REDACTED]	[REDACTED]	
11	[REDACTED]			[REDACTED]		[REDACTED]	[REDACTED]	

IRS0000001362

	A	B	C	D	E	F	G	H
1	[REDACTED]							
12	Occupied Territory Advocacy	Email dated 8/6/10. Applications deal with disputed territories in the Middle East. Examples may be organizations named or connected with [REDACTED] XXXX (XXXX = a particular city). [REDACTED] Applications may be inflammatory, advocate a one sided point of view and promotional materials may signify propaganda.		11 2010 - #1		If you see these cases, please forward to the TAG Group, 7830.	Open- 8/6/10	
13	[REDACTED]			[REDACTED]		[REDACTED]	[REDACTED]	
14	Accountable Care Organization (ACO)	Email dated 8/12/10. An ACO is a an entity created by the Affordable Care Act. These consist of groups of healthcare providers (hospitals and doctors) who have entered into an agreement with Medicare to have Medicare patients assigned to them. The amounts charged to Medicare for the ACO's patients are compared to certain benchmark levels set by Medicare. Medicare pays the ACO a percentage difference of the difference as incentive to cost savings. ACO's are not required to be tax exempt.		13 2010 - #1		These cases should be forwarded to Group 7821	Open- 8/12/10	
15	[REDACTED]			[REDACTED]		[REDACTED]	[REDACTED]	
16	[REDACTED]			[REDACTED]		[REDACTED]	[REDACTED]	

IRS0000001363

From: Kindell Judith E
Sent: Wednesday, July 18, 2012 10:54 AM
To: Lerner Lois G
Cc: Light Sharon P
Subject: Bucketed cases

Of the 84 (c)(3)

cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

Of the 199 (c)(4)

cases, approximately 3/4 appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

File 112310
Tab 5 – Watch List

20101123

A	B	C	D	E	F	G	H
1 Issue Name	Watch Issue Description		Issue Number	Alerts (Year and number)	Disposition of Watch Issue	Current Status (Opened or closed)	
2 Open Source Software	These organizations are requesting either 501(c)(3) or 501(c)(6) exemption in order to collaboratively develop new software. The members of these organizations are usually the for-profit business or for-profit support technicians of the software.		1	x	There is no specific guidance at this point. If you see a case, elevate it to your manager.	Open	
3	RHIO's Organization's setup to electronically exchange healthcare data, called Regional Health Information Organizations (RHIOs), are requesting exemption under 501(c)(3).		2	x	These cases should be transferred to EOT.	Open	
4	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5 Healthcare legislation	Per Rob Choi email dated April 20, 2010, cases impacted by the Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (HCERA) are being coordinated with EOT.		4	2010 - #1	New applications are subject to secondary screening in Group 7821. Wayne Bothe is the coordinator.	Open-4/20/10	
6	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8 Medical Marijuana	Email dated 7/15/10. Look for cases involving Medical Marijuana		7	2010 - #1	Forward cases to processing who will forward the cases to Denise Tamayo, group 7888	Open-7-15-10	

Screening Workshop Notes - July 28, 2010

- The emailed attachment outlines the overall process.
- Glenn deferred additional statements and/or questions to John Shafer on yesterday’s developments; how they affect the screening process and timeline.
- Concerns can be directed to Glenn for additional research if necessary.

Current/Political Activities: Gary Muthert

- Discussion focused on the political activities of Tea Parties and the like-regardless of the type of application.
- If in doubt Err on the Side of Caution and transfer to 7822.
- Indicated the following names and/or titles were of interest and should be flagged for review:
 - 9/12 Project,
 - 6103
 - Progressive
 - [Redacted]
 - 6103
 - Pink-Slip Program.
- Elizabeth Hofacre, Tea Party Coordinator/Reviewer
 - Re-empathize that applications with Key Names and/or Subjects should be transferred to 7822 for Secondary Screening. Activities must be primary.
 - “Progressive” applications are not considered “Tea Parties”

Disaster Relief: Renee Norton/Joan Kiser

- Advise audience that buzz words or phrases include:
 - “X” Rescue
 - References to the Gulf Coast, Oil Spills,
- Reminded screeners that Disaster Relief is controlled by 7838, and then forwarded to Group 7827, for Secondary Screening.
- Denied Expedites worked by initial screener:
 - Complete Expedite Denial CCR, place on left side of file.
 - Email Renee or Joan with specific reason why expedite was denied and disposition (i.e. AP, IP, 51).
 - Place Post-It on Orange Folder advising Karl
 - “Denied Expedite / Fwd to M Flammer.”

Power of Attorneys: Nancy Heagney

- Form 2848 that references 990, 941 or the like should be
 - Printed and annotate on the bottom per procedures
 - Documentation on TEDS should be made.
 - See Interim Guidance located on Public Folders.

Screening Workshop Notes - July 28, 2010

3

Closing Sheets: Gary Muthert

- Closing Sheets should not cover pertinent info on the AIS sheet or EDS' 8327.
- Case Grade and Data (e.g. NTEEs) must be correctly presented and accurately depict the case's complexity and purpose.
 - Inaccurate presentations create processing delays.
 - Steve Bowling, Mgr 7822 "Volumes of cases are graded incorrectly."
 - EDS and TEDS must Agree to achieve desired business results

Credit Counseling (CC)

Stephen Seok

- Re-stressed impact that section 501(q) had on purely educational cases.
 - Cases are fully developed as 501(q) Credit Counseling Cases.
 - Key analysis is whether financial education and/or counseling activities are "substantial".
 - Cases with financial education and/or financial counseling- substantial or insubstantial are still subject to Secondary Screening until further notice.
 - Continue to document the analysis as "Substantial" or "Insubstantial" on the CC Check-sheet.
 - Feedback on cases received is in process.

TAG

Jon Waddell

- The New List will be completed and issued this week- approximately 7/30/10.
- Sharing a Drive on the Server has created the delay/dilemma.
- Monthly Emails will restart shortly after the List's distribution.
- Listing will include the following:
 - Touch and Go, Emerging Issues and Issues to Watch For.
 - 6103 Cases* (Puerto Rico based low-income housing) are considered "Potential Abusive Cases".
 - 6103 Cases (Las Vegas, NV) should continue to be sent to TAG Group for re-screening

*LCD referrals are in process since both have questionable practices.



INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

June 26, 2013

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515-6348

Dear Representative Levin:

This letter is in response to letters dated June 24, 2013 and June 26, 2013 regarding our recent audit report entitled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review." We appreciate the opportunity to clarify our recent report in response to your questions.

TIGTA's audit report focused on criteria being used by the Internal Revenue Service (IRS) during the period of May 2010 through May 2012 regarding allegations that certain groups applying for tax-exempt status were being targeted. We reviewed all cases that the IRS identified as potential political cases and did not limit our audit to allegations related to the Tea Party. TIGTA concluded that inappropriate criteria were used to identify potential political cases for extra scrutiny – specifically, the criteria listed in our audit report. From our audit work, we did not find evidence that the criteria you identified, labeled "Progressives," were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited. The "Progressives" criteria appeared on a section of the "Be On the Look Out" (BOLO) spreadsheet labeled "Historical," and, unlike other BOLO entries, did not include instructions on how to refer cases that met the criteria. While we have multiple sources of information corroborating the use of Tea Party and other related criteria we described in our report, including employee interviews, e-mails, and other documents, we found no indication in any of these other materials that "Progressives" was a term used to refer cases for scrutiny for political campaign intervention.

Based on the information you flagged regarding the existence of a "Progressives" entry on BOLO lists, TIGTA performed additional research which determined that six tax-exempt applications filed between May 2010 and May 2012 having the words "progress" or "progressive" in their names were included in the 298 cases the IRS identified as potential political cases. We also determined that 14 tax-exempt applications filed between May 2010 and May 2012 using the words "progress" or "progressive" in their names were not referred for added scrutiny as potential political cases. In total, 30 percent of the organizations we identified with the words "progress" or "progressive" in their names were processed as potential political cases. In

comparison, our audit found that 100 percent of the tax-exempt applications with Tea Party, Patriots, or 9/12 in their names were processed as potential political cases during the timeframe of our audit.

The following addresses the specific questions presented in your June 24, 2013 letter:

- Please describe in detail why your report dated May 14, 2013 omitted the fact that "Progressives" was used.

Our audit did not find evidence that the IRS used the "Progressives" identifier as selection criteria for potential political cases between May 2010 and May 2012. The focus of our audit was on whether the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups' applications, and 3) requested unnecessary information from targeted groups. We determined the IRS developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. In addition, we found other inappropriate criteria that were used (e.g., 9/12, Patriots) to select potential political cases that were not included in any BOLO listings. The inappropriate criteria used to select potential political cases for review did not include the term "Progressives." The term "Progressives" appears, beginning in August 2010, in a separate section of the BOLO listings that was labeled "TAG [Touch and Go] Historical" or "Potential Abusive Historical." The Touch and Go group within the Exempt Organizations function Determinations Unit is a different group of specialists than the team of specialists that was processing potential political cases related to the allegations we audited.

- Did you investigate whether the criteria "Progressives" in the BOLO lists was developed in the same manner as you did for "Tea Party"? If not, why?

TIGTA did not audit how the criteria for the "Progressives" identifier were developed in the BOLO listings. We did not audit these criteria because it appeared in a separate section of the BOLO listings labeled as "Historical" (as described above) and we did not have indications or other evidence that it was in use for selecting potential political cases from May 2010 to May 2012.

- Please also explain why footnote 16 on page 6 was included in the audit report.

Footnote 16 was included in our report because TIGTA was aware of other named organizations being on BOLO listings that were not used for selecting cases related to political campaign intervention. TIGTA added this footnote to disclose that we did not audit whether the use of the other named organizations was appropriate. Following the publication of our audit report, we communicated information

regarding other names on the BOLO listings to Acting Commissioner Daniel Werfel, and, to the extent authorized by Title 26 U.S.C. § 6103, the Senate Committee on Finance and the House Committee on Ways and Means.

- If your organization overlooked the existence of the "Progressives" identifier, please describe in detail the process by which your organization investigated the BOLO lists created and circulated by the EO Determinations Unit.

As part of our audit, we reviewed the section of the BOLO listings that related to the specific criteria that the IRS stated were used to identify potential political cases for additional scrutiny. TIGTA also found that certain criteria (e.g., Patriots, 9/12, education of the public by advocacy/lobbying to "make America a better place to live," etc.) used to select potential political cases were not in any BOLO listings.

- Your report states that TIGTA "reviewed all 298 applications that had been identified as potential political cases as of May 31, 2012." (See page 10 of your report.) Your report includes the following breakdown of the potential political cases by organization name: (1) 96 were "Tea Party," "9/12," or "Patriots" organizations; and (2) 202 were "Other." Why did your report not identify that liberal organizations were also included among the 298 applications you reviewed?

TIGTA did not make any characterizations of any organizations in its audit report as conservative or liberal and believes it would be inappropriate for a nonpartisan Inspector General to make such judgments. Instead, our audit focused on the testing of 296 of the 298 potential political cases (two case files were incomplete) to determine if they were selected using the actual criteria that should have been used by the IRS from the beginning to screen potential political cases. Those criteria were whether the specific applications had indications of significant amounts of political campaign intervention (a term used in Treasury's Regulations). For 69 percent of the 296 cases, TIGTA found that there were indications of significant political campaign intervention, while 31 percent of the cases did not have that evidence. We also reviewed samples of 501 (c)(4) cases that were not identified as potential political cases to determine if they should have been. We estimate that more than 175 applications were not appropriately identified as potential political cases.

TIGTA's audit report determined that certain cases were referred for potential political review because their names used terms in the IRS selection criteria. We could not tell why other organizations were selected for additional scrutiny because the IRS did not document specifically why the cases were forwarded to a team of specialists. TIGTA recommended that the IRS do so in the future.

- Why did your testimony before the Committee on Ways and Means, the Oversight and Government Reform Committee, and the Senate Finance Committee not include a discussion of this aspect of the 298 applications?

When I testified, I attempted to convey that our report did not characterize organizations as conservative or liberal and I believe it would be inappropriate for a nonpartisan Inspector General to make such judgments.

- In the course of your audit, what did you discover about the processing of cases with the "Progressives" identifier? Were the cases processed in the same manner as the cases with the "Tea Party" and associated terms identifiers? Or were they processed differently?

TIGTA's audit did not review how TAG Historical cases (including the "Progressives" identifier) were processed because we did not find evidence that the IRS used the TAG Historical section of the BOLO listings as selection criteria for potential political cases between May 2010 and May 2012.

- If you are now auditing or investigating the processing of tax-exemption applications with the "Progressives" identifier, please provide the date that you started the audit or investigation and documentation to support this assertion. We also would like to know if you have briefed and alerted anyone at the IRS or Department of Treasury of such audit or investigation.

TIGTA's Office of Audit made a referral to our Office of Investigations on May 28, 2013 stating that our recently issued audit report noted the use of other named organizations on the BOLO listings that were not related to potential political cases reviewed as part of our audit. TIGTA's Office of Audit requested the Office of Investigations investigate to determine: 1) whether cases meeting the criteria on the "watch list" [a particular section of the BOLO listings] were routed for any additional or specialized review, or were simply referred to the same group for coordinated processing; 2) how many (if any) applications were affected by use of these criteria; 3) who was responsible for the inclusion of these criteria on the BOLO lists; and 4) whether these criteria were added to the BOLO for an improper purpose.

TIGTA also discussed the BOLO listings with the Acting Commissioner of the IRS on May 28, 2013, and expressed our concerns and the importance of the IRS following up on this matter. We notified the Acting Commissioner of our review of this matter on that date. In addition, I informed the Department of the Treasury's Chief of Staff and General Counsel about this matter.

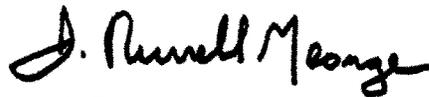
Pursuant to authorization under Title 26 U.S.C. § 6103, we also provided these BOLO listings to House Ways and Means Committee Majority staff and the Senate Finance Committee Majority and Minority staff on June 7, 2013. We spoke to staff from House Ways and Means Committee Majority staff on the BOLOs on June 6 and June 11, 2013, and Senate Finance Committee Majority and Minority staff on June 10, 2013. We informed the staff we met with of our ongoing review of this matter.

Because of Privacy Act and Title 26 U.S.C. § 6103 restrictions, TIGTA cannot comment specifically on the status of any ongoing investigation. TIGTA will continue its efforts to provide independent oversight of IRS activities and accomplish its statutory mission through audits, inspections and evaluations, and investigations of criminal and administrative misconduct.

In your June 26, 2013 letter, you raised concerns about statements attributed to TIGTA sources by members of the media. Many of the press reports are not accurate. Please rely on our statements in this letter, my testimony, and our published materials for an accurate portrayal of our position.

We hope this information is helpful. If you or your staff has any questions, please contact me at 202-[REDACTED] or Acting Deputy Inspector General for Audit Michael E. McKenney at 202-[REDACTED].

Sincerely,



J. Russell George
Inspector General



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUN 24 2013

June 24, 2013

The Honorable Darrell Edward Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am responding to your request for documents relating to the screening and review process for applicants for tax-exempt status. I am providing copies of "Be on the Lookout" (BOLO) spreadsheets from which IRC section 6103 information has been redacted.

We are committed to providing you with as full a response as possible and to full cooperation with you and your staff to address this matter.

Our efforts to gather documents related to the TIGTA report 2013-10-053, dated May 14, 2013, are ongoing. These documents are being produced from the set that been reviewed to date. To the extent our continuing searches reveal additional BOLO lists responsive to your request, we will provide them.

The attached documents are indexed by Bates stamped numbers IRS0000001349 to IRS0000001537 and numbers IRS0000002479-IRS0000002591 and numbers IRS0000002705 to IRS0000002717.

I hope this information is helpful. If you have questions, please contact me or have your staff contact me at 202-██████████.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard Oursler".

Leonard Oursler
Area Director

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Okay. Now, sir, in this period, roughly March of 2010, was there a time when someone in the IRS told you that you would be assigned to work on two Tea Party cases? 23

A. Yes.

Q. Do you recall when precisely you were told that you would be assigned two Tea Party cases?

A. When precisely, no.

Q. Sometime in –

A. Sometime in the area, but I did get, they were assigned to me in April.

Q. Okay, and just to be clear, April of 2010?

A. Yes.

Q. And sir, were they cases 501(c)(3)s, or 501(c)(4)s?

A. One was a 501(c)(3), and one was a 501(c)(4).

Q. So one of each?

A. One of each.

Q. What, to your knowledge, was it intentional that you were sent one of each?

A. Yes.

Q. Why was that?

A. I'm not sure exactly why. I can only make assumptions, but those are the two areas that usually had political possibilities.

Q. The point of my question was, no one ever explained to you that you were to understand and work these cases for the purpose of working similar cases in the future?

A. All right, I -- I was given -- they were going to be test cases to find out how we approached (c)(4), and (c)(3) with regards to political activities.

Q. Mr. Hull, before we broke, you were talking about these two cases being test cases, is that right? Do you recall that?

A. I realized that there were other cases. I had no idea how many, but there were other cases. And they were trying to find out how we should approach these organizations, and how we should handle them.

Q. And when you say these organizations, you mean Tea Party organizations?

A. The two organizations that I had.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Did you send out letters to both organizations the 501(c)(3) and 501(c)(4)?

A. I did.

Q. Did you get responses from both organizations?

A. I got response from only one organization.

Q. Which one?

A. The (c)(4).

Q. (C)(4). What did you do with the case that did not respond?

A. I tried to contact them to find out whether they were going to submit anything.

Q. By telephone?

A. By telephone. And I never got a reply.

Q. Then what did you do with the case?

A. I closed it, failure to establish.

Q. So at this time, when the (c)(3) became the FTE, did you begin to work only on the (c)(4)?

A. I notified my supervisor that I would need another (c)(3) if they wanted me to work one of each.

- Q. How did you phrase the request to Ms. Hofacre? Was it -- were you asking for another (c)(3) Tea Party application?
- A. I was asking for another (c)(3) application in the lines of the first one that she had sent up. I'm not sure if I asked her for a particular organization or a particular type of organization. I needed a (c)(3) that was maybe involved in political activities.
- Q. And the first (c)(3), it was a Tea Party application?
- A. Yes, it was.

Testimony of Elizabeth Hofacre
Revenue Agent in Determinations Unit
May 31, 2013

Q. And you mentioned the Tea Party cases. Do you have an understanding of whether the Tea Party cases were part of that grouping of organizations with political activity, or were they separate?

A. That was the group of political cases.

Q. So why do you call them Tea Parties if it includes more than —

A. Well, at that time that's all they were. That's all that we were -- that's how we were classifying them.

Q. In 2010, you were classifying any organization that had political activity as a Tea Party?

A. No, it's the latter. I mean, we were looking at Tea Parties. I mean, political is too broad.

Q. What do you mean when you say political is too broad?

A. No, because when -- what do you mean by "political"?

Q. Political activity -- if an application has an indication of political activity in it.

A. I mean, I was tasked with Tea Party, so that's all I'm aware of. So I wasn't tasked with political in general.

Q. Was there somebody who was tasked with political in general?

A. Not that I'm aware of.

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

Q. Okay. So at this point between October 2010 and July 2011, were all the Tea Party cases going to you?

A. Correct.

Q. And to your knowledge, during this same time period, was it only Tea Party cases that were being assigned to you or were there other advocacy cases that were part of this group?

A. Does that include 9/12 and Patriot?

Q. Yes, yes.

A. Yes.

Q. Okay. So it was just those type of cases, not other type of advocacy cases that maybe had a different -- a different political -- a liberal or progressive case?

A. Correct.

Q. Okay. And to your knowledge, when you were first assigned these cases in October 2010 and through July 2011, do you know what criteria the screening unit was using to identify the cases to send to you?

A. Yes.

Q. And what was that criteria?

A. It was solicited on the Emerging Issues tab of the BOLO report.

- Q. And what did that say? What did that Emerging Issue tab on the BOLO say?
- A. In July 20 –
- Q. In October 2010 we'll start.
- A. I don't know exactly what it said, but it just -- Tea Party cases, 9/12, Patriot.
- Q. And do you recall how many cases you inherited from Ms. Hofacre?
- A. 50 to 100.
- Q. And were those only Tea Party-type cases as well?
- A. To the best of my knowledge.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

- A. I'm not sure who mentioned Tea Party, but at that point Lois I remember breaking in and saying no, no, we don't refer to those as Tea Parties anymore. They are advocacy organizations.
- Q. And what was her tone when saying that?
- A. Very firm.
- Q. Did she explain why she wanted to change the reference?
- A. She said that the Tea Party was just too pejorative.

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

- Q. And do you recall when that – when the BOLO was changed after – you said it was after the meeting [with Lerner], they changed the BOLO after the meeting, do you recall when?
- A. July.
- Q. Of 2011?
- A. Yes, sir.
- Q. And you were going to say the BOLO became more, and then you were cut off. What were you going to say?
- A. It became more – they had more the advocacy, more organizations to the advocacy, like I mentioned about maybe a cat rescue that's advocating for let's not kill the cats that get picked up by the local government in whatever cities.

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

- Q. Mr. Bell, in July 2011, when the BOLO was changed where they chose broad language, after that point, did you conduct secondary screening on any of the cases that were being held by you?
- A. You mean the cases that I inherited from Liz are the ones that had already been put into the whatever timeframe, Tea Party advocacy, slash advocacy?
- Q. Other type, yes.
- A. No, these were new ones coming in that someone thought that they perhaps should be in the advocacy, slash, Tea Party inventory.
- Q. Okay.
- A. They were assigned to Group 7822, and I reviewed them, and you know, maybe some were, but a vast majority was like outside the realm we were looking for.
- Q. And so they were like the . . . cat type cases you were discussing earlier?
- A. Yes.
- ***
- Q. After the July 2011 change to the BOLO, how long did you perform the secondary screening?
- A. Up until July 2012.
- Q. So, for a whole year?

- A. Yeah.
- Q. And you would look at the cases and see if they were not a Tea Party case, you would move that either to closing or to further development?
- A. Yeah, and then the BOLO changed about midway through that timeframe.
- Q. Okay.
- A. To make it where we put the note on there that we don't need the general advocacy.
- Q. And after the BOLO changed in January 2012, did that affect your secondary screening process?
- A. There was less cases to be reviewed.
- Q. Okay. So during this whole year, the Tea Party cases remained on hold pending guidance from Washington while the other cases that you identified as non-Tea Party cases were moved to either closure or further development; is that right?
- A. Correct.

Testimony of Michael Seto
Manager of EO Technical Unit
July 11, 2013

- Q. -- about the cases? What about Miss Lerner, did you ever talk to Miss Lois Lerner about the cases at this point in time, January-February 2011?
- A. No, I have not talked to her verbally about it.
- Q. But did you talk to her nonverbally about these cases in that period of time?
- A. She sent me email saying that when these cases need to go through multi-tier review and they will eventually have to go to Miss Kindell and the chief counsel's office.
- Q. Miss Lerner told you this in an email?
- A. That's my recollection.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Have you ever sent a case to Ms. Kindell before?

A. Not to my knowledge.

Q. This is the only case you remember?

A. Uh-huh.

Q. Correct?

A. This is the only case I remember sending directly to Judy.

Q. Had you ever sent a case to the Chief Counsel's office before?

A. I can't recall offhand.

Q. You can't recall. So in your 48 years of experience with the IRS, you don't recall sending a case to Ms. Kindell or a case to IRS Chief Counsel's office?

A. To Ms. Kindell, I don't recall ever sending a case before. To Chief Counsel, I am sure some cases went up there, but I can't give you those.

Q. Sitting here today you don't remember?

A. I don't remember.

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

- Q. So did you see something different in these Tea Party cases applying for 501(c)(4) status that was different from other organizations that had political activity, political engagement applying for 501(c)(4) status in the past?
- A. I'm not sure if I understand that.
- Q. I guess what I'm getting at is you said you had seen previous applications from an organization applying for 501(c)(4) status that had some level of political engagement, and these Tea Party groups are also applying for 501(c)(4) status and they have some level of political engagement. Was there any difference in your mind between the Tea Party groups and the other groups that you'd seen in your experience at the IRS?
- A. No.
- Q. So, do you think that Tea Party groups are treated the same as these other groups from your previous experience?
- A. No.
- ***
- Q. In your experience, was there anything different about the way that the Tea Party 501(c)(4) cases were treated that was as opposed to the previous 501(c)(4) applications that had some level of political engagement?
- A. Yes.
- Q. And what was different?

- A. Well, they were segregated. They seemed to have been more scrutinized. I hadn't interacted with EO technical [in] Washington on cases really before.
- Q. You had not?
- A. Well, not a whole group of cases.

Testimony of Stephen Seok
Group Manager of EO Determinations Unit
June 19, 2013

- Q. And to your knowledge, the cases that you worked on, was there anything different or novel about the activities of the Tea Party cases compared to other (c)(4) cases you had seen before?

- A. Normal (c)(4) cases we must develop the concept of social welfare, such as the community newspapers, or the poor, that types. These organizations mostly concentrate on their activities on the limiting government, limiting government role, or reducing government size, or paying less tax. I think it[']s different from the other social welfare organizations which are (c)(4).

- Q. So the difference between the applications that you just described, the applications for folks that wanted to limit government, limit the role of government, the difference between those applications and the (c)(4) applications with political activity that you had worked in the past, was the nature of their ideology, or perspective, is that right?
- A. Yeah, I think that's a fair statement. But still, previously, I could work, I could work this type of organization, applied as a (c)(4), that's possible, though. Not exactly Tea Party, or 9-12, but dealing with the political ideology, that's possible, yes.
- Q. So you may have in the past worked on applications from (c)(4), applicants seeking (c)(4) status that expressed a concern in ideology, but those applications were not treated or processed the same way that the Tea Party cases that we have been talking about today were processed, is that right?

- A. Right. Because that [was] way before these – these organizations were put together. So that's way before. If I worked those cases, way before this list is on.

Testimony of Robert Choi
Former Director of IRS Rulings and Agreements
August 21, 2013

- Q. You said earlier in the last hour there was email traffic about the ACORN successor groups in 2010; is that right?
- A. That's correct, yes.
- Q. But the ACORN successor groups were not subject to a sensitive case report; is that right?
- A. I don't recall if they were listed in there, in the sensitive case report.
- Q. So you don't recall them being part of a sensitive case report?
- A. I think what I'm saying is they may be part of a sensitive case report. I do not have a specific recollection that they were listed in a sensitive case report.
- Q. But you do have a specific recollection that the Tea Party cases were on sensitive case reports in 2010.
- A. Yes.
- Q. To your knowledge, did any ACORN successor application go to the Chief Counsel's Office?
- A. I am not aware of it.
- Q. Are you aware of any ACORN successor groups facing application delays?
- A. I do not know if – well, when you say “delays,” how do you –
- Q. Well –

- A. I mean, I'm aware of successor ACORN applications coming in, and I am aware of email traffic that talked about my concern of delays on those cases and, you know, that there was discussion about seeing an influx of these applications which appear to be related to the previous organization.

- Q. And the concern behind the reason that they weren't being processed was that they were potentially the same organization that had been denied previously?

- A. Not that they were denied previously. These appeared to be successor organizations, meaning these were newly formed organizations with a new EIN, employer identification number, located at the same address as the previous organization and, in some instances, with the same officers.

And it was an issue of concern as to whether or not these were, in fact, the same organizations just coming in under a new name; whether, in fact, the previous organizations, if they were, for example, 501(c)(3) organizations, properly disposed of their assets. Did they transfer it to this new organization? Was this perhaps an abusive scheme by these organizations to say that they went out of business and then not really but they just carried on under a different name?

- Q. And that's the reason they were held up?

- A. Yes.

Testimony of Lucinda Thomas
Program Manager of EO Determinations Unit
June 28, 2013

Q. Ms. Thomas, is this an example of the BOLO from looks like November 2010?

A. I don't know if it was from November of 2010, but –

Q. This is an example of the BOLO, though?

A. Yes.

Q. Okay. And, ma'am, under what has been labeled as tab 2, TAG Historical?

A. Yes.

Q. Let's turn to page 1354.

A. Okay.

Q. Do you see that, it says -- the entry says progressive?

A. Yes.

Q. This is under TAG Historical, is that right?

A. Yes.

Q. So this is an issue that hadn't come up for a while, is that right?

A. Right.

Q. And it doesn't note that these were referred anywhere, is that correct? What happened with these cases?

- A. This would have been on our group as – because of – remember I was saying it was consistency-type cases, so it's not necessarily a potential fraud or abuse or terrorist issue, but any cases that were dealing with these types of issues would have been worked by our TAG group.
- Q. Okay. And were they worked any different from any other cases that EO Determinations had?
- A. No. They would have just been worked consistently by one group of agents.
- Q. Okay. And were they cases sent to Washington?
- A. I'm not – I don't know.
- Q. Not that you are aware?
- A. I'm not aware of that.
- Q. As the head of the Cincinnati office you were never aware that these cases were sent to Washington?
- A. There could be cases that are transferred to the Washington office according to, like, our [Internal Revenue Manual] section. I mean, there's a lot of cases that are processed, and I don't know what happens to every one of them.
- Q. Sure. But these cases identified as progressive as a whole were never sent to Washington?
- A. Not as a whole.

Testimony of Elizabeth Hofacre
Revenue Agent in EO Determinations Unit
May 31, 2013

- Q. In 2010, you were classifying any organization that had political activity as a Tea Party?
- A. No, it's the latter. I mean, we were looking at Tea Parties. I mean, political is too broad.
- Q. What do you mean when you say political is too broad?
- A. No, because when -- what do you mean by "political"?
- Q. Political activity -- if an application has an indication of political activity in it.
- A. I mean, I was tasked with Tea Party, so that's all I'm aware of. So I wasn't tasked with political in general.
- Q. Was there somebody who was tasked with political in general?
- A. Not that I'm aware of.

Testimony of Steven Grodnitzky
Manager in EO Technical Unit
July 16, 2013

Q. So these Democratic-leaning organizations, their applications took approximately 3 years to process?

A. On or around. I mean, if they came in at the end of 2008, for example, and were resolved in the beginning of 2011, it may be a little over 2 years. But I mean, on or around that time period.

Q. Did those 2008 Democratic-leaning applications involve potential political campaign activity as well?

A. Yes, we had -- the organizations were related in the sense that they were -- how can I say this? -- sort of like an -- I am going to call it, for lack of a better term, like when you have in a veterans-type organization, you have posts, and there is one in each State. And that is sort of what it was like. So they were very similar in the sense that the main difference that I recall was that they were just from one State to the next. And we found in those particular cases that the organization was benefiting the Democratic Party, and there was too much private benefit to that particular party. And the organization was denied.

Testimony of Amy Franklin Giuliano
Attorney Advisor in IRS Chief Counsel's Office
August 9, 2013

Q. And you said that some of those five progressive applications were approved in a matter of hours; is that right?

A. Yes.

Q. The reason that the other five cases would be revoked if that case the Counsel's Office had was denied, was that because they were affiliated entities?

A. It is because they were essentially the same organization. I mean, every – the applications all presented basically identical facts and basically identical activities.

Q. And the groups themselves were affiliated.

A. And the groups themselves were affiliated, yes.

Q. The issue in the case you reviewed in May of 2010 was private benefit.

A. Yes.

Q. As opposed to campaign intervention.

A. We considered whether political campaign intervention would apply, and we decided it did not.

Testimony of Sharon Light
Senior Technical Advisor
September 5, 2013

Q Were you aware that there was an entry for Occupy organizations in the BOLO by the May 2012 time frame?

A I don't think I was. My understanding of Determinations at that point was if you saw an organization or issue that you thought Determinations should be on the watch for, you would -- I would send an email to Cindy and say, hey, can you tell your screeners to keep an eye out for this, so it didn't slip through and get approved without someone looking at it.

Q Did you become aware of the entry on the BOLO for Occupy organizations at a later date?

A Yes, I did at some point.

Q And why did you become aware of the entry on the BOLO for the Occupy organizations -- or, rather, how?

A I believe I became aware of it the summer after it hit the news that groups were -- well, I became aware of it after it was reported that only conservative groups were being singled out by the IRS.

Testimony of Joseph Grant
Commissioner, Tax Exempt and Government Entities
September 25, 2013

Q Were you aware that for a period of time the IRS also specifically referenced "Occupy" on a BOLO?

A I subsequently became aware of that. I was not aware of that at the time.

Testimony of Nancy Marks
Senior Technical Advisor to the Commissioner, Tax
Exempt and Government Entities
October 8, 2013

- Q Were you aware in the spring 2012 timeframe that there was a "Be on the Look Out" list entry specifically identifying Occupy groups by name?
- A I don't think I knew that in the spring of 2012. At some point, I became aware that that was one of the things on the "Be on the Look Out" list.

Testimony of Elizabeth Kastenburg
Tax Law Specialist in EO Technical Unit
July 31, 2013

Q. Do you recall if progressive or Occupy groups were among those listed on the BOLO?

A. No, I don't know.

Q. Do you know how Occupy groups, as in Occupy Wall Street groups, were processed by the IRS?

A. No, I do not know.

Testimony of Justin Lowe
Technical Advisor, Tax Exempt and Government Entities
July 23, 2013

- Q. ...Do you recall whether as a tax law specialist in EO Guidance you referred cases related to Occupy organizations?
- A. It's a pretty broad descriptor, so I don't know exactly. I don't think so, but I couldn't tell you definitively one way or the other...

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

- Q. Okay. And is it normal procedure for EO Technical to have to -- for you -- for you to have to wait for approval from EO Technical to move these cases?
- A. Not in my personal experience.
- Q. Okay. So this was something that was unusual that you were having to wait on Washington?
- A. In -- from -- in my experience.
- Q. In your experience. Okay.

Testimony of Steven Grodnitzky
Manager in EO Technical Unit
July 16, 2013

- Q. Is it fair to say that those Democratic organizations that were grouped together in the 2008 time frame were treated similarly to the Tea Party cases that you saw in the 2010 time frame?
- A. Sure. I mean, it is fair to say that they were treated similarly. It is -- there were fewer of them. Unlike the Tea Party, my understanding is that there are more -- as far as quantity there is more of them.

Testimony of Amy Franklin Giuliano
Attorney Advisor in IRS Chief Counsel's Office
August 9, 2013

Q. Did you ever speak to Mr. Griffin about these cases around the time they were assigned to you, or the one assigned to you?

A. Yes. He handed the case that was assigned to me to me directly.

Q. And what did he say to you?

A. He said, "This is a (c)(4) case that presents the question of political advocacy. It seems to be conservative-leaning."

Q. Prior to you receiving this case in June of 2011, do you know if it was worked by IRS officials in Washington?

A. Yes. On top of the case file were three memos, all by D.C. employees.

Q. Who were the memos from?

A. Janet Gitterman, Siri Buller, and Justin Lowe.

Q. And what was the substance of these memos?

A. The memo from Janet was first because I believe she was, sort of, their docket attorney. I don't know what they call it. And she explained that she had looked through the file, that some of the ads seemed to verge on political campaign intervention, and it wasn't an election year. She raised that the group leased space from a Republican group. But she said that it seemed that the amount of political activity did not preclude exemption.

There was a memo from Siri Buller as sort of a concurring -- I think she was kind of asked to review what Janet had done. And Siri's

memo is much longer and listed about 15 instances of what could be considered political campaign intervention and said that there is political campaign intervention here but maybe not enough to preclude exemption.

And then Justin Lowe had about a one-page memo that sort of said, you know, the ads seem to be propaganda, they don't seem to be informative, but not sure that that's a reason to deny, so I concur.

Q. So all three of them, Ms. Gitterman, Ms. Buller, and Mr. Lowe, all concurred in the recommendation to approve exemption?

A. Yes.

Q. And Ms. Gitterman and Ms. Buller, are they in EO Technical, do you know?

A. I don't know. It's either Technical or Guidance, and I don't really understand the difference.

Q. So, you're aware of some coordination between EO Technical or EO Guidance and Cincinnati regarding the treatment of this group of progressive cases?

A. Yes. I mean, I was aware of it because I knew that enough communication had happened to get three like cases to one person in D.C.

Q. And it sounded like there was concern about the way the cases had been developed in Cincinnati; is that fair?

A. I think there was concern that -- that a -- yeah. That it looked like maybe they should be denials, yet already the five favorables had gone out. There was a concern that we were going to be treating the taxpayers inconsistently.

- Q. In this case, the -- did you state that the ultimate outcome was a recommendation for denial?
- A. Yes, that was our recommendation.

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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

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).

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.

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.

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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Congress of the United States
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April 9, 2014

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Cummings:

The Committee has engaged in a comprehensive and thorough examination of the IRS targeting of tax-exempt applicants. From the very outset, you have worked to obstruct the investigation, even declaring on national television after only a few weeks of fact-finding that the “case is solved.”¹ New IRS documents identified by the Committee raise disturbing concerns about your possible motivations for opposing this investigation and unwillingness to lend your support to efforts to obtain the testimony of former IRS Exempt Organizations Director Lois G. Lerner.

Although you have previously denied that your staff made inquiries to the IRS about conservative organization True the Vote that may have led to additional agency scrutiny, records of communication between your staff and IRS officials – which you did not disclose to Majority Members or staff – indicate otherwise. As the Committee is scheduled to consider a resolution holding Ms. Lerner, a participant in responding to your communications that you failed to disclose, in contempt of Congress, you have an obligation to fully explain your staff’s undisclosed contacts with the IRS.

Ms. Catherine Engelbrecht, the founder and President of True the Vote, an organization that had applied for tax-exempt status with the IRS, testified before the Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs about the IRS targeting of True the Vote.² During this proceeding, she alleged that you targeted her group in the same manner as the IRS. She testified: “Three times, Representative Elijah Cummings sent letters to True the Vote, demanding much of the same information that the IRS had requested. Hours after sending

¹ *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Ranking Member Elijah E. Cummings).

² *“The IRS Targeting Investigation: What Is the Administration Doing?”: Hearing before the Subcomm. on Economic Growth, Job Creation, and Regulatory Affairs of the H. Comm. on Oversight & Gov’t & Reform, 113th Cong. (2014).*

The Honorable Elijah E. Cummings
April 9, 2014
Page 2

letters, he would appear on cable news and publicly defame me and my organization. Such tactics are unacceptable.”³

During the hearing, Ms. Engelbrecht’s attorney, Cleta Mitchell, raised the possibility that your staff had coordinated with the IRS in targeting True the Vote. Your exchange with Ms. Mitchell was as follows:

Ms. Mitchell: **We want to get to the bottom of how these coincidences happened, and we’re going to try to figure out whether any – if there was any staff of this committee that might have been involved in putting True the Vote on the radar screen of some of these Federal agencies. We don’t know that, but we – we’re going to do everything we can do to try to get to the bottom of how did this all happen.**

Mr. Cummings: Will the gentleman yield?

Mr. Meadows: Yes.

Mr. Cummings: I want to thank the gentleman for his courtesy. **What she just said is absolutely incorrect and not true.**⁴

Beginning in 2010, congressional Democrats publicly and aggressively lobbied the IRS to crack down on 501(c)(4) organizations involved in political speech. Senator Dick Durbin urged the IRS to “quickly investigate the tax-exempt status of Crossroads GPS,”⁵ and Senator Max Baucus implored the IRS to “survey major” nonprofit groups.⁶ In March 2012, Representative Peter Welch and 31 other Democrats urged the IRS to “investigate whether any groups qualifying as social welfare organizations under 501(c)(4) . . . are improperly engaged in political campaign activity.”⁷

New IRS e-mails obtained in the Committee’s investigation of IRS targeting indicate that in late August 2012, your staff contacted the IRS to notify them that you “are about to launch an investigation similar to the one launched by Cong. Welch’s office.”⁸ In October 2012, you sent the first of a series of letters to Ms. Engelbrecht, President of True the Vote, an organization that had applied for tax-exempt status with the IRS.⁹ Your letter requested various categories of

³ *Id.* (written testimony of Catherine Engelbrecht, True the Vote).

⁴ *Id.*

⁵ Press Release, Senator Dick Durbin, Durbin urges IRS to investigate spending by Crossroads GPS (Oct. 12, 2010).

⁶ Letter from Max Baucus, S. Comm. on Finance, to Douglas H. Shulman, Internal Revenue Serv. (Sept. 28, 2010).

⁷ Letter from Peter Welch et al., U.S. House of Representatives, to Douglas Shulman, Internal Revenue Serv. (Mar. 28, 2012).

⁸ E-mail from Catherine Williams, Internal Revenue Serv., to Ross Kiser & Kevin Smith, Internal Revenue Serv. (Aug. 31, 2012). [IRSR 563026]

⁹ Letter from Elijah E. Cummings, H. Comm. on Oversight & Gov’t Reform, to Catherine Engelbrecht, True the Vote (Oct. 4, 2012) [hereinafter “Ranking Member Cummings Letter”].

The Honorable Elijah E. Cummings

April 9, 2014

Page 3

information from Ms. Engelbrecht.¹⁰ Several of your requests are virtually identical to the information requests sent by the IRS to True the Vote in February 2012.¹¹ For example:

- The IRS asked True the Vote “how many jurisdictions have you presented your review of voter rolls to election administration?”¹² You similarly requested “a list of voter registration rolls by state, county, and precinct that True the Vote is currently reviewing for potential challenges”; “a list of all individual voter registration challenges by state, county, and precinct submitted to government entities”; and “copies of all letters sent to states, counties, or other entities alleging non-compliance with the National Voter Registration Act for failing to conduct voter registrations list maintenance prior to the November elections.”¹³
- The IRS inquired about the intellectual property rights associated with True the Vote’s voter registration software.¹⁴ You requested “copies of computer programs, research software, and databases used by True the Vote to review voter registration”; all contracts, agreements, and memoranda of understanding between True the Vote and affiliates or other entities relating to the terms of use of True the Vote research software and databases”; and “a list of all organizations and volunteer groups that currently have access to True the Vote computer programs, research software, and databases.”¹⁵
- The IRS asked True the Vote for information describing “the training process used by the organization” and for a copy of “any training materials used.”¹⁶ You, likewise, requested “copies of all training materials used for volunteers, affiliates, or other entities.”¹⁷
- The IRS requested information about any for-profit organizations associated with True the Vote.¹⁸ You similarly requested “a list of vendors of voter information, voter registration lists, and other databases used by True the Vote, its volunteers, and its affiliates.”¹⁹

This timeline and pattern of inquiries raises concerns that the IRS improperly shared protected taxpayer information with your staff.

¹⁰ *Id.*

¹¹ Letter from Janine L. Estes, Internal Revenue Serv., to True the Vote, c/o Clea Mitchell, Foley & Lardner LLP (Feb. 8, 2012) [hereinafter “IRS Letter”].

¹² *Id.*

¹³ Ranking Member Cummings Letter, *supra* note 9.

¹⁴ IRS Letter, *supra* note 11.

¹⁵ Ranking Member Cummings Letter, *supra* note 9.

¹⁶ IRS Letter, *supra* note 11.

¹⁷ Ranking Member Cummings Letter, *supra* note 9.

¹⁸ IRS Letter, *supra* note 11.

¹⁹ Ranking Member Cummings Letter, *supra* note 9.

The Honorable Elijah E. Cummings
 April 9, 2014
 Page 4

According to Ms. Engelbrecht, following your initial document request to her,²⁰ she faced additional scrutiny by multiple agencies and outside groups, including the IRS and the Bureau of Alcohol, Tobacco, Firearms and Explosives. For example, five days after your initial document request to Ms. Engelbrecht, in which you requested, among other things, “copies of all training materials used for volunteers, affiliates, or other entities,”²¹ the IRS requested that Ms. Engelbrecht provide “a copy of [True the Vote’s] volunteer registration form,” “...the process you use to assign volunteers,” “how you keep your volunteers in teams,” and “how your volunteers are deployed ... following the training they receive by you.”²² Less than two weeks after your initial document request to Ms. Engelbrecht, the Service Employees International Union (SEIU) urged Lois Lerner to deny True the Vote’s application for tax exempt status.²³ The following day, you sent a second request for documents to Ms. Engelbrecht, which you publicly described as “Ramp[ing] Up” your “Investigation” of True the Vote.²⁴

In January 2013, your staff requested information from the IRS about True the Vote.²⁵ The head of the IRS Legislative Affairs office e-mailed several IRS officials, including former Exempt Organizations Director Lois Lerner, that “House Oversight Committee Minority staff” sought information about True the Vote.²⁶ The e-mail shows that your staff requested tax returns filed by True the Vote as well as any other IRS material about True the Vote’s tax-exempt status.

From: Barre Catherine M
Sent: Friday, January 25, 2013 02:58 PM Eastern Standard Time
To: Lerner Lois G; Paz Holly O; Marks Nancy J
Subject: House Oversight Committee Minority Staff

The house oversight committee (not the subcommittee of ways and means) has requested any publicly available information on an entity that they believe has filed for c3 status.

They do not have a waiver.

The entity is KSP True the Vote EIN [REDACTED].

They believe the entity has filed tax returns in the past and would like copies of those if they are publicly available in addition to any other information that is publicly available about the entity’s tax-exempt status.

In response to your staff’s request, Lerner’s subordinate Holly Paz – who has since been placed on administrative leave for her role in the targeting of conservative groups²⁷ – asked an

²⁰ Letter from Hon. Elijah Cummings, Ranking Member, House Comm. on Oversight and Govt. Reform, to Ms. Catherine Engelbrecht, Oct. 4, 2012.

²¹ *Id.*

²² Letter from IRS to True the Vote, Inc., October 9, 2012.

²³ Letter from Judith A. Scott, General Counsel, Service Employees International Union, to Douglas Shulman and Lois Lerner, Oct. 17, 2012.

²⁴ Press Release, Hon. Elijah Cummings, Ranking Member, House Comm. on Oversight and Govt. Reform, Oct. 18, 2012, available at <http://democrats.oversight.house.gov/press-releases/cummings-ramps-up-investigation-of-voter-suppression-allegations/>.

²⁵ E-mail from Catherine Barre, Internal Revenue Serv., to Lois Lerner et al., Internal Revenue Serv. (Jan. 25, 2013). [IRSR 180906]

²⁶ *Id.*

²⁷ See Eliana Johnson, *Did the IRS fire Holly Paz*, NAT’L REVIEW ONLINE, June 13, 2013.

The Honorable Elijah E. Cummings
April 9, 2014
Page 5

IRS employee to look for material about True the Vote.²⁸ This e-mail included material redacted as confidential taxpayer information covered by I.R.C. § 6103, suggesting that the IRS discussed particular sensitivities about True the Vote’s tax information as a result of your request. It is unclear how the IRS responded to your request or what information you received from the IRS.

From:	Paz Holly O
Sent:	Friday, January 25, 2013 3:53 PM
To:	Megosh Andy
Subject:	Fw: House Oversight Committee Minority Staff

Can you please have someone look into see what publicly available docs (app, 990s) we have on this one? [REDACTED]

[REDACTED] Thank you!

IRS e-mails indicate that Lois Lerner appeared personally interested in fulfilling your request for information about True the Vote. Your staff requested the information on Friday, January 25, 2013. The following Monday, January 28, Lerner wrote to Paz: “Did we find anything?”²⁹ When Paz informed her minutes later that she had not heard back about True the Vote’s information, Lerner replied: “thanks – check tomorrow please.”³⁰

²⁸ E-mail from Holly Paz, Internal Revenue Serv., to Andy Megosh, Internal Revenue Serv. (Jan. 25, 2013). [IRSR 180906]

²⁹ E-mail from Lois Lerner, Internal Revenue Serv., to Holly Paz, Internal Revenue Serv. (Jan. 28, 2013). [IRSR 557133]

³⁰ E-mail from Lois Lerner, Internal Revenue Serv., to Holly Paz, Internal Revenue Serv. (Jan. 28, 2013). [IRSR 557133]

The Honorable Elijah E. Cummings

April 9, 2014

Page 6

From: Lerner Lois G
Sent: Monday, January 28, 2013 5:57 PM
To: Paz Holly O
Subject: RE: House Oversight Committee Minority Staff

thanks—check tomorrow please

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Monday, January 28, 2013 4:04 PM
To: Lerner Lois G
Subject: RE: House Oversight Committee Minority Staff

Have not heard yet. We didn't get the request until people had left on Friday and people were in late or on unscheduled leave today.

From: Lerner Lois G
Sent: Monday, January 28, 2013 4:01 PM
To: Paz Holly O
Subject: RE: House Oversight Committee Minority Staff

Did we find anything?

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Friday, January 25, 2013 4:51 PM
To: Barre Catherine M; Lerner Lois G; Marks Nancy J
Subject: Re: House Oversight Committee Minority Staff

I will see what we have as far as publicly available info and get back to you asap.

Sent from my BlackBerry Wireless Device

From: Barre Catherine M
Sent: Friday, January 25, 2013 02:58 PM Eastern Standard Time
To: Lerner Lois G; Paz Holly O; Marks Nancy J
Subject: House Oversight Committee Minority Staff

The house oversight committee (not the subcommittee of ways and means) has requested any publicly available information on an entity that they believe has filed for c3 status.

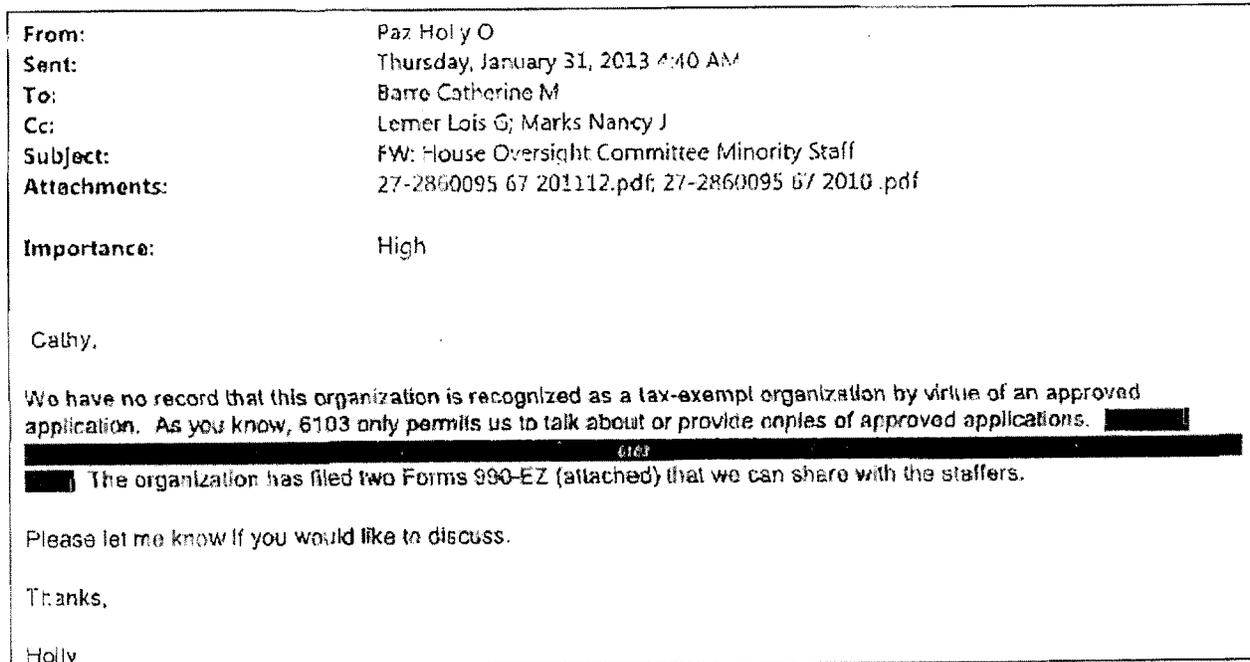
Subsequently, on January 31, 2013, Holly Paz informed the IRS Legislative Affairs office that True the Vote had not been recognized for exempt status.³¹ Paz attached True the Vote's form 990s, which she authorized the IRS to share with your staff.³² Paz's e-mail also

³¹ E-mail from Holly Paz, Internal Revenue Serv., to Catherine Barre, Internal Revenue Serv. (Jan. 31, 2013). [IRSR 557181]

³² *Id.*

The Honorable Elijah E. Cummings
 April 9, 2014
 Page 7

included information redacted as confidential taxpayer information.³³ It is unclear whether the IRS shared True the Vote's confidential taxpayer information with you or your staff through either official or unofficial channels. The IRS certainly did not share these documents or others related to True the Vote at the time nor did they inform the Majority of your staff's request for information.



These documents, indicating the involvement of IRS officials at the center of the targeting scandal responding to your requests, raise serious questions about your actions and motivations for trying to bring this investigation to a premature end. If the Committee, as you publicly suggested in June 2013, "wrap[ped] this case up and moved on" at that time,³⁴ the Committee may have never seen documents raising questions about your possible coordination with the IRS in communications that excluded the Committee Majority. Your frequent complaints about the Committee Majority contacting individuals on official matters without the involvement of Minority staff make the reasons for your staff's secretive correspondence with the IRS even more mysterious.³⁵

As the Committee continues to investigate the IRS's wrongdoing and to gather all relevant testimonial and documentary evidence, the American people deserve to know the full truth. They deserve to know why the Ranking Member and Minority staff of the House Committee on Oversight and Government Reform surreptitiously contacted the IRS about an

³³ *Id.*

³⁴ *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Ranking Member Elijah E. Cummings).

³⁵ See, e.g., letter from Hon. Elijah Cummings, Ranking Member, House Comm. on Oversight and Govt. Reform, and Hon. Gerald Connolly, Ranking Member, Subcommittee on Government Operations, to Hon. J. Russell George, Treasury Inspector General for Tax Administration, Feb. 4, 2012.

The Honorable Elijah E. Cummings
April 9, 2014
Page 8

individual organization without informing the Majority Staff and even failed to disclose the contact after it became an issue during a subcommittee proceeding.

The public deserves a full and truthful explanation for these actions. We ask that you explain the full extent of you and your staff's communications with the IRS and why you chose to keep communications with the IRS from Majority Members and staff even after it became a subject of controversy.

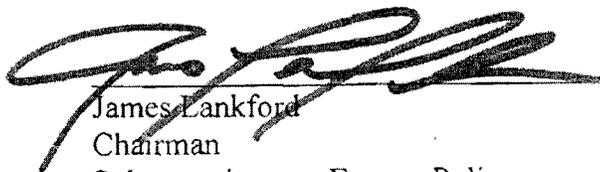
Sincerely,



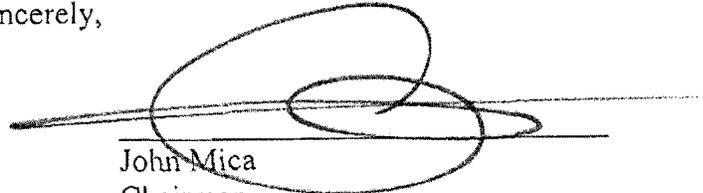
Darrell Issa
Chairman



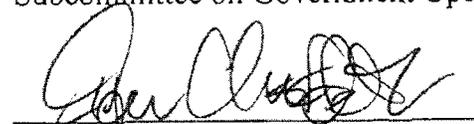
Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation, and Regulatory Affairs



James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements



John Mica
Chairman
Subcommittee on Government Operations



Jason Chaffetz
Chairman
Subcommittee on National Security



Blake Farenthold
Chairman
Subcommittee on Federal Workforce,
U.S. Postal Service and the Census

VIII. MINORITY VIEWS

Democratic Members of the Committee on Oversight and Government Reform

**OPPOSITION TO RESOLUTION BY CHAIRMAN DARRELL ISSA
PROPOSING THAT THE HOUSE OF REPRESENTATIVES HOLD
LOIS LERNER IN CONTEMPT OF CONGRESS**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
113TH CONGRESS
APRIL 10, 2014

EXECUTIVE SUMMARY

These Minority Views are the opinions of Democratic Members of the Committee on Oversight and Government Reform in opposition to Chairman Darrell Issa's resolution proposing that the House of Representatives hold former Internal Revenue Service (IRS) employee Lois Lerner in contempt of Congress despite the fact that she exercised her rights under the Fifth Amendment of the Constitution.

We oppose the resolution because Chairman Issa fundamentally mishandled this investigation and this contempt proceeding. During this investigation, Chairman Issa has made reckless accusations with no evidence to back them up, routinely leaked partial excerpts of interview transcripts to promote misleading allegations, repeatedly ignored opposing viewpoints that are inconsistent with his political narrative, inconceivably rejected an offer by Ms. Lerner's attorney for her to testify with a simple one-week extension, and—in his rush to silence a fellow Committee Member—botched the contempt proceedings by disregarding key due process protections that are required by the Constitution, according to the Supreme Court.

McCarthy Era Precedent for Chairman Issa's Actions

Chairman Issa has identified virtually no historical precedent for successfully convicting an American citizen of contempt after that person has asserted his or her Fifth Amendment right not to testify before Congress. The only era in recent memory when Congress attempted to do this was a disgraceful stain on our nation's history.

We asked the nonpartisan Congressional Research Service (CRS) to identify the last time Congress disregarded an individual's Fifth Amendment rights, held that person in contempt, and pursued a criminal prosecution. CRS went back more than four decades to identify a series of cases spanning from 1951 to 1968. In these cases, the Senate Committee on Government Operations led by Senator Joseph McCarthy, the House Un-American Activities Committee, and other committees attempted to hold individuals in contempt even after they asserted their Fifth Amendment rights. In almost every case, juries refused to convict these individuals or Federal courts overturned their convictions.

We oppose Chairman Issa's efforts to re-create the Oversight Committee in Joe McCarthy's image, and we reject his attempts to drag us back to that shameful era in which Congress tried to strip away the Constitutional rights of American citizens under the bright lights of hearings that had nothing to do with responsible oversight and everything to do with the most dishonorable kind of partisan politics.

Chairman Issa Could Have Obtained Lerner's Testimony

The unfortunate irony of Chairman Issa's contempt resolution is that the Committee could have obtained Ms. Lerner's testimony if the Chairman had accepted a reasonable request by her attorney for a simple one-week extension.

When Chairman Issa demanded—with only a week’s notice—that Ms. Lerner appear before the Committee on March 5, her attorney had obligations out of town, so he requested an additional seven days to prepare his client to testify. If Chairman Issa had sought our input on this request, every one of us would have accepted it without a moment’s hesitation. Anyone actually interested in obtaining Ms. Lerner’s testimony would have done the same.

We wanted to question Ms. Lerner about the Inspector General’s finding that she failed to conduct sufficient oversight of IRS employees in Cincinnati who developed inappropriate terms to screen tax-exempt applicants. We wanted to know why she did not discover the use of these terms for more than a year, as the Inspector General reported, and how new inappropriate terms were put in place after she had directed employees to stop using them. We also wanted to know why she did not inform Congress sooner about the use of these inappropriate terms.

Instead, Chairman Issa rejected this request without consulting any of us. Even worse, he went on national television and stated—inaccurately—that Ms. Lerner had agreed to testify without the extension, scuttling the offer from Ms. Lerner’s attorney. This counterproductive action deprived the Committee of Ms. Lerner’s testimony, deprived us of the opportunity to question her, and deprived the American people of information important to our inquiry.

Independent Experts Conclude That Chairman Issa Botched Contempt Proceedings

Based on an overwhelming number of legal assessments from Constitutional law experts across the country—and across the political spectrum—we believe that pressing forward with contempt based on the fatally flawed record compiled by Chairman Issa would undermine the credibility of the Committee and the integrity of the House of Representatives.

We do not believe that Ms. Lerner “waived” her Fifth Amendment rights during the Committee’s hearing on May 22, 2013, when she gave a brief statement professing her innocence. Ms. Lerner’s attorney wrote to the Committee before the hearing making clear her plan to exercise her Fifth Amendment right not to testify, yet Chairman Issa compelled her to appear in person anyway. Ms. Lerner relied on her attorney’s advice at every stage of the proceeding, and there is no doubt about her intent. As the Supreme Court held in 1949, “testimonial waiver is not to be lightly inferred and the courts accordingly indulge every reasonable presumption against finding a testimonial waiver.”

In addition, 31 independent legal experts have now come forward to conclude that Chairman Issa botched the contempt proceeding when he abruptly adjourned the Committee’s hearing on March 5, 2014. In an effort to prevent Ranking Member Cummings from speaking, Chairman Issa rushed to end the hearing, ignored the Ranking Member’s repeated requests for recognition, silenced the Ranking Member’s microphone, and drew his hand across his neck while ordering Republican staff to “close it down.”

According to more than two dozen Constitutional law experts who have reviewed the record before the Committee, the legal byproduct of Chairman Issa’s actions on March 5 was that—in his rush to silence the Ranking Member—he failed to take key steps required by the Constitution, according to the Supreme Court. Specifically, these experts found that the

Chairman did not give Ms. Lerner a clear, unambiguous choice between answering his questions or being held in contempt because he failed to overrule Ms. Lerner's assertion of her Fifth Amendment rights and direct her to answer notwithstanding the invocation of those protections.

Chairman Issa has tried to minimize the significance of these independent experts, but their qualifications speak for themselves. They include two former House Counsels, three former clerks to Supreme Court justices, six former federal prosecutors, several attorneys in private practice, and law professors from Yale, Stanford, Harvard, Duke, and Georgetown, as well as the law schools of several Republican Committee Members, including Temple, University of Michigan, University of South Carolina, George Washington, University of Georgia, and John Marshall. They also include both Democrats and Republicans. For example:

- Morton Rosenberg, who served for 35 years as an expert in Constitutional law and contempt at CRS, concluded that “the requisite due process protections have not been met.”
- Stanley M. Brand, who served as House Counsel from 1976 to 1983, concluded that Chairman Issa's failure to comply with Constitutional due process requirements “is fatal to any subsequent prosecution.”
- Thomas J. Spulak, who served as House Counsel from 1994 to 1995, concluded that “I do not believe that the proper basis for a contempt of Congress charge has been established.”
- J. Richard Broughton, a Professor at the University of Detroit Mercy School of Law and a member of the Republican National Lawyers Association, concluded that Ms. Lerner “would likely have a defense to any ensuing criminal prosecution for contempt, pursuant to the existing Supreme Court precedent.”

After independent experts raised concerns about these Constitutional deficiencies, Chairman Issa asked the House Counsel's office to draft a memo justifying his actions. We have great respect for the dedicated attorneys in this office, and we recognize their obligation to represent their client, Chairman Issa. However, their memo must be understood for what it is—a legal brief written in preparation for defending Chairman Issa's actions in court.

Because of the gravity of these Constitutional issues and their implications for all American citizens, on June 26, 2013, Ranking Member Cummings asked Chairman Issa to hold a hearing with legal experts from all sides. He wrote: “I believe every Committee Member should have the benefit of testimony from legal experts—on both sides of this issue—to present and discuss the applicable legal standards and historical precedents regarding Fifth Amendment protections for witnesses appearing before Congress.” He added: “rushing to vote on a motion or resolution without the benefit of even a single hearing with expert testimony would risk undercutting the legitimacy of the motion or resolution itself.”

More than nine months later, Chairman Issa has still refused to hold a hearing with any legal experts, demonstrating again that he simply does not want to hear from anyone who disagrees with his position.

Democrats Call for Full Release of All Committee Interview Transcripts

Rather than jeopardizing Constitutional protections and continuing to waste taxpayer funds in pursuit of deficient contempt litigation, we call on the Committee to release copies of the full transcripts of all 38 interviews conducted during this investigation that have not been released to date.

For the past year, Chairman Issa's central accusation in this investigation has been that the IRS engaged in political collusion directed by—or on behalf of—the White House. Before the Committee received a single document or interviewed one witness, Chairman Issa went on national television and stated: "This was the targeting of the President's political enemies effectively and lies about it during the election year."

The full transcripts show definitively that the Chairman's accusations are baseless. They demonstrate that the White House played no role in directing IRS employees to use inappropriate terms to screen tax-exempt applicants, they show that there was no political bias behind those actions, and they explain in detail how the inappropriate terms were first developed and used.

Until now, Chairman Issa has chosen to leak selected excerpts from interview transcripts and withhold portions that directly contradict his public accusations. For example, Chairman Issa leaked cherry-picked transcript excerpts prior to an appearance on national television on June 2, 2013. When pressed on why he provided only portions instead of the full transcripts, he responded: "these transcripts will all be made public."

On June 9, 2013, Ranking Member Cummings asked Chairman Issa to "release publicly the transcripts of all interviews conducted by Committee staff."

This request included, for example, the full transcript of an interview conducted with a Screening Group Manager in Cincinnati who identified himself as a "conservative Republican." This official explained how one of his own employees first developed the inappropriate terms, and he explained that he knew of no White House involvement or political motivation. As he told us: "I do not believe that the screening of these cases had anything to do other than consistency and identifying issues that needed to have further development."

Although Chairman Issa had promised to release the transcripts, he responded to this request by calling the Ranking Member "reckless" and claiming that releasing the full transcripts would "undermine the integrity of the Committee's investigation." The Ranking Member asked Chairman Issa to "identify the specific text of the transcripts you believe should be withheld from the American public," but he refused. As a result, the Ranking Member released the full transcript of the Screening Group Manager, while deferring to the Chairman on the others.

It has been more than nine months since Chairman Issa promised on national television to release the full transcripts, and we believe it is now time for the Chairman to make good on his promise.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
I. BACKGROUND	7
II. LACK OF HISTORICAL PRECEDENT FOR CHAIRMAN ISSA’S ACTIONS	11
III. CHAIRMAN ISSA COULD HAVE OBTAINED LERNER’S TESTIMONY	14
IV. INDEPENDENT EXPERTS CONCLUDE THAT CHAIRMAN ISSA BOTCHED CONTEMPT PROCEEDINGS	16
A. No Waiver of Fifth Amendment Rights	16
B. Chairman’s Offensive Conduct in Silencing Ranking Member	17
C. “Fatal” Constitutional Defect in Rushed Adjournment	19
D. House Counsel’s Retroactive Defense of Chairman’s Actions	23
V. DEMOCRATS CALL FOR FULL RELEASE OF ALL COMMITTEE INTERVIEW TRANSCRIPTS	25
ATTACHMENT A:	
MEMORANDUM FROM THE NONPARTISAN CONGRESSIONAL RESEARCH SERVICE ON McCARTHY ERA PRECEDENT	30
ATTACHMENT B:	
OPINIONS FROM 31 INDEPENDENT LEGAL EXPERTS IDENTIFYING CONSTITUTIONAL DEFICIENCIES IN CONTEMPT PROCEEDINGS	35

I. BACKGROUND

On May 14, 2013, the Treasury Inspector General for Tax Administration issued a report concluding that IRS employees used “inappropriate criteria” to screen applications for tax-exempt status.¹ The first line of the “results” section of the report found that this activity began in 2010 with employees in the Determinations Unit of the IRS office in Cincinnati.² The report stated that these employees “developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names.”³ The report also stated that these employees “developed and implemented inappropriate criteria in part due to insufficient oversight provided by management.”⁴

The Inspector General’s report found that Lois Lerner, the former Director of Exempt Organizations at the IRS, did not discover the use of these inappropriate criteria until a year later—in June 2011—after which she “immediately” ordered the practice to stop.⁵ Despite this direction, the Inspector General’s report found that employees subsequently began using different inappropriate criteria “without management knowledge.”⁶ The Inspector General reported that “the criteria were not influenced by any individual or organization outside the IRS.”⁷

After announcing that the Committee would be investigating this matter—but before the Committee received a single document or interviewed one witness—Chairman Issa went on national television and stated: “This was the targeting of the President’s political enemies effectively and lies about it during the election year.”⁸

To date, the IRS has produced more than 450,000 pages of documents, Committee staff have conducted 39 transcribed interviews of IRS and Department of the Treasury personnel, and the Committee has held five hearings. The IRS estimates that it has spent between \$14 million and \$16 million responding to Congressional investigations on this topic.⁹

¹ Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013) (2013-10-053).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Issa on IRS Scandal: “Deliberate” Ideological Attacks*, CBS News (May 14, 2013) (online at www.cbsnews.com/videos/issa-on-irs-scandal-deliberate-ideological-attacks/).

⁹ Letter from Commissioner John Koskinen, Internal Revenue Service, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Feb. 25, 2014).

On May 14, 2013, Chairman Issa invited Ms. Lerner to testify before the Committee on May 22, 2013.¹⁰ On the same day, Chairman Issa and Chairman Jordan sent a second letter to Ms. Lerner accusing her of providing “false or misleading information” to the Committee, noting that her actions carry “potential criminal liability,” and citing Section 1001 of Title 18 of the United States Code providing criminal penalties of up to five years in prison.¹¹

The same week, House Speaker John Boehner also raised the specter of criminal prosecution, stating at a press conference: “Now, my question isn’t about who’s going to resign. My question is who’s going to jail over this scandal?” He added: “Clearly someone violated the law.”¹²

Based on these accusations of criminal conduct, Ms. Lerner’s attorney wrote a letter on May 20, 2013, informing Chairman Issa that he had advised his client to exercise her Fifth Amendment right not to testify and requesting that she not be compelled to appear in person:

Because Ms. Lerner is invoking her constitutional privilege, we respectfully request that you excuse her from appearing at the hearing. Congress has a longstanding practice of permitting a witness to assert the Fifth Amendment by affidavit or through counsel in lieu of appearing at a public hearing to do so. In addition, the District of Columbia Bar’s Legal Ethics Committee has opined that it is a violation of the Bar’s ethics rule to require a witness to testify before a congressional committee when it is known in advance that the witness will invoke the Fifth Amendment, and the witness’s appearance will serve “no substantial purpose ‘other than to embarrass, delay, or burden’ the witness.” D.C. Legal Ethics Opinion No. 358 (2011); see also D.C. Legal Ethics Opinion No. 31 (1977). Because Ms. Lerner will exercise her right not to answer questions related to the matters discussed in the TIGTA report or to her prior exchanges with the Committee, requiring her to appear at the hearing merely to assert her Fifth Amendment privilege would have no purpose other than to embarrass or burden her.¹³

¹⁰ Letter from Chairman Darrell Issa, House Committee on Oversight and Government Reform, to Lois Lerner, Director, Exempt Organizations, Internal Revenue Service (May 14, 2013).

¹¹ Letter from Chairman Darrell Issa, House Committee on Oversight and Government Reform, and Chairman Jim Jordan, Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, House Committee on Oversight and Government Reform, to Lois Lerner, Director, Exempt Organizations Division, Internal Revenue Service (May 14, 2013).

¹² *Boehner on IRS Scandal: “Who Is Going to Jail?”*, CNN.com (May 15, 2013) (online at <http://politicalticker.blogs.cnn.com/2013/05/15/boehner-on-irs-scandal-who-is-going-to-jail/>).

¹³ Letter from William W. Taylor, III, Counsel to Lois Lerner, to Chairman Darrell Issa, House Committee on Oversight and Government Reform (May 20, 2013).

Rather than accepting the letter from Ms. Lerner's counsel as proof of her intention to invoke her Fifth Amendment right not to testify, Chairman Issa demanded that Ms. Lerner appear before the Committee on May 22, 2013, pursuant to his unilateral subpoena.¹⁴

On the advice of counsel, Ms. Lerner complied with the subpoena by attending the hearing and invoking her Fifth Amendment rights in a brief statement professing her innocence:

[M]embers of this committee have accused me of providing false information when I responded to questions about the IRS processing of applications for tax exemption.

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. And while I would very much like to answer the committee's questions today, I've been advised by my counsel to assert my constitutional right not to testify or answer questions related to the subject matter of this hearing. After very careful consideration, I have decided to follow my counsel's advice and not testify or answer any of the questions today.

Because I'm asserting my right not to testify, I know that some people will assume that I've done something wrong. I have not. One of the basic functions of the Fifth Amendment is to protect innocent individuals, and that is the protection I'm invoking today. Thank you.¹⁵

After she delivered her statement, Committee Member Trey Gowdy stated:

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.¹⁶

Later in the hearing, Chairman Issa agreed, telling Ms. Lerner:

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.¹⁷

¹⁴ House Committee on Oversight and Government Reform, Subpoena to Lois Lerner (May 17, 2013); Letter from William Taylor, III, Counsel to Lois Lerner, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (May 20, 2013).

¹⁵ House Committee on Oversight and Government Reform, *Hearing on The IRS: Targeting Americans for their Political Beliefs* (May 22, 2013).

¹⁶ *Id.*

¹⁷ *Id.*

Chairman Issa then stated:

For this reason, I have no choice but to excuse the witness subject to recall after we seek specific counsel on the questions of whether or not the constitutional right of the Fifth Amendment has been properly waived. Notwithstanding that, in consultation with the Department of Justice as to whether or not limited or use immunity could be negotiated, the witness and counsel are dismissed.¹⁸

Chairman Issa recessed the hearing instead of adjourning it, explaining:

[I]t 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 the 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.¹⁹

On June 25, 2013, Chairman Issa announced that the Committee would hold a business meeting three days later to “consider a motion or resolution concerning whether Lois Lerner, the Director of Exempt Organizations at the Internal Revenue Service, waived her Fifth Amendment privilege against self-incrimination when she made a statement at the Committee hearing on May 22, 2013.”²⁰

On June 26, 2013, Ranking Member Cummings sent a letter to Chairman Issa requesting that the Committee first hold a hearing with Constitutional law experts who could testify about the legal issues involved with Fifth Amendment waivers. He wrote:

[E]very Committee Member should have the benefit of testimony from legal experts—on both sides of this issue—to present and discuss the applicable legal standards and historical precedents regarding Fifth Amendment protections for witnesses appearing before Congress.²¹

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ House Committee on Oversight and Government Reform, *Oversight Committee to Vote on Lois Lerner’s Potential Waiver of Fifth Amendment Right* (June 25, 2013) (online at <http://oversight.house.gov/release/oversight-committee-to-vote-on-lois-lerners-potential-waiver-of-fifth-amendment-right/>).

²¹ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (June 26, 2013) (online at: <http://democrats.oversight.house.gov/press-releases/cummings-asks-issa-for-testimony-from-legal-experts-before-committee-vote-on-lerners-5th-amendment-rights/>).

Chairman Issa disregarded this request, and the Committee voted on June 28, 2013, on a partisan basis to adopt a resolution concluding that Ms. Lerner waived her Fifth Amendment rights.²²

On February 25, 2014, Chairman Issa wrote a letter to Ms. Lerner's attorney recalling her to appear before the Committee on March 5, 2014, pursuant to the subpoena that remained in effect.²³

On February 26, 2014, Ms. Lerner's attorney wrote to the Committee stating that Ms. Lerner did not waive her Fifth Amendment rights when she appeared before the Committee in 2013, reaffirming that she would continue to decline to answer questions, and requesting that the Committee not require her to appear solely for the purpose of again invoking her Fifth Amendment rights.²⁴

Again, Chairman Issa insisted that Ms. Lerner appear in person, and, on March 5, 2014, he asked Ms. Lerner a series of questions. She again asserted her right under the Fifth Amendment not to answer his questions.²⁵ When the Chairman finished asking questions, he adjourned the hearing without overruling Ms. Lerner's invocation of her Fifth Amendment rights or ordering her to answer his questions notwithstanding her assertion. As Chairman Issa rushed to end the hearing, he disregarded repeated requests for recognition by Ranking Member Cummings, silenced the Ranking Member's microphone, and drew his hand across his neck while ordering Republican staff to "close it down."²⁶

II. LACK OF HISTORICAL PRECEDENT FOR CHAIRMAN ISSA'S ACTIONS

Chairman Issa has cited virtually no historical precedent for successfully convicting an American citizen of contempt after that person asserts his or her Fifth Amendment right not to testify before Congress.

On March 20, 2014, the nonpartisan Congressional Research Service (CRS) issued a memorandum reviewing "previous instances in which a witness before a congressional committee was voted in contempt of Congress and then prosecuted for refusing to answer the committee's questions or produce documents pursuant to a subpoena after invoking the Fifth

²² House Committee on Oversight and Government Reform, Business Meeting, Resolution of the Committee on Oversight and Government Reform (June 28, 2013) (22 yeas, 17 nays).

²³ Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, to William Taylor, III, Counsel to Lois Lerner (Feb. 25, 2014).

²⁴ Letter from William W. Taylor, III, Counsel to Lois Lerner, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Feb. 26, 2014).

²⁵ House Committee on Oversight and Government Reform, *Resumption of Hearing on The IRS: Targeting Americans for their Political Beliefs* (Mar. 5, 2014).

²⁶ *Id.*

Amendment privilege against self-incrimination.”²⁷ The memo also analyzed whether any subsequent convictions for contempt of Congress under 2 U.S.C. §§ 192, 194 were upheld or overturned.²⁸ The CRS memorandum is included as Attachment A to these Minority Views.

The CRS memo identified 11 cases spanning from 1951 to 1968 in which congressional committees held individuals in contempt even after they asserted their Fifth Amendment rights. These include seven individuals held in contempt by the House Committee on Un-American Activities, two by the Special Committee on Organized Crime in Interstate Commerce, one by the Senate Committee on Foreign Relations, and one by the Senate Committee on Government Operations.²⁹ The vast majority of those congressional investigations involved alleged communist activities.

In almost every case, the witnesses were either acquitted or their convictions were overturned on appeal. According to the CRS memo, three of these individuals were not convicted of criminal contempt, and Federal courts overturned the convictions of six more individuals. In three cases, the Supreme Court itself overturned the convictions despite the findings of the congressional committees. In each case, the Court found that the committee had failed to establish a record sufficient to prove the elements of contempt of Congress.³⁰

For example, in the case of *Quinn v. United States*, the defendant was held in contempt by the House Committee on Un-American Activities and convicted criminally. The Supreme Court overturned this conviction, finding that “the court below erred in failing to direct a judgment of acquittal.”³¹ The Court held that a committee must enable a witness to determine “with a reasonable certainty that the committee demanded his answer despite his objection.”³² The Court wrote: “Since the enactment of § 192, the practice of specifically directing a recalcitrant witness to answer has continued to prevail.”³³

In another example highlighted by CRS, *United States v. Hoag*, there are striking similarities between the actions of Senator Joseph McCarthy in 1954 and those of Chairman Issa in the present case. Senator McCarthy chaired the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations. During a hearing on August 6, 1954, Senator

²⁷ Congressional Research Service, *Prosecutions for Contempt of Congress and the Fifth Amendment* (Mar. 20, 2014) (online at <http://democrats.oversight.house.gov/uploads/CRS%20Contempt%20Report%20--%20Redacted.pdf>) (noting the possibility that unpublished cases might not be included in its review).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Quinn v. United States*, 349 U.S. 155, 167 (1955).

³² *Id.*

³³ *Id.* at 169.

McCarthy repeatedly questioned a woman named Diantha Hoag despite the fact that she had asserted her Fifth Amendment rights. The witness was a coil winder at the Westinghouse Company in Cheektowaga who made \$1.71 an hour.³⁴

Like Ms. Lerner, Ms. Hoag professed her innocence and then declined to answer subsequent questions. In response to questioning from Senator McCarthy, for example, Ms. Hoag stated: “I have never engaged in espionage nor sabotage. I am not so engaged. I will not so engage in the future. I am not a spy nor a saboteur.”³⁵

Like Chairman Issa, Senator McCarthy concluded that his witness had waived her Fifth Amendment rights without citing any independent legal opinions or experts. He explained to her at the time:

For your benefit, you have waived any right as far as espionage is concerned by your volunteering the information you have never engaged in espionage. ... My position is, just for counsel’s benefit, when the witness says she never engaged in espionage, then she waived the Fifth Amendment, not merely as to that question, but the entire field of espionage. Giving out information about Government work would be in that field.³⁶

The Senate pursued criminal charges, Ms. Hoag was indicted, and she opted for a federal judge to preside over her case instead of a jury. The judge explained the issue before the court:

The issue, therefore, is whether, by giving that answer, she waived her rights, under the Fifth Amendment, to the questions subsequently propounded. These, generally speaking, had to do with whether she had given information about her work to members of the Communist Party, whether she had discussed at a Communist Party meeting classified Government work, whether she received any clearance before 1947 to work on classified work, whether she did some espionage for the Communist Party seven and one-half years before, the character of work she was doing before 1947, and the city where she worked before her present job.³⁷

The judge rejected Senator McCarthy’s claims, found no Fifth Amendment waiver, and acquitted the witness of all charges, writing in an opinion in 1956:

Having in mind the admonition in the recent case of *Emspak v. United States*, 1955, 349 U.S. 190, 196, 75 S.Ct. 687, 691, 99 L.Ed. 997, quoting from *Smith v. United States*, 337

³⁴ Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, *Hearing on Subversion and Espionage in Defense Establishments and Industry* (Aug. 6, 1954) (online at <http://democrats.oversight.house.gov/uploads/McCarthy%20Hearing%2008-06-1954.pdf>).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *U.S. v. Hoag*, 142 F. Supp. 667, 668 (D.D.C. 1956) (online at www.courtlistener.com/dcd/cAQM/united-states-v-hoag/).

U.S. 137, 150, 69 S.Ct. 1000, 93 L.Ed. 1264, that “Waiver of constitutional rights * * * is not lightly to be inferred”, and in the light of the controlling decisions of the Supreme Court and the Court of Appeals for this circuit, above referred to, I reach the conclusion that the defendant did not waive her privilege under the Fifth Amendment and therefore did not violate the statute in question in refusing to answer the questions propounded to her. Therefore, I find that she is entitled to a judgment of acquittal on all counts, and judgment will be entered accordingly.³⁸

In addition to the cases cited by CRS, Committee staff identified additional cases from the same time period. In four of those cases, federal appellate courts overturned the convictions.³⁹ In one case, the federal appellate court affirmed the conviction. Unlike in the present case, however, the Chairman in that case gave the witness a direct, unequivocal order to answer the question: “You are ordered—with the permission of the committee the Chair orders and directs you to answer that question.”⁴⁰

III. CHAIRMAN ISSA COULD HAVE OBTAINED LERNER’S TESTIMONY

The Committee could have obtained Ms. Lerner’s testimony if Chairman Issa had accepted a request by her attorney for a simple one-week extension.

On February 25, 2014, Chairman Issa wrote a letter to Ms. Lerner’s attorney recalling her to appear before the Committee on March 5, 2014, pursuant to the subpoena that remained in effect.⁴¹ The next day, Ms. Lerner’s attorney wrote to the Committee stating that Ms. Lerner did not waive her Fifth Amendment rights when she appeared before the Committee in 2013, that she would continue to decline to answer questions, and that the Committee should not require her to appear solely for the purpose of again invoking her Fifth Amendment rights.⁴²

In the days that followed, Chairman Issa’s staff communicated frequently with Ms. Lerner’s attorney via email and telephone about various options, including potential hearing testimony. Ultimately, Ms. Lerner’s attorney explained that Ms. Lerner was willing to testify if she could obtain a one-week extension to March 12. That extension would have allowed him to adequately prepare his client for the hearing since he had obligations out of town.

³⁸ *Id.*

³⁹ See, e.g., *Singer v. United States*, 247 F.2d 535 (1957); *U.S. v. Doto*, 205 F.2d 416 (2d Cir. 1953); *Poretto v. U.S.*, 196 F.2d 392 (5th Cir. 1952); *Starkovich v. U.S.*, 231 F.2d 411 (9th Cir. 1956); *Aiuppa v. U.S.*, 201 F. 2d 287 (6th Cir. 1952).

⁴⁰ *Presser v. U.S.*, 284 F.2d 233 (D.C. Cir. 1960).

⁴¹ Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, to William W. Taylor, III, Counsel to Lois Lerner (Feb. 25, 2014).

⁴² Letter from William W. Taylor, III, Counsel to Lois Lerner, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Feb. 26, 2014).

On Saturday, March 1, 2014, a staff member working for Chairman Issa wrote an email to Ms. Lerner's counsel stating: "I understand from [another Republican staffer] that Ms. Lerner is willing [sic] testify, and she is requesting a one week delay. In talking to the Chairman, wanted to make sure we had this right."⁴³ In response, Ms. Lerner's counsel wrote: "Yes."⁴⁴

In a subsequent email, Chairman Issa's staffer memorialized a telephone conversation he had with Ms. Lerner's counsel, writing: "On Sat I indicated the Chairman would be in a position to confer with his members on that request on Monday."⁴⁵ It is unclear whether Chairman Issa ever discussed this offer with his Republican colleagues or Speaker Boehner, but he certainly did not discuss it with any Democratic Committee Members, who would have accepted it immediately.

Instead of consulting with Committee Members on the following Monday, Chairman Issa went on national television a day earlier, on Sunday, March 2, 2014, to announce—inaccurately—the "late breaking news" that Ms. Lerner would testify on March 5, 2014. He stated: "Quite frankly, we believe the evidence we've gathered causes her, in her best interest, to be someone who should testify."⁴⁶

As a result of Chairman Issa's actions, the Committee lost the opportunity to obtain Ms. Lerner's testimony. Following Chairman Issa's interview and his inaccurate statements, Ms. Lerner's attorney, William W. Taylor III, explained why he advised Ms. Lerner against testifying:

We lost confidence in the fairness and the impartiality of the forum. It is completely partisan. There was no possibility in my view that Ms. Lerner would be given a fair opportunity to speak or to answer questions or to tell the truth.⁴⁷

Chairman Issa's staff subsequently claimed that they "didn't realize at the time that Taylor's offer was contingent on the delay."⁴⁸

⁴³ Email from Majority Staff, House Committee on Oversight and Government Reform, to William W. Taylor III, Counsel to Lois Lerner (Mar. 1, 2014). *See also Lawyer for IRS Official Denies Issa Claim Client Will Testify*, Washington Times (Mar. 3, 2014).

⁴⁴ Email from William W. Taylor, III, Counsel to Lois Lerner, to Majority Staff, House Committee on Oversight and Government Reform (Mar. 1, 2014)

⁴⁵ Email from Majority Staff, House Committee on Oversight and Government Reform, to William W. Taylor, III, Counsel to Lois Lerner (Mar. 3, 2014).

⁴⁶ *Fox News Sunday*, Fox News (Mar. 2, 2014) (online at www.foxnews.com/on-air/fox-news-sunday-chris-wallace/2014/03/02/rep-mike-rogers-deepening-crisis-ukraine-rep-darrell-issa-talks-irs-investigation-sen-rob#p//v/3281439472001).

⁴⁷ *Lerner Again Takes the Fifth in Tea Party Scandal*, USA Today (Mar. 5, 2014) (online at www.usatoday.com/story/news/politics/2014/03/05/lois-lerner-oversight-issa-irs/6070401/).

IV. INDEPENDENT EXPERTS CONCLUDE THAT CHAIRMAN ISSA BOTCHED CONTEMPT PROCEEDINGS

Independent experts conclude that Ms. Lerner did not waive her Fifth Amendment rights by professing her innocence and that Chairman Issa botched the contempt proceeding when he abruptly adjourned the Committee's hearing on March 5 without taking key steps required by the Constitution. Chairman Issa has steadfastly refused to hold a hearing with any legal experts on these issues.

A. No Waiver of Fifth Amendment Rights

Contrary to Chairman Issa's theory that Ms. Lerner waived her Fifth Amendment rights when she gave a brief statement professing her innocence, numerous legal experts have concluded that no Fifth Amendment waiver occurred.

On June 26, 2013, Ranking Member Cummings requested that the Chairman hold a hearing so Committee Members could hear directly from independent experts in Constitutional law before voting on a resolution offered by Chairman Issa concluding that Ms. Lerner waived her Fifth Amendment rights. Ranking Member Cummings wrote:

I believe every Committee Member should have the benefit of testimony from legal experts—on both sides of this issue—to present and discuss the applicable legal standards and historical precedents regarding Fifth Amendment protections for witnesses appearing before Congress.⁴⁹

His letter cited three noted experts who concluded, after reviewing the record before the Committee, that Ms. Lerner did not waive her Fifth Amendment rights:

- Stan Brand, the Counsel of the House of Representatives from 1976 to 1983, stated that Ms. Lerner was “not giving an account of what happened. She's saying, I'm innocent.”
- Yale Kamisar, a former University of Michigan law professor and expert on criminal procedure, stated: “A denial is different than disclosing incriminating facts. You ought to be able to make a general denial, and then say I don't want to discuss it further.”

⁴⁸ *Darrell Issa Rankles Some Republicans in Handling IRS Tea Party Probe*, Politico (Mar. 27, 2014) (online at www.politico.com/story/2014/03/darrell-issa-irs-tea-party-investigation-105119.html).

⁴⁹ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (June 26, 2013) (online at http://democrats.oversight.house.gov/images/user_images/gt/stories/EEC%20to%20Issa.Business%20Mtg.LLerner.pdf).

- James Duane, a professor at Regent University School of Law, stated: “it is well settled that they have a right to make a ‘selective invocation,’ as it’s called, with respect to questions that they think might raise a meaningful risk of incriminating themselves.”⁵⁰

The Ranking Member concluded his request by writing:

[A] hearing to obtain testimony from legal experts would help Committee Members consider this issue in a reasoned, informed, and responsible manner. In contrast, rushing to vote on a motion or resolution without the benefit of even a single hearing with expert testimony would risk undercutting the legitimacy of the motion or resolution itself.⁵¹

The Chairman disregarded this request and proceeded with the Committee’s business meeting to consider his resolution. During debate on the resolution, Ranking Member Cummings introduced into the official record numerous opinions from legal experts addressing the issue.⁵² In addition to the experts described above, Ranking Member Cummings entered into the record a statement from Daniel Richman, a law professor who served as the Chief Appellate Attorney in the U.S. Attorney’s Office for the Southern District of New York, stating: “as a matter of law, Ms. Lerner did not waive her privilege and would not be found to have done so by a competent federal court.”⁵³

In contrast, Chairman Issa did not enter into the Committee’s official record any legal opinions supporting his position. Although he referred to a confidential memorandum from House Counsel, he shared it with Committee Members only on condition that it not be disclosed to the public or entered into the record. Without disclosing the details of that opinion, it did not conclude that Ms. Lerner waived her Fifth Amendment rights beyond a reasonable doubt—the standard that is required for criminal contempt.

B. Chairman’s Offensive Conduct in Silencing Ranking Member

To date, 31 independent experts in Constitutional and criminal law have now come forward to conclude that Chairman Issa botched the contempt proceeding when he abruptly adjourned the Committee’s hearing on March 5. In an effort to prevent Ranking Member Cummings from speaking, Chairman Issa rushed to end the hearing, ignored the Ranking

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Opening Statement of Ranking Member Elijah E. Cummings, Business Meeting, Resolution of the Committee on Oversight and Government Reform (June 28, 2013) (online at <http://democrats.oversight.house.gov/press-releases/opening-statement-of-ranking-member-elijah-e-cummings-full-committee-business-meeting/>).

⁵³ Statement of Professor Daniel Richman, *Regarding Validity of Fifth Amendment Privilege Assertion by Lois Lerner* (June 27, 2013).

Member's repeated requests for recognition, silenced the Ranking Member's microphone, and drew his hand across his neck while ordering Republican staff to "close it down."⁵⁴

Ranking Member Cummings intended to pose a procedural question concerning a potential proffer Ms. Lerner's counsel agreed to provide in response to a request from Chairman Issa's staff. Although Ranking Member Cummings was attempting to help the Committee obtain this information, Republican Committee Members left the room while the Ranking Member was attempting to speak.⁵⁵

Chairman Issa's actions were so egregious that within hours of the hearing, the Democratic Members of the Committee sent a letter criticizing the Chairman's actions and insisting that he "apologize immediately to Ranking Member Cummings as a first step to begin the process of restoring the credibility and integrity of our Committee."⁵⁶

Republicans also criticized Chairman Issa's actions. One senior Republican lawmaker stated: "You can be firm without being nasty; you can be effective without being snide—this is Darrell's personality. He is not the guy that you'd move next door to."⁵⁷ Similarly, Republican commentator Joe Scarborough stated: "It seemed like a bush league move to me."⁵⁸

In addition, David Firestone, the Projects Director for the *New York Times* Editorial Board, wrote:

For Mr. Issa, the fear of again being exposed as a fraud was greater than his fear of being accused of trampling on minority rights. When politicians reach for the microphone switch, you know they've lost the argument.⁵⁹

Dana Milbank of the *Washington Post* wrote:

⁵⁴ House Committee on Oversight and Government Reform, *Resumption of the Hearing on The IRS: Targeting Americans for Their Political Beliefs* (Mar. 5, 2014).

⁵⁵ Statement of Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, *Resumption of the Hearing on The IRS: Targeting Americans for Their Political Beliefs* (Mar. 5, 2014) (online at <http://democrats.oversight.house.gov/press-releases/issa-turns-off-mic-tries-to-silence-cummings-and-democrats-at-irs-hearing/>).

⁵⁶ Letter from Democratic Members to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Mar. 5, 2014) (online at <http://democrats.oversight.house.gov/press-releases/oversight-committee-democrats-unanimously-condemn-chairman-issas-actions-at-todays-irs-hearing/>).

⁵⁷ *Issa Hands Dems the Mic*, The Hill (Mar. 6, 2014) (online at <http://thehill.com/homenews/house/200162-issa-hands-dems-the-mic#ixzz2vJSTVh2e>).

⁵⁸ *Morning Joe*, MSNBC (Mar. 6, 2014) (online at www.msnbc.com/morning-joe/watch/rep-cummings-please-do-not-shut-my-mic-down-184217155964).

⁵⁹ David Firestone, *Why Darrell Issa Turned Off the Mic*, New York Times (Mar. 6, 2014).

Even by today's low standard of civility in Congress, calling a hearing and then not allowing minority lawmakers to utter a single word is rather unusual. But Issa, now in the fourth and final year of his chairmanship, is an unusual man.⁶⁰

The day after Chairman Issa's actions, Rep. Marcia Fudge offered a Privileged Resolution on the House floor, which stated:

That the House of Representatives strongly condemns the offensive and disrespectful manner in which Chairman Darrell E. Issa conducted the hearing of the House Committee on Oversight and Government Reform on March 5, 2014, during which he turned off the microphones of the Ranking Member while he was speaking and adjourned the hearing without a vote or a unanimous consent agreement.⁶¹

On March 6, 2014, the House tabled the resolution by a vote of 211 to 186.⁶² That evening, Chairman Issa telephoned Ranking Member Cummings and apologized for his conduct.⁶³

On March 14, 2014, Congressman Dan Kildee offered another Privileged Resolution on the House floor condemning the Chairman's "offensive and disrespectful behavior" and calling on Chairman Issa to issue a public apology from the well of the House.⁶⁴ That resolution was also tabled.⁶⁵

C. "Fatal" Constitutional Defect in Rushed Adjournment

According to more than two dozen Constitutional law experts who have now reviewed the record before the Committee, the legal byproduct of Chairman Issa's actions on March 5 was

⁶⁰ Dana Milbank, *Darrell Issa Silences Democrats and Hits a New Low*, Washington Post (Mar. 5, 2014).

⁶¹ Privileged Resolution Against the Offensive Actions of Chairman Darrell E. Issa (Mar. 6, 2014).

⁶² Vote to Table Privileged Resolution Against the Offensive Actions of Chairman Darrell E. Issa (Mar. 6, 2014).

⁶³ House Committee on Oversight and Government Reform Democrats, *Cummings Responds to Issa's Apology* (Mar. 6, 2014) (online at <http://democrats.oversight.house.gov/press-releases/cummings-responds-to-issas-apology1/>).

⁶⁴ Office of Rep. Dan Kildee, *Congressman Dan Kildee Introduces Privileged Resolution in House to Condemn Repeated Offensive Behavior by Chairman Darrell Issa* (Mar. 14, 2014) (online at <http://dankildee.house.gov/media-center/press-releases/congressman-dan-kildee-introduces-privileged-resolution-in-house-to>).

⁶⁵ *Dems Hold Up Pictures on House Floor to Protest Issa*, The Hill (Mar. 13, 2014) (online at <http://thehill.com/blogs/floor-action/votes/200779-house-rejects-dem-resolution-to-force-issa-apology#ixzz2y9SOBYL6>).

that—in his rush to silence the Ranking Member—he failed to take key steps required by the Constitution, according to the Supreme Court.

Specifically, these experts found that the Chairman did not give Ms. Lerner a clear, unambiguous choice between answering the Committee’s questions or being held in contempt because he failed to overrule Ms. Lerner’s assertion of her Fifth Amendment rights and failed to direct her to answer notwithstanding the invocation of those protections.

In an independent analysis provided to the Committee, Morton Rosenberg, who spent 35 years as a Specialist in American Public Law with CRS, stated:

I conclude that the requisite legal foundation for a criminal contempt of Congress prosecution mandated by the Supreme Court rulings in *Quinn, Emspak and Bart* have not been met and that such a proceeding against Ms. Lerner under 2 U.S.C. 194, if attempted, will be dismissed.⁶⁶

Mr. Rosenberg stated that because Chairman Issa did not reject Ms. Lerner’s invocation of her Fifth Amendment rights and did not direct her to answer notwithstanding her assertion, the foundation for holding her in contempt of Congress has not been met. He explained:

More significantly, the Chairman’s opening remarks were equivocal about the consequence of a failure by Ms. Lerner to respond to his questions. As indicated above, he simply stated that “the Committee *may proceed to consider* whether she will be held in contempt.” Combined with his closing remarks in the May 2013 hearing, where he indicated he would be discussing the possibility of granting the witness statutory immunity with the Justice Department to compel her testimony, there could be no certainty for the witness and her counsel that a contempt prosecution was inevitable.⁶⁷

Stan Brand, who served as House Counsel from 1976 to 1983, joined in Mr. Rosenberg’s analysis, stating:

[A] review of the record from last week’s hearing reveals that at no time did the Chair expressly overrule the objection and order Ms. Lerner to answer on pain of contempt. Making it clear to the witness that she has a clear cut choice between compliance and assertion of the privilege is an essential element of the offense and the absence of such a demand is fatal to any subsequent prosecution.⁶⁸

After independent legal experts raised concerns regarding Chairman Issa’s procedural errors in the March 5 hearing, the Chairman asked the House Counsel’s office to draft a memo justifying his actions. On March 26, 2014, Chairman Issa released an opinion issued by House

⁶⁶ Statement of Morton Rosenberg, *Constitutional Due Process Prerequisites for Contempt of Congress Citations and prosecutions* (Mar. 9, 2014).

⁶⁷ *Id.*

⁶⁸ *Id.*

Counsel a day earlier stating that “it is this Office’s considered opinion that Mr. Rosenberg is wrong 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.’”⁶⁹

In addition, Chairman Issa and other Committee members attempted to minimize the significance of these expert opinions. For example, in a letter to Ranking Member Cummings on March 14, 2014, Chairman Issa suggested that Mr. Rosenberg and Mr. Brand were not independent. He wrote: “Your position was based on an allegedly ‘independent legal analysis’ provided by your lawyer, Stanley M. Brand, and your ‘Legislative Consultant,’ Morton Rosenberg.”⁷⁰ Similarly, Committee Member Trey Gowdy stated: “I am not persuaded by the legal musings of two attorneys.”⁷¹

Despite these claims, the number of independent legal experts who have now come forward with opinions concluding that Chairman Issa’s contempt case is deficient has increased dramatically to 31. They include two former House Counsels, three former clerks to Supreme Court justices, six former federal prosecutors, several attorneys in private practice, and law professors from Yale, Stanford, Harvard, Duke, and Georgetown, as well as the law schools of several Republican Committee Members, including Temple, University of Michigan, University of South Carolina, George Washington, University of Georgia, and John Marshall. They also include both Democrats and Republicans.

For example, Thomas J. Spulak, who served as House Counsel from 1994 to 1995, concluded that “I do not believe that the proper basis for a contempt of Congress charge has been established.” He explained: “I have deep respect for Chairman Darrell Issa and his leadership of the Committee. But the matter before the Committee is a relatively rare occurrence and must be dispatched in a constitutionally required manner for the good of this and future Congresses.” He provided his opinion “out of my deep concerns for the constitutional integrity of the U.S. House of Representatives, its procedures and its future precedents.”⁷²

J. Richard Broughton, a former federal prosecutor and now a Professor at the University of Detroit Mercy Law School and member of the Republican National Lawyers Association, concluded:

⁶⁹ Memorandum from Office of General Counsel, United States House of Representatives, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Mar. 25, 2014) (bracketed text and ellipse in original).

⁷⁰ Letter from Chairman Darrell E. Issa to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Mar. 14, 2014).

⁷¹ *Democrats: Darrell Issa Botches Rules in Run-up to IRS Contempt Vote*, Politico (Mar. 12, 2014) (online at www.politico.com/story/2014/03/darrell-issa-irs-contempt-vote-lois-lerner-democrats-104611.html).

⁷² Letter from Thomas Spulak, former General Counsel to the House of Representatives, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Mar. 14, 2014).

Like any other criminal sanction, however, the contempt power must be used prudently, not for petty revenge or partisan gain. It should also be used with appropriate respect for countervailing constitutional rights and with proof that the accused contemnor possessed the requisite level of culpability in failing to answer questions. . . . Absent such a formal rejection and subsequent directive, the witness—here, Ms. Lerner—would likely have a defense to any ensuing criminal prosecution for contempt, pursuant to the existing Supreme Court precedent. Those who are concerned about the reach of federal power should desire legally sufficient proof of a person’s culpable mental state before permitting the United States to seek and impose criminal punishment.⁷³

Robert Muse, a partner at Stein, Mitchell, Muse & Cipollone, LLP, Adjunct Professor of Congressional Investigations at Georgetown University Law Center, and formerly the General Counsel to the Special Senate Committee to Investigate Hurricane Katrina, concluded: “Procedures and rules exist to provide justice and fairness. In his rush to judgment, Issa forgot to play by the rules.”⁷⁴

Louis Fisher, a former Senior Specialist in Separation of Powers at CRS, Adjunct Scholar at the CATO Institute, and Scholar in Residence at the Constitution Project, concluded:

Why would a delay of one week interfere with the committee’s investigation that has thus far taken nine and a half months? Why not, in pursuit of facts and evidence, probe this opportunity to obtain information from her, particularly when Chairman Issa and the committee have explained that she has important information that is probably not available from any other witness? With his last question, Chairman Issa raised the “expectation” that she would cooperate with the committee if given an additional week. Under these conditions, I think the committee has not made the case that she acted in contempt. If litigation resulted, courts are likely to reach the same conclusion.⁷⁵

Julie Rose O’Sullivan, a former federal prosecutor and law clerk to Supreme Court Justice Sandra Day O’Connor and current Professor at the Georgetown University Law Center, concluded:

The Supreme Court has spoken—repeatedly—on point. Before a witness may be held in contempt under 18 U.S.C. sec. 192, the government bears the burden of showing “criminal intent—in this instance, a deliberate, intentional refusal to answer.” *Quinn v. United States*, 349 U.S. 155, 165 (1955). This intent is lacking where the witness is not faced with an order to comply or face the consequences. Thus, the government must show that the Committee “clearly apprised [the witness] that the committee demands his

⁷³ Statement of Professor J. Richard Broughton, *Regarding Legal Issues Related to Possible Contempt of Congress Prosecution* (Mar. 17, 2014).

⁷⁴ Statement of Robert Muse (Mar. 13, 2014).

⁷⁵ Statement of Louis Fisher, *Regarding Possible Contempt of Lois Lerner* (Mar. 14, 2014).

answer notwithstanding his objections” or “there can be no conviction under [sec.] 192 for refusal to answer that question.” *Id.* at 166. Here, the Committee at no point directed the witness to answer; accordingly, no prosecution will lie. This is a result demanded by common sense as well as the case law. “Contempt” citations are generally reserved for violations of court or congressional orders. One cannot commit contempt without a qualifying “order.”⁷⁶

Joshua Levy, a partner at Cunningham & Levy who teaches Congressional Investigations at Georgetown University Law Center, concluded: “Contempt cannot be born from a game of gotcha. Supreme Court precedents that helped put an end to the McCarthy era ruled that Congress cannot initiate contempt proceedings without first giving the witness due process.”⁷⁷

Samuel W. Buell, a former federal prosecutor who teaches at Duke University Law School, concluded: “Seeking contempt now on this record thus could accomplish nothing but making the Committee look petty and uninterested in getting to the merits of the matter under investigation.”⁷⁸

A full set of the independent legal opinions from all of these Constitutional law experts is included as Attachment B to these Minority Views.

D. House Counsel’s Retroactive Defense of Chairman’s Actions

After Ranking Member Cummings warned that independent legal experts had identified Constitutional deficiencies with Chairman Issa’s actions at the May 5 hearing, House Speaker John Boehner stated: “I and the House Counsel reject the premise of Mr. Cummings’s letter.”⁷⁹ When asked if he would provide a copy of the House Counsel opinion he referenced, Speaker Boehner first directed reporters to ask “the appropriate people.” When they explained that he was the appropriate person, he answered: “I am sure that we will see an opinion at some point.”⁸⁰

It appears that, at the time Speaker Boehner made these statements, the House Counsel had not issued any written opinion. To date, no House Counsel opinion prepared before the March 5 hearing has been made available to the members of the Committee, particularly one stating that Ms. Lerner could be successfully prosecuted for contempt if Chairman Issa did not overrule her assertion of Fifth Amendment rights and order her to answer his questions

⁷⁶ Statement of Julie Rose O’Sullivan (Mar. 12, 2014).

⁷⁷ Statement of Joshua Levy (Mar. 12, 2014).

⁷⁸ Statement of Samuel Buell (Mar. 12, 2014).

⁷⁹ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Speaker of the House John Boehner (Mar. 14, 2014) (online at <http://democrats.oversight.house.gov/press-releases/cummings-asks-speaker-boehner-for-copy-of-counsel-opinion-on-lerner-contempt-proceedings/#sthash.jpaw602R.dpuf>).

⁸⁰ *Id.*

notwithstanding her assertion. Instead, it appears that Chairman Issa sought an opinion justifying his actions only after the March 5 hearing when independent legal experts raised concerns about these Constitutional deficiencies.⁸¹

Independent legal experts have rejected the arguments raised by House Counsel in defense of Chairman Issa's actions. The House Counsel memo stated that contempt charges could be brought against Ms. Lerner because the Chairman had ensured that 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.” The House Counsel's memo cited two reasons for this opinion:

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.⁸²

According to Mr. Rosenberg, “both assertions are meritless.” Regarding the Committee's June 28, 2013, partisan vote that Ms. Lerner waived her Fifth Amendment right, Mr. Rosenberg explained:

Nothing in the language of the Committee's June 28, 2013 resolution can be even be remotely construed as an *explicit* rejection of Ms. Lerner's Fifth Amendment privilege at the May 22 hearing. It is solely and exclusively concerned with the question whether Ms. Lerner voluntarily waived her privilege at that hearing. A rejection of a future claim in a resumed hearing may be implicit in the resolution's language, but that rejection, under *Quinn*, *Emspak*, and *Bart*, would have had to have been expressly directed at the particular claim when raised by the witness.⁸³

Mr. Rosenberg also addressed the second argument in the House Counsel memorandum:

⁸¹ Memo from the Office of General Counsel, United States House of Representatives, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Mar. 25, 2014) (explaining that Chairman Issa requested that the office “analyze a March 12, 2014 memorandum, prepared by former Congressional Research Service (‘CRS’) attorney Morton Rosenberg.”).

⁸² Memo from the Office of General Counsel, United States House of Representatives, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Mar. 25, 2014).

⁸³ Statement of Morton Rosenberg, *Comments on House General Counsel Opinion* (Apr. 6, 2014).

[T]he Chairman’s verbal observation at the end of his opening remarks at the March 5 hearing that if she continued to refuse to answer questions, “the [C]ommittee may proceed to consider whether she should be held in contempt.” Thus the “indirect” support relies predominantly on the incorrect factual and legal premise that the Committee had communicated a rejection of her privilege claims in its waiver resolution and ambiguous statements by members and the Chairman about the risk of contempt. But, again, when the March 5 questioning took place, the Chairman never expressly overruled her objections or demanded a response.⁸⁴

Former House Counsel Tom Spulak also “fully” agreed with Mr. Rosenberg’s opinion that Chairman Issa failed to establish a record to support contempt charges. He explained:

The fact of the matter, however, is that based on relevant Supreme Court rulings, the pronouncement must occur with the witness present so that he or she can understand the finality of the decision, appreciate the consequences of his or her continued silence, and have an opportunity to decide otherwise at that time.⁸⁵

Mr. Spulak also explained that, although he agreed that there is no “fixed verbal formula” to convey to a witness the Committee’s decision regarding questioning, Chairman Issa’s equivocal statements to Ms. Lerner on March 5 did not meet the standard of “specifically directing a recalcitrant witness to answer” outlined by the Supreme Court.⁸⁶ He wrote:

I believe that the Court does require that whatever words are used be delivered to the witness in a direct, unequivocal manner in a setting that allows the witness to understand the seriousness of the decision and the opportunity to continue to insist on invoking the privilege or revoke it and respond to the Committee’s questioning. That, as I understand the facts, did not occur.⁸⁷

V. DEMOCRATS CALL FOR FULL RELEASE OF ALL COMMITTEE INTERVIEW TRANSCRIPTS

Instead of pursuing deficient contempt litigation that will continue to waste taxpayer funds, Democratic Members of the Oversight Committee now call on the Committee to officially release copies of the full transcripts of all 38 interviews conducted by Committee staff during this investigation that have not been released to date.

⁸⁴ *Id.*

⁸⁵ Letter from Thomas Spulak, former General Counsel to the House of Representatives, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Mar. 14, 2014).

⁸⁶ *Quinn v. United States*, 349 U.S. 155, 169 (1955).

⁸⁷ Letter from Thomas Spulak, former General Counsel to the House of Representatives, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Mar. 14, 2014).

For the past year, Chairman Issa's central accusation in this investigation has been that the IRS engaged in political collusion directed by—or on behalf of—the White House. Before the Committee received a single document or interviewed one witness, Chairman Issa went on national television and stated: "This was the targeting of the President's political enemies effectively and lies about it during the election year."⁸⁸

Until now, Chairman Issa has chosen to leak selected excerpts from the Committee's interviews and withhold portions that directly contradict his public accusations. The interview transcripts show definitively that the Chairman's accusations are baseless and that the White House played absolutely no role in directing IRS employees to use inappropriate terms to screen applicants for tax exempt status.

For example, on June 6, 2013, Committee staff interviewed the Screening Group Manager in the Cincinnati Determinations Unit who worked at the IRS for 21 years as a civil servant and supervised a team of several Screening Agents in that office. He answered questions from Committee staff directly and candidly for more than five hours. When asked by Republican Committee staff about his political affiliation, he answered that he is a "conservative Republican."⁸⁹

The Screening Group Manager stated that there was no political motivation in the decision to screen and centralize the review of the Tea Party cases:

Q: In your opinion, was the decision to screen and centralize the review of Tea Party cases the targeting of the President's political enemies?

A: I do not believe that the screening of these cases had anything to do other than consistency and identifying issues that needed to have further development.⁹⁰

The Screening Group Manager also explained that he had no reason to believe that any officials from the White House were involved in any way:

Q: Do you have any reason to believe that anyone in the White House was involved in the decision to screen Tea Party cases?

A: I have no reason to believe that.

Q: Do you have any reason to believe that anyone in the White House was involved in the decision to centralize the review of Tea Party cases?

⁸⁸ *Issa on IRS Scandal: "Deliberate" Ideological Attacks*, CBS News (May 14, 2013) (online at www.cbsnews.com/videos/issa-on-irs-scandal-deliberate-ideological-attacks/).

⁸⁹ House Committee on Oversight and Government Reform, Interview of Screening Group Manager, at 28-29 (June 6, 2013).

⁹⁰ *Id.* at 139-140.

A: I have no reason to believe that.⁹¹

Instead, the Screening Group Manager explained how one of his own employees flagged the first “Tea Party” case for additional review because it needed further development, and that he elevated the case to his management because it was “high-profile” and to ensure consistent review:

We would need to know how frequently or—of the total activities, 100 percent of the activities, what portion of those total activities would you be dedicating to political activities. And in this particular case, it wasn’t addressed, it was just mentioned, and, to me, that says it needs to have further development, and it could be good, you know. Once the information is all received, it could be fine.⁹²

After elevating the original case to his management, the Screening Group Manager explained that he made the decision on his own to instruct his Screening Agents to identify additional similar cases. He said: “There was no—there was no—no one said to make a search.”⁹³ He explained that he did this to ensure “consistency” in the treatment of applications with similar fact patterns.⁹⁴

The Screening Group Manager informed Committee staff that he did not discover that his employee had used inappropriate search terms until June 2, 2011, and he did not provide that information to his superiors before June of 2011. The Inspector General’s report confirmed that Ms. Lerner did not learn of the use of the inappropriate criteria until June of 2011, a fact that also was corroborated by Committee interviews.⁹⁵

On June 2, 2013, Chairman Issa leaked selected excerpts of transcribed interviews with IRS employees prior to an appearance on CNN’s “State of the Union” with Candy Crowley. When pressed to release the full the transcripts, Chairman Issa promised to do so:

ISSA: These transcripts will all be made public. The killer about this thing is—

CROWLEY: Why don’t you put the whole thing out? Because you know our problem really here is—and you know that your critics say that Republicans and you in particular sort of cherry pick information that go to your foregone conclusion, and so it worries us to kind of to put this kind of stuff out. Can you not put the whole transcript out?

⁹¹ *Id.* at 141.

⁹² *Id.* at 146.

⁹³ *Id.* at 63.

⁹⁴ *Id.*

⁹⁵ Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013); House Committee on Oversight and Government Reform, Interview of Acting Director of Rulings and Agreements (May 21, 2013).

ISSA: The whole transcript will be put out. We understand—these are in real time. And the administration is still—they're paid liar, their spokesperson, picture behind, he's still making up things about what happens in calling this local rogue. There's no indication—the reason that Lois Lerner tried to take the fifth is not because there is a rogue in Cincinnati, it's because this is a problem that was coordinated in all likelihood right out of Washington headquarters and we're getting to proving it.⁹⁶

On June 9, 2013, Ranking Member Cummings wrote to Chairman Issa requesting that the Committee “release publicly the transcripts of all interviews conducted by Committee staff.”⁹⁷ This request included the transcripts of the “conservative Republican” Screening Group Manager as well as all other officials interviewed by the Committee.

On June 11, 2013, Chairman Issa wrote to Ranking Member Cummings reversing his previous position and arguing instead that releasing the transcripts publicly would be “reckless” and “undermine the integrity of the Committee’s investigation.”⁹⁸

On June 13, 2013, Ranking Member Cummings wrote to Chairman Issa seeking clarification about his reversal and asking him to “identify the specific text of the transcripts you believe should be withheld from the American public.”⁹⁹

Over the following week, Chairman Issa reversed his position again and allowed select reporters to come into the Committee’s offices to review full, unredacted transcripts from several interviews with employees other than the Screening Group Manager. For example:

- *USA Today* reported that Chairman Issa allowed its reporters to review the full transcript of IRS official Holly Paz: “USA TODAY reviewed all 222 pages of the transcript of her interview.”

⁹⁶ *State of the Union*, CNN (June 2, 2013) (online at <http://www.youtube.com/watch?v=9zuQU-Mqll4&feature=youtu.be>).

⁹⁷ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (June 9, 2013) (online at <http://democrats.oversight.house.gov/press-releases/conservative-republican-manager-in-charge-of-irs-screener-in-cincinnati-denies-any-white-house-involvement-or-political-influence-in-screening-tea-party-cases/>).

⁹⁸ Letter from Chairman Darrell E. Issa to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (June 11, 2013).

⁹⁹ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (June 13, 2013) (online at <http://democrats.oversight.house.gov/press-releases/new-cummings-letter-to-issa-identify-specific-transcript-text-you-want-withheld-from-public/>).

- The *Wall Street Journal* reported that he allowed its reporters to review the full Paz transcript: “The Wall Street Journal reviewed the transcript of her interview in recent days.”
- *Reuters* reported that he allowed its reporters to review the full Paz transcript as well: “Reuters has reviewed the interview transcript.”
- The *Associated Press* reported that he allowed its reporters to review not only the full Paz transcript, but also transcripts of interviews with two other IRS officials: “The Associated Press has reviewed transcripts from three interviews—with Paz and with two agents, Gary Muthert and Elizabeth Hofacre.”
- *Politico* also reported that its reporters were given access to full transcripts of interviews “conducted by the House Oversight and Government Reform Committee and reviewed by POLITICO.”¹⁰⁰

In light of the Chairman’s actions, Ranking Member Cummings publicly released the full transcript of the Screening Group Manager on June 18, 2013, explaining:

This interview transcript provides a detailed first-hand account of how these practices first originated, and it debunks conspiracy theories about how the IRS first started reviewing these cases. Answering questions from Committee staff for more than five hours, this official—who identified himself as a “conservative Republican”—denied that he or anyone on his team was directed by the White House to take these actions or that they were politically motivated.¹⁰¹

Democratic Committee Members have been asking for more than nine months for the public release of all of the Committee’s interview transcripts and believe it is now time for the Chairman to make good on his promise to do so.

¹⁰⁰ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (June 18, 2013) (online at http://democrats.oversight.house.gov/images/user_images/gt/stories/2013-06-18.EEC%20to%20Issa.pdf).

¹⁰¹ *Id.*

ATTACHMENT A

**MEMORANDUM FROM THE NONPARTISAN
CONGRESSIONAL RESEARCH SERVICE
ON McCARTHY ERA PRECEDENT**



**Congressional
Research Service**

Informing the legislative debate since 1914

MEMORANDUM

March 20, 2014

To: House Committee on Oversight and Government Reform
Attention: [REDACTED]

From: [REDACTED] Legislative Attorney, [REDACTED]

Subject: Prosecutions for Contempt of Congress and the Fifth Amendment

This memorandum responds to your request for information about invocation of the Fifth Amendment privilege against self-incrimination in congressional hearings and contempt of Congress. Specifically, you asked for previous instances in which a witness before a congressional committee was voted in contempt of Congress and then prosecuted for refusing to answer the committee's questions or produce documents pursuant to a subpoena after invoking the Fifth Amendment privilege against self-incrimination. Additionally, you asked for information on whether any subsequent convictions for contempt of Congress under 2 U.S.C. §§ 192, 194 were upheld or overturned.

The table below provides the requested information based on searches of federal court cases in the LexisNexis database.¹ Although a number of search terms were used, it is possible that some relevant cases were missed. Additionally, other relevant cases may be unpublished, and therefore, not searchable in an available database. Cases involving witnesses who asserted other constitutional privileges, not including the Fifth Amendment privilege against self-incrimination, and were subsequently held in contempt of Congress are not included in the table. The cases are organized first by court authority (Supreme Court, followed by circuit courts and district courts) and then in chronological order.

¹ Several searches using different combinations of the following search terms were conducted: "2 U.S.C. 192," 192, committee, contempt, "contempt of Congress," "Fifth Amendment," subpoena, and subpena. Additionally, relevant cases appearing on the Shepard's report for 2 U.S.C § 192 were searched.

Table 1. Published Cases of Prosecutions for Contempt of Congress Following a Fifth Amendment Privilege Assertion

Case	Court and Date	Congressional Committee	Was the Witness Convicted?	Disposition of Convictions	Case Excerpt
Quinn v. United States, 349 U.S. 155 (1955).	Supreme Court May 23, 1955	Comm. on Un-American Activities	Yes	Overturned	"...we must hold that petitioner's references to the Fifth Amendment were sufficient to invoke the privilege and that the court below erred in failing to direct a judgment of acquittal." <i>Quinn</i> , 349 U.S. at 165.
Emspak v. United States, 349 U.S. 190 (1955).	Supreme Court May 23, 1955	Comm. on Un-American Activities	Yes	Overturned	"...in the instant case, we do not think that petitioner's "No" answer can be treated as a waiver of his previous express claim under the Fifth Amendment." <i>Emspak</i> , 349 U.S. at 197.
Bart v. United States, 349 U.S. 219 (1955).	Supreme Court May 23, 1955	Comm. on Un-American Activities	Yes	Overturned	"Because of the consistent failure to advise the witness of the committee's position as to his objections, petitioner 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. Because of this defect in laying the necessary foundation for a prosecution under § 192, petitioner's conviction cannot stand under the criteria set forth more fully in <i>Quinn v. United States</i> ..." <i>Bart</i> , 319 U.S. at 223.
McPhaul v. United States, 364 U.S. 372 (1960).	Supreme Court Nov. 14, 1960	Comm. on Un-American Activities	Yes	Upheld	"The Fifth Amendment did not excuse petitioner from producing the records of the Civil Rights Congress, for it is well settled that "books and records kept 'in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even though production of the papers might tend to incriminate [their keeper] personally.'" <i>McPhaul</i> , 364 U.S. at 380.

CRS-2

Case	Court and Date	Congressional Committee	Was the Witness Convicted?	Disposition of Convictions	Case Excerpt
Marcello v. United States, 196 F.2d 437 (1952).	Fifth Circuit April 22, 1952	Special Committee on Organized Crime in Interstate Commerce (The Kefauver Committee)	Yes	Overturned	"We are clear that there was no waiver by the appellant of the privilege against self-incrimination in this case. The judgment appealed from is reversed, and a judgment of acquittal here rendered." <i>Marcello</i> , 196 F.2d at 445.
Jackins v. United States, 231 F.2d 405 (1956).	Ninth Circuit March 8, 1956	Comm. on Un-American Activities	Yes	Overturned	"Jackins' claim of privilege must be sustained since in the setting here described 'it was not 'perfectly clear, from a careful consideration of all the circumstances in the case, that the witness (was) mistaken, and that the answer(s) cannot possibly have such tendency' to incriminate.'... The judgment is reversed with directions to enter a judgment of acquittal upon all counts." <i>Jackins</i> , 231 F.2d at 410.
Fagerhaugh v. United States, 232 F.2d 803 (1956).	Ninth Circuit April 24, 1956	Comm. on Un-American Activities	Yes	Overturned	"We believe that <i>Quinn v. United States</i> requires a reversal of this conviction as it appears that the Committee did not indicate its refusal to accept the claim of privilege against self-incrimination, and did not 'demand' that the witness answer the question... The judgment is reversed with directions to enter a judgment of acquittal." <i>Fagerhaugh</i> , 232 F.2d at 805.
Shelton v. United States, 404 F.2d 1292 (1968).	D.C. Circuit August 14, 1968	Comm. on Un-American Activities	Yes	Upheld	"...the subpoena did not call upon Mr. Shelton to produce any personal papers, but only those of Klan organizations... The privilege accordingly was not available to him as a basis for refusing to produce." <i>Shelton</i> , 404 F.2d at 1301.

CRS-3

Case	Court and Date	Congressional Committee	Was the Witness Convicted?	Disposition of Convictions	Case Excerpt
United States v. Jaffe, 98 F. Supp. 191 (1951).	District Court for the D.C. Circuit May 28, 1951	Senate Comm. on Foreign Relations	No	n/a	"...having claimed the privilege granted to him by the Fifth Amendment to the Constitution, he should not have been required to give such testimony, and, therefore, it is the judgment of the Court that, in refusing to do so, he is not guilty of contempt." <i>Jaffe</i> , 98 F. Supp. at 198.
United States v. Fischetti, 103 F. Supp. 796 (1952).	District Court for the D.C. Circuit March 11, 1952	Senate Special Comm. to Investigate Organized Crime in Interstate Commerce (The Kefauver Committee)	No	n/a	"...the Court is of the opinion that it is required to grant the defendant's motion for judgment of acquittal." <i>Fischetti</i> , 103 F. Supp. at 799.
United States v. Hoag, 142 F. Supp. 667 (1956).	District Court for the D.C. Circuit July 6, 1956	Senate Committee on Government Operations	No	n/a	"...I reach the conclusion that the defendant did not waive her privilege under the Fifth Amendment and therefore did not violate the statute in question in refusing to answer the questions propounded to her. Therefore, I find that she is entitled to a judgment of acquittal on all counts." <i>Hoag</i> , 142 F. Supp. at 673.

Source: Searches of LexisNexis database

ATTACHMENT B

OPINIONS FROM 31 INDEPENDENT LEGAL EXPERTS IDENTIFYING CONSTITUTIONAL DEFICIENCIES IN CONTEMPT PROCEEDINGS

Experts Opinions on Lois Lerner Contempt Proceedings

1	Statement of Morton Rosenberg, Esq.	<u>Page 3</u>
2	Statement of Stanley Brand, former House Counsel	<u>Page 3</u>
3	Statement of Joshua Levy, Esq.	<u>Page 9</u>
4	Statement of Professor Julie Rose O’Sullivan	<u>Page 10</u>
5	Statement of Professor Samuel Buell	<u>Page 11</u>
6	Statement of Robert Muse, Esq.	<u>Page 12</u>
7	Statement of Professor Lance Cole	<u>Page 13</u>
8	Statement of Professor Renée Hutchins	<u>Page 14</u>
9	Statement of Professor Colin Miller	<u>Page 15</u>
10	Statement of Professor Thomas Crocker	<u>Page 17</u>
11	Statement of Thomas Spulak, former House Counsel	<u>Page 20</u>
12	Statement of Professor J. Richard Broughton	<u>Page 24</u>
13	Statement of Louis Fisher, Esq.	<u>Page 29</u>
14	Statement of Professor Steven Duke	<u>Page 32</u>
15	Statement of Emerita Professor Barbara Babcock	<u>Page 34</u>
16	Statement of Michael Davidson, Esq.	<u>Page 35</u>
17	Statement of Professor Robert Weisberg	<u>Page 36</u>

18	Statement of Professor Gregory Gilchrist	<u>Page 42</u>
19	Statement of Professor Lisa Kern Griffin	<u>Page 43</u>
20	Statement of Professor David Gray	<u>Page 44</u>
21	Statement of Dean JoAnne Epps	<u>Page 45</u>
22	Statement of Professor Stephen Saltzburg	<u>Page 47</u>
23	Statement of Professor Kami Chavis Simmons	<u>Page 48</u>
24	Statement of Professor Patrice Fulcher	<u>Page 49</u>
25	Statement of Professor Andrea Dennis	<u>Page 50</u>
26	Statement of Professor Katherine Hunt Federle	<u>Page 53</u>
27	Statement of Glenn Ivey, Esq.	<u>Page 54</u>
28	Statement of Professor Jonathan Rapping	<u>Page 55</u>
29	Statement of Professor Eve Brensike Primus	<u>Page 56</u>
30	Statement of Professor David Jaros	<u>Page 57</u>
31	Statement of Professor Alex Whiting	<u>Page 58</u>
	Additional Statement of Morton Rosenberg, Esq. Addressing Chairman Issa’s House Counsel Memo	<u>Page 59</u>

1. **Morton Rosenberg spent 35 years as a former Specialist in American Public Law at the non-partisan Congressional Research Service and is a former Fellow at the Constitution Project.**

2. **Stanley M. Brand, who served as General Counsel for the House of Representatives from 1976 to 1983, wrote that he agreed with Mr. Rosenberg's analysis.**

March 12, 2014

**To: Honorable Elijah E. Cummings
Ranking Minority Member,
House Committee on Oversight
And Government Reform**

**From: Morton Rosenberg
Legislative Consultant**

**Re: Constitutional Due Process Prerequisites for Contempt of Congress
Citations and Prosecutions**

You have asked that I discuss whether, at this point in the questioning of Ms. Lois Lerner, a witness in the Committee's ongoing investigation of alleged irregularities by the Internal Revenue Service (IRS) in the processing of applications by certain organizations for tax-exempt status, the appropriate constitutional foundation has been established for the Committee to initiate the process that would lead to her prosecution for contempt of Congress. My understanding of the requirements of the law in this area leads me to conclude that the requisite due process protections have not been met.

My views in this matter have been informed by my 35 years of work as a Specialist in American Public Law with the American Law Division of the Congressional Research Service, during which time I concentrated particularly on constitutional and practice issues arising from interbranch conflicts over information disclosures in the course of congressional oversight and investigations of executive agency implementation of their statutory missions. My understandings have been further refined by my preparation for testimony on investigative matters before many committees, including your Committee, and by the research involved in the writing and publication by the Constitution Project in 2009 of a monograph entitled "When Congress Comes Calling: A Primer on the Principles, Practices, and Pragmatics of Legislative Inquiry."

Briefly, the pertinent background of the situation is as follows. Ms. Lerner, who was formerly the Director of Exempt Organizations of the Tax-Exempt and Government Entities Division of IRS, was subpoenaed to testify

before the Committee on May 22, 2013. She appeared and after taking the oath presented an opening statement but thereafter refused to answer questions by Members, invoking her Fifth Amendment right against self-incrimination. The question was raised whether Ms. Lerner had effectively waived the privilege by her voluntary statements. On advice of counsel she continued to assert the privilege. Afterward, on dismissing Ms. Lerner and her counsel, Chairman Issa remarked "For this reason I have no choice but to excuse this witness subject to recall after we seek specific counsel on the question whether or not the constitutional right of the Fifth Amendment has been properly waived. Notwithstanding that, in consultation with the Department of Justice as to whether or not limited or use of unity [sic: immunity] could be negotiated, the witness and counsel are dismissed." Thus at the end of her initial testimony, there had been no express Committee determination rejecting her privilege claim nor an advisement that she could be subject to a criminal contempt proceeding. There was, however, some hint of granting statutory use immunity that would compel her testimony. On June 28, 2013, the Committee approved a resolution rejecting Ms. Lerner's privilege claim on the ground that she had waived it by her voluntary statements.

Still subject to the original subpoena, Ms. Lerner was recalled by the Committee on March 5, 2014. Chairman Issa's opening statement recounted the events of the May 22, 2013 hearing and the fact of the Committee's finding that she had waived her privilege. He then stated that "if she continues to refuse to answer questions from Members while under subpoena, the Committee may proceed to consider whether she will be held in contempt." In answer to the first question posed by Chairman Issa, Ms. Lerner expressly stated in response that she had been advised by counsel that she had not waived her privilege and would continue to invoke her privilege, which she did in response to all the Chair's further questions. After his final question Chairman Issa adjourned the hearing without allowing further questions or remarks by Committee members, and granted her "leave of said Committee," stating, "Ms. Lerner, you're released." At no time during his questioning did the Chair explicitly demand an answer to his questions, expressly overrule her claim of privilege, or make it clear that her refusal to respond would result in a criminal contempt prosecution.

In 1955 the Supreme Court announced in a trilogy of rulings that in order to establish a proper legal foundation for a contempt prosecution, a jurisdictional committee must disallow the constitutional privilege objection and clearly apprise the witness that an answer is demanded. A witness will not be forced to guess whether or not a committee has accepted his or her objection. If the witness is not able to determine “with a reasonable degree of certainty that the committee demanded his answer despite his objection,” and thus is not presented with a “clear-cut choice between compliance and non-compliance, between answering the question and risking the prosecution for contempt,” no prosecution for contempt may lie. *Quinn v. United States*, 349 U.S. 155, 166, 167 (1955); *Empsak v. United States*, 349 U.S. 190, 202 (1955). In *Bart v. United States*, 349 U.S. 219 (1955), the Court found that at no time did the committee overrule petitioner’s claim of self-incrimination or lack of pertinency, nor was he indirectly informed of the committee’s position through a specific direction to answer. A committee member’s suggestion that the chairman advise the witness of the possibility of contempt was rejected. The Court concluded that the consistent failure to advise the witness of the committee’s position as to his objections left him to speculate about this risk of possible prosecution for contempt and did not give him a clear choice between standing with his objection and compliance with a committee ruling. Citing *Quinn*, the Court held that this defect in laying the necessary constitutional foundation for a contempt prosecution required reversal of the petitioner’s conviction. 349 U.S. at 221-23. Subsequent appellate court rulings have adhered to the High Court’s guidance. See, e.g., *Jackins v. United States*, 231 F. 2d 405 (9th Cir. 1959); *Fagerhaugh v. United States*, 232 F. 2d 803 (9th Cir. 1959).

In sum, at no stage in this proceeding did the witness receive the requisite clear rejections of her constitutional objections and direct demands for answers nor was it made unequivocally certain that her failure to respond would result in criminal contempt prosecution. The problematic Committee determination that Ms. Lerner had waived her privilege, see, e.g., *McCarthy v. Arndstein*, 262 U.S. 355. 359 (1926) and *In re Hitchings*, 850 F. 2d 180 (4th Cir. 1980), occurred after the May 2013 hearing. Chairman Issa’s opening statement at the March 5, 2014 hearing, while referencing the waiver decision did not make it a substantive element of the Committee’s current concern and was never mentioned again during his interrogation of the witness. More significantly, the Chairman’s opening remarks were equivocal about the consequence of a failure

by Ms. Lerner to respond to his questions. As indicated above, he simply stated that “the Committee *may proceed to consider* whether she will be held in contempt.” Combined with his closing remarks in the May 2013 hearing, where he indicated he would be discussing the possibility of granting the witness statutory immunity with the Justice Department to compel her testimony, there could be no certainty for the witness and her counsel that a contempt prosecution was inevitable. Finally, it may be reiterated that the Chairman during the course of his most recent questioning never expressly rejected Ms. Lerner’s objections nor demanded that she respond.

I conclude that the requisite legal foundation for a criminal contempt of Congress prosecution mandated by the Supreme Court rulings in *Quinn, Emspak and Bart* have not been met and that such a proceeding against Ms. Lerner under 2 U.S.C. 194, if attempted, will be dismissed. Such a dismissal will likely also occur if the House seeks civil contempt enforcement.

You also inquire whether the waiver claim raised in the May 2013 hearing can be raised in a subsequent hearing to which Ms. Lerner might be again subpoenaed and thereby prevent her from invoking her Fifth Amendment rights. The courts have long recognized that a witness may waive the Fifth Amendment right to self-incrimination in one proceeding, and then invoke it later at a different proceeding on the same subject. See, e.g., *United States v. Burch*, 490 F.2d 1300, 1303 (8th Cir. 1974); *United States v. Licavoli*, 604 F. 2d 613, 623 (9th Cir. 1979); *United States v. Cain*, 544 F. 2d 1113,1117 (1st Cir. 1976); *In re Neff*, 206 F. 2d 149, 152 (3d Cir. 1953). See also, *United States v. Allman*, 594 F. 3d 981 (8th Cir. 2010) (acknowledging the continued vitality of the “same proceeding” doctrine: “We recognize that there is ample precedent for the rule that the waiver of the Fifth Amendment privilege in one proceeding does not waive that privilege in a subsequent proceeding.”). Since Ms. Lerner was released from her subpoena obligations by the final adjournment of the Committee’s hearing, a compelled testimonial appearance at a subsequent hearing on the same subject would be a different proceeding.

In addition, Stanley M. Brand has reviewed this memorandum and fully subscribes to its contents and analysis.

Mr. Brand served as General Counsel for the House of Representatives from 1976 to 1983 and was the House’s chief legal officer responsible for representing the House, its members, officers, and employees in connection with legal procedures and challenges to the conduct of their official activities. Mr. Brand represented the House and its committees before both federal district and appellate courts, including the U.S. Supreme Court, in actions arising from the subpoena of records by the House and in contempt proceedings in connection with congressional demands.

In addition to the analysis set forth above, Mr. Brand explained that a review of the record from last week’s hearing reveals that at no time did the Chair expressly overrule the objection and order Ms. Lerner to answer on pain of contempt. Making it clear to the witness that she has a clear cut choice between compliance and assertion of the privilege is an essential element of the offense and the absence of such a demand is fatal to any subsequent prosecution.

3. **Joshua Levy, a partner in the firm of Cunningham and Levy and an Adjunct Professor of Law at the Georgetown University Law Center who teaches Congressional Investigations, said:**

“Contempt cannot be born from a game of gotcha. Supreme Court precedents that helped put an end to the McCarthy era ruled that Congress cannot initiate contempt proceedings without first giving the witness due process. For example, Congress cannot hold a witness in contempt without directing her to answer the questions being asked, overruling her objections and informing her, in clear terms, that her refusal to answer the questions will result in contempt. None of that occurred here.”

4. Julie Rose O’Sullivan, a former federal prosecutor and law clerk to Supreme Court Justice Sandra Day O’Connor and current a Professor at the Georgetown University Law Center, said:

“The Supreme Court has spoken—repeatedly—on point. Before a witness may be held in contempt under 18 U.S.C. sec. 192, the government bears the burden of showing ‘criminal intent—in this instance, a deliberate, intentional refusal to answer.’ *Quinn v. United States*, 349 U.S. 155, 165 (1955). This intent is lacking where the witness is not faced with an order to comply or face the consequences. Thus, the government must show that the Committee ‘clearly apprised [the witness] that the committee demands his answer notwithstanding his objections’ or ‘there can be no conviction under [sec.] 192 for refusal to answer that question.’ *Id.* at 166. Here, the Committee at no point directed the witness to answer; accordingly, no prosecution will lie. This is a result demanded by common sense as well as the case law. ‘Contempt’ citations are generally reserved for violations of court or congressional orders. One cannot commit contempt without a qualifying ‘order.’”

5. Samuel W. Buell, a former federal prosecutor and current Professor of Law at Duke University Law School, said:

“[T]he real issue for me is the pointlessness and narrow-mindedness of proceeding in this way. Contempt sanctions exist for the purpose of overcoming recalcitrance to testify. One would rarely if ever see this kind of procedural Javert-ism from a federal prosecutor and, if one did, one would expect it to be condemned by any federal judge before whom such a motion were made.

In federal court practice, contempt is not sought against grand jury witnesses as a kind of gotcha penalty for invocations of the Fifth Amendment privilege that might turn out to contain some arguable formal flaw. Contempt is used to compel witnesses who have asserted the privilege and then continued to refuse to testify after having been granted immunity. Skirmishing over the form of a privilege invocation is a wasteful sideshow. The only question that matters, and that would genuinely interest a judge, is whether the witness is in fact intending to assert the privilege and in fact has a legitimate basis to do so. The only questions of the witness that therefore need asking are the kind of questions (and a sufficient number of them) that will make the record clear that the witness is not going to testify. Usually even that process is not necessary and a representation from the witness’s counsel will do.

Again, contempt sanctions are on the books to serve a simple and necessary function in the operation of legal engines for finding the truth, and not for any other purpose. Any fair and level-headed judge is going to approach the problem from that perspective. Seeking contempt now on this record thus could accomplish nothing but making the Committee look petty and uninterested in getting to the merits of the matter under investigation.”

- 6. Robert Muse, a partner at Stein, Mitchell, Muse & Cipollone, LLP, Adjunct Professor of Congressional Investigations at Georgetown Law, and formerly the General Counsel to the Special Senate Committee to Investigate Hurricane Katrina, said:**

“Procedures and rules exist to provide justice and fairness. In his rush to judgment, Issa forgot to play by the rules.”

7. Professor Lance Cole of Penn State University's Dickinson School of Law, said:

"I agree with the analysis and conclusions of Mr. Rosenberg, and the additional comments by Mr. Brand. I also have a broader concern about seeking criminal contempt sanctions against Ms. Lerner. I do not believe criminal contempt proceedings should be utilized in a situation in which a witness is asserting a fundamental constitutional privilege and there is a legitimate, unresolved legal issue concerning whether or not the constitutional privilege has been waived. In that situation initiating a civil subpoena enforcement proceeding to obtain a definitive judicial resolution of the disputed waiver issue, prior to initiating criminal contempt proceedings, would be preferable to seeking criminal contempt sanctions when there is a legitimate issue as to whether the privilege has been waived and that legal issue inevitably will require resolution by the judiciary. Pursuing a criminal contempt prosecution in this situation, when the Committee has available to it the alternatives of either initiating a civil judicial proceeding to resolve the legal dispute on waiver or granting the witness statutory immunity, is unnecessary and could have a chilling effect on the constitutional rights of witnesses in congressional proceedings."

8. **Renée Hutchins is a former federal prosecutor, current appellate defense attorney, and Associate Professor of Law at the University of Maryland Carey School of Law. She said:**

"America is a great nation in no small part because it is governed by the rule of law. In a system such as ours, process is not a luxury to be afforded the favored or the fortunate. Process is essential to our notion of equal justice. In a contempt proceeding like the one being threatened the process envisions, at minimum, a witness who has refused to comply with a valid order. But a witness cannot refuse to comply if she has not yet been told what she must do. Our system demands more. Before the awesome powers of government are brought to bear against individual Americans we must be vigilant, now and always, to ensure that the process our fellow citizens confront is a fair one."

9. Colin Miller is an Associate Professor of Law at the University of South Carolina School of Law whose areas of expertise include Evidence, as well as Criminal Law and Procedure. He wrote:

In this case, the witness invoked the Fifth Amendment privilege, the Committee Chairman recessed the hearing, and the Chairman now wants to hold the witness in contempt based upon the conclusion that she could not validly invoke the privilege. Under these circumstances, the witness cannot be held in contempt. Instead, the only way that the witness could be held in contempt is if the Committee Chairman officially ruled that the Fifth Amendment privilege was not available, instructed the witness to answer the question(s), and the witness refused.

As the United States District Court for the Northern District of Illinois noted in *United States ex rel. Berry v. Monahan*, 681 F.Supp. 490, 499 (N.D.Ill. 19988),

If the law were otherwise, a person with a meritorious fifth amendment objection might not assert the privilege at all simply because of fear that the judge would find the invocation erroneous and hold the person in contempt. In that scenario, the law would throw the person back on the horns of the "cruel trilemma" for in order to insure against the contempt sanction the person would have to either lie or incriminate himself.

The Northern District of Illinois is not alone in this conclusion. Instead, it cited as support:

Traub v. United States, 232 F.2d 43, 49 (D.C.Cir.1955) ("no contempt can lie unless the refusal to answer follows an adverse ruling by the court on the claim of the privilege or clear direction thereafter to answer" (*citation omitted*)); *Carlson v. United States*, 209 F.2d 209, 214 (1st Cir.1954) ("the claim of privilege calls upon the judge to make a ruling whether the privilege was available in the circumstances presented; and if the judge thinks not, then he instructs the witness to answer"). See also *Wolfe v. Coleman*, 681 F.2d 1302, 1308 (11th Cir.1982) (the petition for the writ in a contempt case failed because the court had found the petitioner's first amendment objection invalid before ordering him to answer); *In re Investigation Before the April 1975 Grand Jury*, 531 F.2d 600, 608 (D.C.Cir.1976) (a witness is subject to contempt if the witness refuses to answer a grand jury question previously found not to implicate the privilege). Compare *Maness v. Meyers*, 419 U.S. 449, 459, 95 S.Ct. 584, 591, 42 L.Ed.2d 574 (1975) ("once the court has ruled, counsel and others involved in the action must abide by the ruling and comply with the court's orders" (emphasis added)); *United States v. Ryan*, 402 U.S. 530, 533, 91 S.Ct. 1580, 1582, 29 L.Ed.2d 85 (1971) (after the court rejects a witness' objections, the witness is confronted with the decision to comply or be held in contempt if his objections to testifying are rejected again on appeal).

Most importantly, it cited the Supreme Court's opinion in *Quinn v. United States*, 349 U.S. 155 (1955), in support

The Supreme Court in *Quinn v. United States*, 349 U.S. 155, 75 S.Ct. 688, 99 L.Ed. 964 (1955) held that in congressional-committee hearings the committee must clearly dispose of the witness' fifth amendment claim and order that witness to answer before the committee invokes its contempt power. *Quinn v. United States*, 349 U.S. 155, 167–68, 75 S.Ct. 668, 675–76, 99 L.Ed.

964 (1955). According to *Quinn*, “unless the witness is clearly apprised that the committee demands his answer notwithstanding his objections,” the witness' refusal to answer is not contumacious because the requisite intent element of the congressional-contempt statute is lacking. *Id.* at 165–66, 75 S.Ct. at 674–75 (discussing 2 U.S.C. § 192). The court further stated that “a clear disposition of the witness' objection is a prerequisite to prosecution for contempt.”

Therefore, *Quinn* clearly stands for the proposition that the witness in this case cannot be held in contempt of COurt.

Sincerely,

Colin Miller
University of South Carolina School of Law

10. **Thomas Crocker is a Distinguished Professor of Law at the University of South Carolina School of Law who teaches courses in teaches Constitutional Law, Criminal Procedure, as well as seminars in Jurisprudence.**

21 March 2014

Honorable Elijah E. Cummings
Ranking Minority Member
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Honorable Cummings:

After reviewing materials relevant to the recent appearance of Ms. Lois Lerner as a witness before the Committee, I conclude that that no legal basis exists for holding her in contempt. Specifically, I agree with the legal analysis and conclusions Morton Rosenberg reached in the memo provided to you. Let me add a few thoughts as to why I agree.

The Fifth Amendment privilege against self-incrimination has deep constitutional roots. As the Supreme Court explained, the privilege is “of great value, a protection to the innocent though a shelter to the guilty, and a safeguard against heedless, unfounded, or tyrannical prosecutions.” *Quinn v. United States*, 349 U.S. 155, 161-62 (1955). Because of its importance, procedural safeguards exist to ensure that government officials respect “our fundamental values,” which “mark[] an important advance in the development of our liberty.” *Kastigar v. United States*, 406 U.S. 441, 444 (1972). As the Supreme Court made clear in a trio of cases brought in response to congressional contempt proceedings, before a witness can be held in contempt under 18 U.S.C. sec. 192, a committee must “directly overrule [a witness’s] claims of self incrimination.” *Bart v. United States*, 349 U.S. 219, 222 (1955). “[U]nless the witness is clearly apprised that the committee demands his answer notwithstanding his objections, there can be no conviction under sec. 192 for refusal to answer that question.” *Quinn*, 349 U.S. at 166. Without this clear appraisal, and without a subsequent refusal, the statutory basis for violation of section 192 does not exist. This reading of the statutory requirements under section 192, required by the Supreme Court, serves the constitutional purpose of protecting the values reflected in the Fifth Amendment.

Reviewing the proceedings before the House Oversight Committee, it is clear that Chairman Darrell Issa did not overrule the witness’s assertion of her Fifth Amendment privilege. As a result, the witness was “never confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt.” *Empsak v. United States*, 349 U.S. 190, 202 (1955). Without that choice, then under section 192, the witness lacks the relevant intent, and therefore does not meet an essential element necessary for a claim of contempt. This is not a close or appropriately debatable case.

In addition, I understand that arguments have been made that Ms. Lerner waived her Fifth Amendment privilege in making an opening statement to the Committee and in authenticating earlier answers to the Inspector General. Although I would conclude that Ms. Lerner did not waive her right to invoke a Fifth Amendment privilege against testifying, resolution of this legal question is not relevant to the question of whether the proper foundation exists for a contempt of Congress claim under section 192. Even if the witness had waived her privilege, Chairman Issa failed to follow the minimal procedural safeguards required by the Supreme Court as a prerequisite for a contempt charge.

Sincerely,

Thomas P. Crocker, J.D., Ph.D.
Distinguished Professor of Law

- 11. Thomas Spulak served as General Counsel of the House of Representatives from 1994-1995. He wrote in a statement to Ranking Member Cummings:**

THOMAS J. SPULAK, ESQ.

1700 PENNSYLVANIA AVENUE, N. W.

202-661-7948

March 20, 2014

Honorable Elijah Cummings

Ranking Member

WASHINGTON, DC 20006

Committee on Oversight and Government Reform

U. S. House of Representatives

24 71 Rayburn Office Building

Washington, DC 20515

Dear Representative Cummings:

I write to you in response to your request for my views on the matter involving Ms. Lois Lerner currently pending before the Committee on Oversight and Government Reform (the "Committee"). I do so out of my deep concerns for the constitutional integrity of the U.S. House of Representatives, its procedures and its future precedents. I have no association with the matter whatsoever.

I have read reports in the Washington Post regarding the current proceedings involving Ms. Lois Lerner and especially the question of whether an appropriate and adequate constitutional predicate has been laid to serve as the basis for a charge of contempt of Congress. In my opinion, it has not.

I have deep respect for Chairman Darrell Issa and his leadership of the Committee. But the matter before the Committee is a relatively rare occurrence and must be dispatched in a constitutionally required manner for the good of this and future

Congresses.

I have reviewed the memorandum that Mr. Morton Rosenberg presented to you on March 12th of this year. As you may know, Mr. Rosenberg is one of the leading scholars on the U.S. Congress, its procedures and the constitutional foundation. He has been relied upon by members and staff of both parties for over 30 years. I first met Mr. Rosenberg in the early 1980s when I was Staff Director and General Counsel of the House Rules Committee. He was an important advisor to the members of the Rules Committee then and has been for years after. While perhaps there have been times when some may have disagreed with his position, I know of no instance where his objectivity or commitment-to the U.S. Congress has ever been questioned.

Based on my experience, knowledge and understanding of the facts, I fully agree with Mr. Rosenberg's March 12th memorandum.

I have also reviewed Chairman Issa's letter to you dated March 14th of this year. His letter is very compelling and clearly states the reasons that he believes a proper foundation for a charge of contempt of Congress has been laid. For example, he indicates that on occasions, Ms. Lerner knew or should have known that the Committee had rejected her Fifth Amendment privilege claim, either through the Chairman's letter to her attorney or to reports of the same that appeared in the media. The fact of the matter, however, is that based on relevant Supreme Court rulings, the pronouncement must occur with the witness present so that he or she can understand the finality of the decision, appreciate the consequences of his or her continued silence, and have an opportunity to decide otherwise at that time.

I agree with the Chairman's reading of *Quinn v. United States* in that there is no requirement to use any "fixed verbal formula" to convey to the witness the Committee's decision. But, I believe that the Court does require that whatever words are used be delivered to the witness in a direct, unequivocal manner in a setting that allows the

witness to understand the seriousness of the decision and the opportunity to continue to insist on invoking the privilege or revoke it and respond to the Committee's questioning. That, as I understand the facts, did not occur.

In conclusion, I quote from Mr. Rosenberg's memorandum and agree with him when he said-

... [A]t no stage in [the] proceeding did the witness receive the requisite clear rejections of her constitutional objections and direct demands for answers nor was it made unequivocally certain that her failure to respond would result in criminal contempt prosecution.

Accordingly, I do not believe that the proper basis for a contempt of Congress charge has been established. Ultimately, however, this will be determined by members of the Judicial Branch.

Sincerely,

Thomas J. Spulak

- 12. J. Richard Broughton is a Professor of Law at the University of Detroit Mercy School of Law and a member of the Republican National Lawyers Association.**

MEMORANDUM

TO: Donald K. Sherman, Counsel
House Oversight & Government Reform Committee

FROM: J. Richard Broughton, Associate Professor of Law
University of Detroit Mercy School of Law

RE: Legal Issues Related to Possible Contempt of Congress Prosecution

DATE: March 17, 2014

You have asked for my thoughts regarding the possibility of a criminal contempt prosecution pursuant to 2 U.S.C. §§ 192 & 194 against Lois Lerner, in light of the assertion that the Committee violated the procedures necessary for permitting such a prosecution. My response here is intended to be objective and non-partisan, and is based on my own research and expertise. I am a full-time law professor, and my areas of expertise include Constitutional Law, Criminal Law, and Criminal Procedure, with a special focus on Federal Criminal Law. I previously served as an attorney in the Criminal Division of the United States Department of Justice during the Bush Administration. These views are my own and do not necessarily reflect the views of the University of Detroit Mercy or anyone associated with the University.

The power of Congress to hold a witness in contempt is an important tool for carrying out the constitutional functions of the legislative branch. Lawmaking and oversight of the other branches require effective fact-finding and the cooperation of those who are in a position to assist the Congress in gathering information that will help it to do its job. Like any other criminal sanction, however, the contempt power must be used prudently, not for petty revenge or partisan gain. It should also be used with appropriate respect for countervailing constitutional rights and with proof that the accused contemnor possessed the requisite level of culpability in failing to answer questions. The Supreme Court has held that a recalcitrant witness's culpable mental state can only be established after the Committee has unequivocally rejected a witness's objection to a question and then demanded an answer to that question, even where the witness asserts the Fifth Amendment privilege. Absent such a formal rejection and subsequent directive, the witness – here, Ms. Lerner – would likely have a defense to any ensuing criminal prosecution for contempt, pursuant to the existing Supreme Court precedent. Those who are concerned about the reach of federal power should desire legally sufficient proof of a person's culpable mental state before permitting the United States to seek and impose criminal punishment.

Whether the precedents are sound, or whether they require such formality, however, is another matter. As set forth in the Rosenberg memorandum of March 12, 2014, the relevant cases are *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). *Quinn* contains the most detailed explanation of the procedural requirements for using section 192. Mr. Rosenberg's thoughtful memo correctly describes the holding in these cases. Still, those cases are not a model of clarity and their application to the Lerner matter is subject to some greater exploration.

One could argue that the Committee satisfied the rejection-then-demand requirement here, when we view the May 22, 2013 and March 5, 2014 hearings in their totality. At the May 22, 2013 hearing, Chairman Issa indicated to Ms. Lerner that he believed she had waived the

privilege (a contention bolstered by Rep. Gowdy at that hearing). The Committee then voted 22 to 17 on June 28, 2013 in favor of a resolution stating that she had waived the privilege. The Chairman then referred to this resolution in his opening statement on March 5, 2014, in the presence of Ms. Lerner and her counsel. And at each hearing, Chairman Issa continued to ask questions of her even after she re-asserted the privilege, thus arguably further demonstrating to her that the chair did not accept her invocation. Consequently, it could be argued that these actions placed her on adequate notice that her assertion of the privilege was unacceptable and that she was required to answer the questions propounded to her, which is why the Chairman continued with his questioning on March 5. Her refusal to answer was therefore intentional.

This argument is problematic, however, particularly if we read the cases as imposing a strict requirement that the specific question initially propounded be repeated and a demand to answer *it* made after formally rejecting the witness's invocation of privilege *as to that question*. And that is a fair reading of the cases. Although the Court said that no fixed verbal formula is necessary when rejecting a witness's objection, the witness must nevertheless be "fairly apprised" that the Committee is disallowing it. See *Quinn*, 349 U.S. at 170. Even Justice Reed's *Quinn* dissent, which criticized the demand requirement, conceded that the requisite mens rea for contempt cannot be satisfied where the witness is led to believe that – or at least confused about whether – her invocation of the privilege is acceptable. See *id.* at 187 (Reed, J., dissenting). Here, the Committee appeared equivocal at the first hearing. Although Chairman Issa's original rejection on May 22, 2013 was likely satisfactory (and bolstered by Rep. Gowdy's argument), it was not followed by a demand to answer the specific question propounded. He then moved onto other questions. On March 5, 2014, the Committee's conduct was also equivocal, because even though the Committee had approved a resolution stating that she had waived the privilege, and the Chairman referred to that resolution in his opening statement, the Committee never formally overruled her assertion of the privilege upon her repeated invocations of it (though it could easily have done so, by telling her that the resolution of June 28, 2013 still applied to each question she would be asked on March 5, 2014). Nor did the Committee demand answers to those same questions. Ms. Lerner was then excused each time and was never compelled to answer.

The problem, then, is not that the Committee failed to notify Ms. Lerner generally that it rejected her earlier assertion of privilege. Rather, the problem is that the Committee did not specifically overrule *each* invocation on either May 22, 2013 or March 5, 2014 and then demand an answer to *each* question previously asked. This is a problem because the refusal to answer each question constitutes a distinct criminal offense for which the mens rea must be established. Therefore, Ms. Lerner could have been confused about whether her invocation of the privilege as to each question was now acceptable – the waiver resolution and the Chair's reference to it notwithstanding – especially after her attorney had assured her that she did *not* waive the privilege. A fresh ruling disputing her counsel's advice would have clarified the Committee's position, but did not occur. But even if she could not have been so confused, she would likely have a persuasive argument that this process was still not sufficient under *Quinn*, absent a ruling on *each* question propounded *and* a demand that she answer the question initially asked of her prior to her invocation of the privilege.

Of course, none of this is to say that the cases are not problematic. *Quinn* is not clear about whether a general rejection of a witness's previous assertion of the privilege – like the one we have here via resolution and reference in an opening statement – would suffice as a method

for overruling an invocation of privilege on each and every question asked (as opposed to informing the witness after each invocation that the invocation is unacceptable). The best reading of *Quinn* is that although it does not require a talisman, it does require that the witness be clearly apprised as to each question that her objection to it is unacceptable. And that would seem to require a separate rejection and demand upon each invocation. *Quinn* also specifically states that once the Committee reasonably concludes that the witness has invoked the Fifth Amendment privilege, the privilege “must be respected.” *Quinn*, 349 U.S. at 163. Yet *Quinn* later states that when a witness asserts the privilege, a contempt prosecution may lie only where the witness refuses the answer once the committee has disallowed the objection and demanded an answer. *Id.* at 166. This would often put the committee in an untenable position. If the committee must respect an assertion of the privilege, then it cannot overrule the invocation of the privilege and demand an answer. For if the committee must decide to overrule the objection and demand an answer, then the committee is not respecting the assertion of the privilege. Perhaps the Court meant something different by “respect;” but its choice of language is confusing.

Also, the cases base the demand requirement on the problem of proving mens rea. Although the statute does not explicitly set forth the “deliberate and intentional” mens rea, the Court has held that the statute requires this. *See Sinclair v. United States*, 279 U.S. 263, 299 (1929). Contrary to *Quinn*, it is possible to read the statute as saying that the offense is complete once the witness refuses to answer a question, especially once it is made clear that the Committee rejects the underlying objection to answering. That reading is made even more plausible if the witness already knows that she may face contempt if she asserts the privilege and refuses to answer. Justice Reed raised this problem, *see Quinn*, 349 U.S. at 187 (Reed, J., dissenting), as did Justice Harlan, who went even farther in his *Emspak* dissent by saying that the rejection-then-demand requirement has no bearing on the witness’s state of mind as of the time she initially refuses to answer. *See Emspak*, 349 U.S. at 214 (Harlan, J., dissenting). Here, Chairman Issa asked Ms. Lerner a series of questions that she did not answer, asserting the privilege instead. There remains a plausible argument that this, combined with the Chairman’s initial statement that she had waived the privilege and the subsequent resolution of June 28, 2013, is enough to prove that she acted intentionally in refusing, even without a subsequent demand. That argument, however, would require reconsideration of the holding in *Quinn*.

Third, the Rosenberg memo adds that the witness must be informed that failure to respond *will* result in a criminal contempt prosecution. That, however, also places the committee in an untenable position. A committee cannot assure such a prosecution. Pursuant to section 194 and congressional rules, the facts must first be certified by the Speaker of the House and the President of the Senate, the case must be referred to the United States Attorney, and the United States Attorney must bring the case before a grand jury (which could choose not to indict). Even if the committee believes the witness should be prosecuted, that result is not inevitable. Therefore, because the committee alone is not empowered to initiate a contempt prosecution, requiring the committee to inform the witness of the inevitability of a contempt prosecution would be inconsistent with federal law (section 194). Perhaps what Mr. Rosenberg meant was simply that the witness must be told that the committee would refer the case to the full Congress.

Even assuming the soundness of the rejection-and-demand requirement (which we should, as it is the prevailing law), and assuming it was not satisfied here, this does not necessarily preclude some future contempt prosecution against Ms. Lerner under section 192. If

the Committee were to recall Ms. Lerner, question her, overrule her assertion of privilege and demand an answer to the same question(s) at that time, then her failure to answer would apparently satisfy section 192. In the alternative, the Committee could argue that *Quinn, et al.* were wrong to require the formality of an explicit rejection and a subsequent demand for an answer in order to prove mens rea. That question would then have to be subject to litigation.

Finally, although beyond the scope of your precise inquiry, I continue to believe that any discussion of using the contempt of Congress statutes must consider that the procedure set forth in section 194 potentially raises serious constitutional concerns, in light of the separation of powers. See J. Richard Broughton, *Politics, Prosecutors, and the Presidency in the Shadows of Watergate*, 16 CHAPMAN L. REV. 161 (2012).

I hope you find these thoughts helpful. I am happy to continue assisting the Committee on this, or any other, matter.

13. **Louis Fisher, Adjunct Scholar at the CATO Institute and Scholar in Residence at the Constitution Project.**

I am responding to your request for thoughts on holding former IRS official Lois Lerner in contempt. They reflect views developed working for the Library of Congress for four decades as Senior Specialist in Separation of Powers at Congressional Research Service and Specialist in Constitutional Law at the Law Library. I am author of a number of books and treatises on constitutional law. For access to my articles, congressional testimony, and books see <http://loufisher.org>. Email: lfisher11@verizon.net. After retiring from government in August 2014, I joined the Constitution Project as Scholar in Residence and continue to teach courses at the William and Mary Law School.

I will focus primarily on your March 5, 2014 hearing to examine whether (1) Lerner waived her constitutional privilege under the Fifth Amendment self-incrimination clause, (2) there is no expectation that she will cooperate with the committee, and (3) the committee should therefore proceed to hold her in contempt. For reasons set forth below, I conclude that if the House decided to hold her in contempt and the issue litigated, courts would decide that the record indicated a willingness on her part to cooperate with the committee to provide the type of information it was seeking. Granted that she had complicated her Fifth Amendment privilege by making a voluntary statement on May 22, 2013 (that she had done nothing wrong, not broken any laws, not violated any IRS rules or regulations, and had not provided false information to House Oversight or any other committee), the March 5 hearing revealed an opportunity to have her provide facts and evidence to House Oversight to further its investigation.

The March 5 hearing began with Chairman Issa stating that the purpose of meeting that morning was “to gather facts about how and why the IRS improperly scrutinized certain organizations that applied for tax-exempt status.” He reviewed the committee’s inquiry after May 22, 2013, including 33 transcribed interviews of witnesses from the IRS. He then stated: “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.” He asked her, under oath, whether her testimony would be the truth, the whole truth, and nothing but the truth. She replied in the affirmative. He proceeded to ask her nine questions. Each time she answered: “On the advice of my counsel I respectfully exercise my Fifth Amendment right and decline to answer that question.” With the initial warning from Chairman Issa, followed by nine responses taking the Fifth, the committee might have been in a position to consider holding her in contempt. However, the final question substantially weakens the committee’s ability to do that in a manner that courts will uphold.

Chairman Issa, after asking the eighth question, said the committee’s general counsel had sent an e-mail to Lerner’s attorney, saying “I understand that Ms. Lerner is willing to testify and she is requesting a week’s delay.” The committee checked to see if that information was correct and received a one-word response to that question from her attorney: “Yes.” Chairman Issa asked Ms. Lerner: “Are you still seeking a one-week delay in order to testify?” She took the Fifth, but might have been inclined to answer in the affirmative but decided to rely on the privilege out of concern that a positive answer could be interpreted as waiving her constitutional right. When she chose to make an opening statement on May 22, 2013, and later took the Fifth, she was openly challenged as having waived the privilege. The hearing on March 5 is unclear on her willingness to testify. For purposes of holding someone in contempt, the record should be clear without any ambiguity or uncertainty.

These are the final words from Chairman Issa: “Ladies and Gentlemen, seeking the truth is the obligation of this Committee. I can see no point in going further. I have no expectation that Ms. Lerner will cooperate with this committee. And therefore we stand adjourned.”

If it is the committee’s intent to seek the truth, why not fully explore the possibility that she would, supported by her attorney, be willing to testify after a short delay of one week? According to a news story, her attorney, William Taylor, agreed to a deposition that would satisfy “any obligation she has or would have to provide information in connection with this investigation.”

<http://www.usatoday.com/story/news/politics/2014/03/03/lois-lerner-testimony-lawyer-emails/5981967>.

Why would a delay of one week interfere with the committee’s investigation that has thus far taken nine and a half months? Why not, in pursuit of facts and evidence, probe this opportunity to obtain information from her, particularly when Chairman Issa and the committee have explained that she has important information that is probably not available from any other witness? With his last question, Chairman Issa raised the “expectation” that she would cooperate with the committee if given an additional week. Under these conditions, I think the committee has not made the case that she acted in contempt. If litigation resulted, courts are likely to reach the same conclusion.

14. **Steven Duke, a former law clerk to Supreme Court Justice William O. Douglas and a current criminal procedure professor at Yale University Law School.**

March 20, 2014

To: Honorable Elijah E. Cummings, Ranking Minority Member, House Committee on Oversight and Government Reform

From: Steven B. Duke, Professor of Law, Yale Law School

Re: Prerequisites for Contempt of Congress Citations and Prosecutions

At the request of your Deputy Chief Counsel, Donald Sherman, I have reviewed video recordings of proceedings before the Committee regarding the testimony of Ms. Lois Lerner, including her claims of privilege and the remarks of Chairman Issa regarding those claims. I have also reviewed the March 12, 2014 report to you by Morton Rosenberg, legislative consultant, and the case law cited therein. I have also done some independent research on the matter. Based on those materials and my own experience as a teacher and scholar of evidence and criminal procedure for five decades, I concur entirely with the conclusions reached in Mr. Rosenberg's report that a proper basis has not been laid for a criminal contempt of Congress prosecution of Ms. Lerner.

I also agree with Mr. Rosenberg's conclusion that whether or not Ms. Lerner waived her Fifth Amendment privilege during the May, 2013 proceedings, any new efforts to subpoena and obtain testimony from Ms. Lerner will be accompanied by a restoration of her Fifth Amendment privilege, since that privilege may be waived or reasserted in separate proceedings without regard to what has previously occurred, that is, the privilege may be waived in one proceedings and lawfully reasserted in subsequent proceedings.

15. Barbara Babcock, Emerita Professor of Law at Stanford University Law School has taught and written in the fields of civil and criminal procedure. She said:

“I agree completely with the memo from Morton Rosenberg about the requirements for laying a foundation before a contempt citation can be issued: a minimal and long-standing requirement for due process. In addition, it is preposterous to think she waived her Fifth Amendment right with the short opening statement on her previous appearance.”

16. Michael Davidson is a Visiting Lecturer at Georgetown University on National Security and the Constitution. He wrote:

"I watched the tape of the March 5, 2014 hearing, by way of the link that you sent me. I also read Mort Rosenberg's memorandum to Ranking Member Cummings.

It seems to me the Committee is still midstream in its interaction with Ms. Lerner. Whatever may have occurred on May 22, 2013 (I have not watched that tape), the Chairman asked a series of questions on March 5, 2014, Ms. Lerner asserted privilege under the Fifth Amendment, but the Chairman did not rule with respect to his March 5 questions and Ms. Lerner's assertion of privilege with respect to them.

As Mr. Rosenberg's memorandum indicates, several Supreme Court decisions should be considered. It would be worthwhile, I believe, to focus on the discussion of 2 U.S.C. 192 in *Quinn v. United States*, 349 U.S. 155, 165-70 (1955). For a witness's refusal to testify to be punishable as a crime under Section 192, there must be a requisite criminal intent. Under the Supreme Court's decision in *Quinn*, "unless the witness is clearly apprised that the committee demands his answer notwithstanding his objections, there can be no conviction under [section] 192 for refusal to answer that question." 349 U.S. at 166.

From the March 5 tape, it appears that the Chairman did not demand that Ms. Lerner answer, notwithstanding her assertion of privilege, any of the questions asked on March 5, and therefore in the words of *Quinn* there could be no conviction for refusal to answer "that question," meaning any of the questions asked on March 5.

The Committee could, of course, seek to complete the process begun on March 5. If I were counseling the Committee, which I realize I am not, I'd suggest the value of inviting Ms. Lerner's attorney to submit a memorandum of law on her assertion of privilege. That could include whether on May 22, 2013 she had waived her Fifth Amendment privilege for questions asked then and whether any waiver back then carried over to the questions asked on March 5, 2014. Knowing her attorney's argument, the Committee could then consider the analysis of its own counsel or any independent analysis it might wish to receive. If it then decided to overrule Ms. Lerner's assertion of privilege, she could be recalled, her assertion of privilege on March 5 overruled, and if so she could then be directed to respond."

17. **Robert Weisberg is the Edwin E. Huddleson, Jr. Professor of Law and Director of the Stanford Criminal Justice Center at Stanford University Law School.**

To: Rep. Elijah Cummings, Ranking Member
Committee on Oversight & Government Reform
United States House of Representatives

March 21, 2014

From: Robert Weisberg, Stanford Law School

Contempt Issue In Regard To Witness Lois Lerner

Dear Rep. Cummings:

You have asked my legal opinion as to whether Chairman Issa has laid the proper foundation for a contempt charge against Ms. Lerner. My opinion is that he has not.

I base this opinion on a review of what I believe to be the relevant case law. Let me note, however, that I have undertaken this review on a very tight time schedule and therefore (a) I cannot claim to have exhausted all possible avenues of research, and (b) the following remarks are more conclusory and informal than scholarly would call for.

The core of my opinion is that the sequence of colloquies at the May 22, 2013 hearing and the March 5, 2014 hearing do not establish the criteria required under 2 U.S.C. sec. 192, as interpreted by the Supreme Court in *Quinn v. United States*, 349 U.S. 155 (1956); *Empsak v. United States*, 349 U.S. 190 (1956), and *Bart v. United States*, 349 U.S. 219 (1956). The clear holding of these cases is that a contempt charge may not lie unless the witness has been presented “with a clear-cut-choice between compliance and non-compliance, between answering the question and risking the prosecution for contempt.” *Quinn*, at 167. Put in traditional language of criminal law, the actus reus element of under section 192 is an express refusal to answer in the face of a categorical declaration that the refusal is legally unjustified..

I know that your focus is on the March 5, 2014 hearing, but I find it useful to first look at the earlier hearing. In my view, the Chairman essentially conceded that contempt had not occurred on May 22, 2013, because rather than frame the confrontation unequivocally as required by section 192, he excused the witness subject to recall, wanting to confirm with counsel whether the witness had waived the privilege by her remarks on that day. Moreover, as I understand it, the Chair at least considered the possibility offering the witness immunity after May 22. Under *Kastigar v. United States*, 406 US 441 (1972), use immunity is a means by which the government can simultaneously respect the witness’s privilege and force her to testify. It makes little sense for the government to even consider immunity unless it believes it at least possible that the witness still holds the privilege. Thus, in my view, the government may effectively be estopped from alleging that the witness was in contempt at that point.

Nor, in my view, was the required confrontation framed at the March 5, 2014 hearing. Instead of directly confronting Ms. Lerner on her refusal to answer, the Chairman proceeded to ask a series of substantive questions, to each of which she responded with an invocation of her privilege. Ms. Lerner could have inferred that the Chair was starting the question/answer/invocation clock all over again, such that as long as she said nothing at this March 5 hearing that could be construed as a waiver, her privilege claim was intact. In my opinion, the Chairman's approach at this point could be viewed, in effect, as a waiver of the waiver issue, or as above, it would allow her to claim estoppel against the government.

Moreover, while the Chairman did lay out the position that Ms. Lerner had earlier waived the privilege, he did not do so in a way that set the necessary predicate for a contempt charge. In opening remarks, the Chairman alluded to Rep. Gowdy's belief that Ms. Lerner had earlier waived and said that the Committee had voted that she had waived. The former of these points is irrelevant. The latter is relevant, but not sufficient, if she was not directly confronted with a formal legal pronouncement upon demand for an answer. Apparently, the Chairman, the reference to the committee vote occurred after Ms. Lerner's first invocation on March 5, but before he continued on to a series of substantive questions and further invocations. Thus, even if reference to the committee view on waiver might have satisfied part of the *Quinn* requirement, Chairman Issa, yet again, arguably waived the waiver issue.

I recognize that by this view the elements of contempt are formalistic and that it puts a heavy burden of meeting those formalistic requirements on the questioner. But such a burden of formalism is exactly what the Supreme Court has demanded in *Quinn*, *Emspak*, and *Bart*. Indeed, it is precisely the formalism of the test that is decried by Justice Reed's dissent in those cases. See *Quinn*, at 171 ff.

Another, supplementary approach to the contempt issue is to consider what mens rea is required for a section 192 violation. This question requires me to turn to the waiver issue. I have not been asked for, nor am I offering, any ultimate opinion on whether Ms. Lerner's voluntary statements at the start of the May 22 hearing constituted a waiver. However, the possible dispute about waiver may be relevant to the contempt issue because it may bear whether Ms. Lerner had the required mental state for contempt, given that she may reasonably or at least honestly believed she had not waived.

The key question is whether the refusal to answer must be "willful." There is some syntactical ambiguity here. Section 192 says that a "default--by which I assume Congress means a failure to appear, must be willful to constitute contempt, and arguably the term "willfully" does not apply to the clause about refusal. But an equally good reading is that because contempt can hardly be a strict liability crime and so there must be some mens rea, Congress meant "willfully: to apply to the refusal as well. In any event, the word "refusal" surely suggests some level of defiance, not mere failure or declination.

So if the statute requires willfulness or its equivalent, federal case law would suggest that a misunderstanding or mistake of law can negate the required mens rea. The doctrine of mistake is very complex because of the varieties of misapprehension of law that call under this rubric. But this much is clear: While mistake about of the existence of substantive meaning of a criminal law with which is one charged normally is irrelevant to one's guilt, things are different under a federal statute requiring willfulness. See *Cheek v. United States*, 498 US 192 (1991) (allowing honest, even if unreasonable, misunderstanding of law to negate guilt).¹⁰²

Showing that the predicate for willfulness has not been established involves repeating much of what I have said before, from slightly different angle. That is, one can define the actus reus term "refuse" so as to implicitly incorporate the mens rea concept of willfulness.

One possible factor bearing on willfulness involves the timing of Ms. Lerner's statements at the May 22 hearing. If Ms. Lerner's voluntary exculpatory statements at that hearing preceded any direct questioning by the committee, there is an argument that those statements did not waive the privilege because she was not yet facing any compulsion to answer, and thus the privilege was not in play yet. To retain her privilege a witness need not necessarily invoke it at the very start of a hearing. Thus in cases like *Jackins v. United States*, 231 F.405 (9th Cir. 1959), the witness was able to answer questions and then later invoke the privilege because it was only after a first set of questions that new questions probed into areas that raised a legitimate concern about criminal exposure. Under those cases, the witness has not waived the privilege because the concern about compelled self-incrimination has not arisen yet. This is, of course, a different situation, because the risk of criminal exposure was already apparent to Ms. Lerner when she made her exculpatory statements. But the situations are somewhat analogous under a general principle that waiver has not occurred until by virtue of both a compulsion to answer and a risk of criminal exposure the witness is facing the proverbial "cruel trilemma" that it is the purpose of the privilege to spare the witness.

Here is one other analogy. When a criminal defendant testifies in his own behalf, the prosecutor may seek to impeach him by reference to the defendant's earlier silence, so long as the

¹⁰² According to Prof. Sharon Davies:

"Knowledge of illegality" has ... been construed to be an element in a wide variety of [federal] statutory and regulatory criminal provisions. . . . These constructions establish that . . . ignorance or mistake of law has already become an acceptable [defense] in a number of regulatory and nonregulatory settings, particularly in prosecutions brought under statutes requiring proof of "willful" conduct on the part of the accused. Under the reasoning employed in these cases, at least 160 additional federal statutes . . . are at risk of similar treatment." *The Jurisprudence of Ignorance: An Evolving Theory of Excusable Ignorance*, 48 *Duke L. J.* 341, 344-47 (1998).

prosecutor is not by penalizing the defendant for exercising his privilege against self-incrimination. The prosecutor may do so where the silence occurred before arrest or before the *Miranda* warning, because until the warning is given, the court will not infer that he was exercising a constitutional right. *Jenkins v. Anderson*, 447 U.S. 231 (1980); *Fletcher v. Weir*, 455 US 603 (1982) By inference here, the Fifth Amendment was not yet in legal play in at the May 22 hearing until Ms. Lerner was asked a direct question, en though she was under subpoena.

Second, I can imagine Ms. Lerner being under the impression that because her voluntary statement could not constitute a waiver because they chiefly amounted to a denial of guilt, not any details about the subject matter.¹⁰³ Again, I am not crediting such a view as a matter of law. Rather, I am allowing for the possibility t hat Ms. Lerner, perhaps on advice of counsel, had honestly believed this to be to be a correct legal inference. But it would probably require the questioner to confront the witness very specifically and expressly about the waiver and to make unmistakably clear to her that it was the official ruling of the committee that her grounds for belief that she had not waived were wrong. If she then still refused to answer, she might be in contempt. (Of course she could then argue to a trial or appellate court that she had not waived but if she lost on that point she would not then be able to undo her earlier refusal.

Most emphatically, I am *not* opining here that these arguments are valid and can defeat a waiver claim by the government. Rather, they are relevant to the extent that Ms. Lerner may have believed them to be valid arguments, and therefore may not have acted “willfully.” If so, at the very least her refusal at the March 5 hearing would not be willful unless the Chairman had categorically clarified for her that she had indeed waived, that she no longer had the privilege, and that if she immediately reasserted her purported privilege, she would be held in contempt. As discussed above, this the Chairman did not do.

One final analogy might be useful here, and that is perjury law. In *Bronston v. United States*,⁴⁰⁹ U.S. 352 (1973), the Supreme Court held that even when a witness clearly intended to mislead the questioner, there was no perjury unless the witness’s statement was a literally a false factual statement.¹⁰⁴ While its reading of the law imposed a heavy burden on the prosecutor to arrange the phrasing of its questions so as to prevent the witness from finessing perjury as Bronston had done there, the Court made clear that just such a formalistic burden is what the law required to

¹⁰³ The federal false statement statute 18 U.S.C. 1001, had allowed the defense that the false statement was merely an “exculpatory no.” That defense was overruled in *Brogan v. United States* 522 U.S. 398 1998), but perhaps a witness or her lawyer might believe would advise a client that a parallel notion might apply in regard to waiver of her fifth amendment privilege.

¹⁰⁴The perjury statute like the contempt statute, makes “willfulness” the required mens rea.

make a criminal of a witness.¹⁰⁵ “Ambiguities with respect to whether an answer is perjurious “are to be remedied through the questioner's acuity.” *Bronston*, at 362.

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¹⁰⁵ “[I]f the questioner is aware of the unresponsiveness of the answer, with equal force it can be argued that the very unresponsiveness of the answer should alert counsel to press on for the information he desires. It does not matter that the unresponsive answer is stated in the affirmative, thereby implying the negative of the question actually posed; for again, by hypothesis, the examiner's awareness of unresponsiveness should lead him to press another question or reframe his initial question with greater precision. Precise questioning is imperative as a predicate for the offense of perjury.” *Bronston*, at 361-62.

18. Gregory Gilchrist is an attorney with experience representing individuals in congressional investigations and currently an Associate Professor at the University of Toledo College of Law.

Statement of Gregory M. Gilchrist, an attorney with experience representing individuals in congressional investigations and current Associate Professor at the University of Toledo College of Law:

The rule is clear, as is the reason for the rule, and neither supports a prosecution for contempt. The Supreme Court has consistently held that unless a witness is “confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt,” the assertion of the Fifth Amendment privilege is devoid of the criminal intent required for a contempt prosecution. See *Quinn v. United States*, 349 U.S. 155, 166 (1955).

Criminal contempt is not a tool for punishing those whose legal analysis about asserting the privilege is eventually overruled by a governing body. Privilege law is hard, and reasonable minds can and will differ.

Contempt proceedings are reserved for those instances where a witness – fully and clearly apprised that her claim of privilege has been rejected by the governing body and ordered to answer under threat of contempt – nonetheless refuses to answer. In this case, the committee was clear only that it had not yet determined how to treat the continued assertion of the privilege. Prosecution for contempt under these circumstances would be inconsistent with rule and reason.

19. Lisa Kern Griffin, Professor of Law at Duke University School of Law whose scholarship and teaching focuses on constitutional criminal procedure stated:

"The Committee has an interest in pursuing its investigation into a matter of public concern and in getting at the truth. But the witness has rights, and there are well-established mechanisms for obtaining her testimony. If a claim of privilege is valid, then a grant of immunity can compel testimony. If a witness has waived the privilege, or continues to demur despite a grant of immunity, then contempt sanctions can result from the failure to respond. But the Supreme Court has made clear that those sanctions are reserved for defiant witnesses. Liability for contempt of Congress under section 192 requires a refusal to answer that is a 'deliberate' and 'intentional' violation of a congressional order. The record of this Committee hearing does not demonstrate the requisite intent because the witness was not presented with a clear choice between compliance and contempt."

20. David Gray is a Professor of Law at the University of Maryland Francis King Carey School of Law with expertise in criminal law, criminal procedure, international criminal law, and jurisprudence. He said:

“After reviewing the relevant portions of the May 22, 2013, and March 5, 2014, hearings, I concur in the views of Messrs. Rosenberg and Brand that a contempt charge filed against Ms. Lerner based on her invocation of her Fifth Amendment privilege and subsequent refusal to answer questions at the March 5, 2014, hearing would in all likelihood be dismissed. Two deficits stand out.

First, at no point during the hearing was Ms. Lerner advised by the Chairman that her invocation of her Fifth Amendment privilege at the March 5, 2014, hearing was improper. The Chairman instead read a lengthy narrative history “for the record,” the content of which he believed were “important . . . for Ms. Lerner to know and understand.” During that narrative, the Chairman reported a vote taken by his committee on June 28, 2013, expressing the committee’s view that Ms. Lerner waived her Fifth Amendment rights at the May 22, 2013, hearing and that her invocation of her Fifth Amendment rights at the May 22, 2012, hearing was therefore improper. During subsequent questioning at the March 5, 2014, hearing, Ms. Lerner declared that her counsel had advised her that she had not waived her Fifth Amendment rights and that she would therefore refuse to answer questions posed at the March 5, 2014, hearing. This exchange produced a wholly ambiguous record. Chairman Issa’s narrative history could quite reasonably have been interpreted by Ms. Lerner as precisely that: history. The committee’s view that her invocation of Fifth Amendment privilege at the May 22, 2013, hearing was improper may well have been “important . . . for Ms. Lerner to know and understand” as a matter of history, but did not inform her as to the committee’s views on her potential invocation of Fifth Amendment privilege at the March 5, 2014, hearing. Ms. Lerner’s statement regarding her counsel’s opinion that she had not waived her Fifth Amendment rights might have been in direct response to the committee’s June 28, 2013, resolution. Alternatively, it may have been a statement regarding the extension of any waiver made in May 2013 to a hearing conducted in March 2014. In either event, in order to lay a proper foundation for a potential contempt charge, Chairman Issa needed to respond directly to Ms. Lerner’s March 5, 2013, invocation at the March 5, 2013, hearing.

Second, Ms. Lerner was never directly informed by the Chairman at the March 5, 2014, hearing that her failure to answer direct questions posed at the March 5, 2014, would leave her subject to a contempt charge. During his narrative history, the Chairman did state that “if [Ms. Lerner] continues to refuse to answer questions from Members while under subpoena, the Committee may proceed to consider whether she will be held in contempt.” Messrs. Rosenberg and Brand are quite right to point out that, by using the word “may,” this statement fails to put Ms. Lerner on notice that her failure to answer questions posed at the March 5, 2014, hearing would leave her subject to a contempt charge. There is another problem, however. In context, the statement seems to be reported as part of the content of the June 28, 2013, resolution and then-contemporaneous discussions of the committee rather than a directed warning to Ms. Lerner as to the risks of her conduct in the March 5, 2014, hearing. In order to lay a proper foundation for a potential contempt charge, Chairman Issa therefore needed to inform Ms. Lerner in unambiguous terms that, pursuant to its June 28, 2013, resolution, the committee would pursue contempt charges against her should she refuse to answer questions posed by the committee on March 5, 2014.

Although it appears that Chairman Issa failed to lay a proper foundation for any contempt charges against Ms. Lerner based on her refusal to answer questions at the March 5, 2014, hearing, I cannot discern any malevolent intent on his part. To the contrary, it appears to me that, based on his exchanges with Ms. Lerner at the May 22, 2013, hearing and his manner and comportment at the March 5, 2014, hearing, that he is genuinely, and laudibly, concerned that he and his committee pay all due deference to Ms. Lerner's constitutional rights. It appears likely to me that his omissions here are the results of an abundance of caution and his choice to largely limit his engagement with Ms. Lerner to reading prepared statements and questions rather than initiating the more extemporaneous dialogue that is the hallmark of examinations conducted in court."

21. JoAnne Epps, a former federal prosecutor and Dean of Temple University Beasley School of Law, said:

“A key element of due process in this country is fairness. The ‘uninitiated’ are not expected to divine the thinking of the ‘initiated.’ In other words, witnesses can be expected to make decisions based on what they are told, but they are not expected to know – or guess – what might be in the minds of governmental questioners. In the context of criminal contempt for refusal to answer, fairness requires that a witness be made clearly aware that an answer is demanded, that the refusal to answer is not accepted, and further that the refusal to answer can have criminal consequences. It appears that the witness in this case received neither a demand to answer, a rejection of her refusal to do so, nor an explanation of the consequences of her refusal. These omissions render defective any future prosecution.”

- 22. Stephen Saltzburg, is a former law clerk to Supreme Court Justice Thurgood Marshall, and currently the Wallace and Beverley Woodbury University at the George Washington University School of Law with expertise in criminal law and procedure; trial advocacy; evidence; and congressional matters. He said:**

The Supreme Court has made clear that a witness may not be validly convicted of contempt of Congress unless the witness is directed by a committee to answer a question and the witness refuses. The three major cases are *Quinn v. United States*, 349 U.S. 155, *Emspak v. United States*, 349 U.S. 190, and *Bart v. United States*, 349 U.S. 219, all decided in 1955. They make clear that where a witness before a committee objects to answering a certain question, asserting his privilege against self-incrimination, the committee must overrule his or her objection based upon the Fifth Amendment *and* expressly direct him to answer before a foundation may be laid for a finding of criminal intent.

This is a common sense rule. When a witness invokes his or her privilege against self-incrimination, the witness is entitled to know whether or not the committee is willing to respect the invocation. Unless and until the committee rejects the claim and orders the witness to answer, the witness is entitled to operate on the assumption that the privilege claim entitles the witness not to answer.

There is another question that arises, which is whether the Chairman of a committee is delegated the power to unilaterally overrule a claim of privilege or whether the committee must vote on whether to overrule it. This is a matter as to which I have no knowledge. I note that the memorandum by Morton Rosenberg appears to assume that the Chairman may unilaterally overrule a privilege claim, but I did not see any authority cited for that proposition.

23. Kami Chavis Simmons, a former federal prosecutor and Professor of Law at Wake Forest University School of Law with expertise in criminal procedure stated:

I agree with the legal analysis provided by Mr. Rosenberg, as well the comments of other legal experts. The Supreme Court's holding in *Quinn v. U.S.*, is instructive here. In *Quinn*, the Supreme Court held that a conviction for criminal contempt cannot stand where a witness before a Congressional committee refuses to answer questions based on the assertion of his fifth-amendment privilege against self-incrimination "unless the witness is clearly apprised that the committee demands his answer notwithstanding his objections." *Quinn v. U.S.*, 349, U.S. 155, 165 (1955). Case law relying on *Quinn* similarly indicates that there can be no conviction where the witness was "never confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt." *Emspak v. U.S.*, 349 U.S. 190, 202 (1955). Based on the record in this case, the witness was not confronted with a choice between compliance and non-compliance. Thus, the initiation of a contempt proceeding seems inappropriate here.

There are additional concerns related to the initiation of criminal contempt proceedings in the instant case. Here, the witness, who was *compelled* to appear before Congress, made statements declaring only her innocence and otherwise made no incriminating statements. Pursuing a contempt proceeding based on these facts, may set an interesting precedent for witnesses appearing before congressional committees, and could result in the unintended consequence of inhibiting future Congressional investigations.

24. Patrice Fulcher is an Associate Professor at Atlanta’s John Marshall Law School where she teaches Criminal Law and Criminal Procedure. She said:

“American citizens expect, and the Constitution demands, that U.S. Congressional Committees adhere to procedural constraints when conducting hearings. Yet the proper required measures designed to provide due process of law were not followed during the May 22nd House Oversight Committee Hearing concerning Ms. Lerner. In *Quinn v. United States*, the Supreme Court clearly outlined practical safeguards to be followed to lay the foundation for contempt of Congress proceedings once a witness invokes the Fifth Amendment. 349 U.S. 155 (1955). To establish criminal intent, the committee has to demand the witness answer and upon refusal, expressly overrule her claim of privilege. This procedure assures that an accused is not forced to ‘guess whether or not the committee has accepted [her] objection’, but is provided with a choice between compliance and prosecution. *Id.* It is undeniable that the record shows that the committee did not expressly overrule Ms. Lerner's claim of privilege, but rather once Ms. Lerner invoked her 5th Amendment right, the Chairman subsequently excused her. The Chairman did not order her to answer or present her with the clear option to respond or suffer contempt charges. Therefore, launching a contempt prosecution against Ms. Lerner appears futile and superfluous due to the Committee’s disregard for long standing traditions of procedure.”

25. **Andrea Dennis is a tenured Associate Professor of Law at the University of Georgia Law School who teaches Criminal Law, Criminal Procedure, and Evidence, among other courses.**



The University of Georgia

School of Law

MEMORANDUM

TO: The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight & Government Reform

FROM: Andrea L. Dennis
Associate Professor of Law
University of Georgia School of Law

DATE: March 25, 2014

You asked my opinion whether the public video record of the appearance of Ms. Lois Lerner, former Director of Exempt Organizations of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (IRS), before the House Committee on Oversight & Government Reform, which was investigating alleged improprieties by the IRS concerning the tax exempt status of some organizations, sufficiently demonstrates that Ms. Lerner acted “willfully” to support a criminal contempt of Congress charge, pursuant to 2 U.S.C. Sec. 192.

Based on my understanding of the facts, legal research, and professional experience, I must answer in the negative. Accordingly, I join the conclusions that Messrs. Morton Rosenberg and Stanley M. Brand presented on March 12, 2014, to Congressman Cummings, and which since have been echoed by others.

I will not herein detail the facts giving rise to this matter or offer a fully fleshed out research report. Mr. Rosenberg’s statement of relevant facts in his memorandum is accurate, and he has cited the most pertinent caselaw. I am happy, however, to provide you with additional supporting citations if necessary.

In short, my research of criminal Congressional contempt charges and analogous legal issues leads me to interpret the term “willfully” in 2 U.S.C. Sec. 192 to require that Ms. Lerner have voluntarily and intentionally violated a specific and unequivocal order to answer the Committee’s questions. Moreover, I believe that Ms. Lerner must have been advised that she faced contempt charges and punishment if she continued to refuse to answer the Committee’s questions despite its clear order to do so. Collectively, these elemental requirements ensure that witnesses in Ms. Lerner’s position are fairly notified that they must choose between making self-incriminating statements, lying under oath, and facing punishment for failing to comply with an order. Witnesses who refuse to comply with such clear statements of expectations have little room to question the nature of the circumstances with which they are confronted. In this case, the record indicates that Ms. Lerner was not forced to make such a choice and therefore a contempt prosecution would be legally and factually unsupportable.

Review of the public video recordings of Ms. Lerner's appearances at the Committee's hearings on May 22, 2013, and March 5, 2014, reveals that at no time during the Committee's publicized proceedings did the Committee Chair explicitly order Ms. Lerner to respond to questions under penalty of contempt. At most, the Committee Chair equivocally stated that if Ms. Lerner refused to answer the Committee's questions, then the Committee may possibly investigate her for contempt. This statement by itself is filled with such uncertainty that it would be erroneous to conclude that Ms. Lerner was directly ordered to answer questions and advised that she would be subject to penalty if she did not. And when considered in connection with the Chair's earlier mentions of possibly offering her immunity or granting her an extension of time to respond, the statement regarding possible contempt charges becomes even more indefinite. For these reasons, I am hard-pressed to conclude that the legal pre-requisites for acting "willfully" in a Congressional criminal contempt prosecution were factually established in these circumstances.

And although you did not particularly inquire of my opinion as to whether Ms. Lerner waived her Fifth Amendment privilege against compelled testimonial self-incrimination at the Committee's hearings on May 22, 2013, I find it an issue worthy of comment. Notably, I am unconvinced that Ms. Lerner waived her privilege at the proceedings by either reading an opening statement briefly describing her professional background and claiming innocence, or authenticating her earlier answers to questions posed to her by the Inspector General. From the record it does not appear that Ms. Lerner voluntarily revealed incriminating information or offered testimony on the merits of the issue being investigated. To conclude otherwise on the waiver issue would suggest oddly that in order to validly assert the privilege individuals must claim the privilege for even non-incriminating information, as well as upend the accepted notion that the innocent may benefit from the privilege.

Before closing, let me explain a little of my background. I am a tenured Associate Professor of Law. I teach Criminal Law, Criminal Procedure, and Evidence, among other courses. I research in a number of areas including criminal adjudication. Prior to entering academia, I clerked for a federal district court judge, practiced as an associate with the law firm of Covington & Burling in Washington, D.C., and served as an Assistant Federal Public Defender in the District of Maryland. A fuller bio may be found at: <http://www.law.uga.edu/profile/andrea-l-dennis>.

Thank you for the opportunity to reflect on this very important matter. Please let me know if you would like me to elaborate further on my thoughts or answer additional questions. If need be, I may be reached via email at aldennis@uga.edu or in my office at 706-542-3130.

26. Katherine Hunt Federle is a Professor of Law at the Ohio State University Michael E. Moritz College of Law where she teaches Criminal Law and serves as Director, for the Center for Interdisciplinary Law & Policy Studies. She said:

Constitutional rights do not end at the doors of Congress. Any witness who receives a subpoena to testify before Congress may nevertheless expect that constitutional protections extend to those proceedings. When that witness raises objections to the questions posed on the grounds of self-incrimination, due process entitles the witness to a clear ruling from the committee on those objections. *Bart v. United States*, 269 F.2d 357, 361 (1955). Only after the committee informs the witness that her objections are overruled, and she continues to assert her Fifth Amendment right, would it be possible to charge the witness with criminal contempt of Congress. *Quinn v. United States*, 349 U.S. 155, 165-166 (1955). However, without a clear statement from the committee overruling her objections, there can be no conviction for contempt of Congress based on her refusal to answer questions. *Id.*

Due process cannot stand for the proposition that a witness must guess whether her assertion of the privilege of self-incrimination has been accepted. In this case, there does not appear to be any statement by the members of the House Committee on Oversight and Government Reform during the hearings informing Ms. Lerner that her objections have been overruled. It would strain credulity to suggest that a witness must rely on news accounts or second-hand statements to divine the Committee's intentions on this matter. Moreover, insisting that a witness who has asserted her Fifth Amendment right appear before the Committee again would seem to serve only political ends in the absence of some intention either to accept the invocation of the privilege against self-incrimination or to offer the witness immunity in exchange for her testimony. Rather, in light of the suggestion that the Committee intends to seek contempt charges, recalling the witness suggests an opportunity for political theater.

The essence of due process is fairness. At the very least, due process requires a direct communication from the Committee to the witness stating in some way that the witness must answer the questions. Some idea that the Committee has disagreed with her objections is not enough, given the nature of the potential charge. Of course that also means that some questions must be posed. I remain unpersuaded that happened here since the Committee met and voted to overrule her objections after Ms. Lerner first appeared, and I cannot see that any questions were asked of Ms. Lerner that would have indicated to her that her objections were overruled. When Ms. Lerner appeared a second time and invoked the privilege against self-incrimination, the Committee then should have told her it was overruling her objections. Again, that did not happen.

27. Glenn F. Ivey is a former federal prosecutor and currently a Partner in the law firm of Leftwich & Ludaway, whose practice focuses on white collar criminal defense, as well as Congressional and grand jury investigations. He said:

"I agree with Morton Rosenberg's statement that Chairman Issa has not laid the requisite legal foundation to bring contempt of Congress charges. Mr. Rosenberg raises important points that the Committee ought to consider, especially given the negative historic impact this decision could have on the institution. Protecting these procedures and precedents from the pressures of the moment is important. Rushing to judgment or trying to score political points is not in the best interest of the Committee, the Congress or the country."

28. Jonathan Rapping is an Associate Professor of Law at the John Marshall School of Law where he teaches Criminal Law and Criminal Procedure. He said:

Ours is a nation founded on the understanding that whenever government representatives are given power over the people, there is the potential for an abuse of that power. Our Bill of Rights enshrined protections meant to shield the individual from a government that fails to exercise restraint. At no time is the exercise of prudence and temperament more important than when a citizen's liberty is at stake. The United States Supreme Court begins its analysis in *Quinn v. United States*, 349 U.S. 155 (1955), with a discussion of the historical importance the Fifth Amendment privilege against self-incrimination holds in our democracy. The Court reminds us that this right serves as "a safeguard against heedless, unfounded or tyrannical prosecutions[,] and that to treat it "as an historical relic, at most merely to be tolerated - is to ignore its development and purpose." *Id.* at 162.

In the instant case, zeal to charge into a criminal contempt prosecution appears to trump respect for process necessary to ensure this critical right is respected. The March 5th hearing opens with Representative Issa indicating that the Committee believes Ms. Lerner waived her Fifth Amendment privilege, and *suggesting* that if Ms. Lerner does not answer questions "the Committee may proceed to consider whether she should be held in contempt." Ms. Lerner subsequently makes clear that her lawyer disagrees with that assessment, and that she believes she retains her right to refuse to answer questions. Ms. Lerner proceeds to refuse to answer questions and Representative Issa appears to accept her refusal without ever again raising the specter of contempt. By the end of the hearing, the threat that contempt charges may be forthcoming is at best ambiguous.

But in our democracy, ambiguous is not good enough. The government has the burden, indeed the obligation, to make clear that refusal to answer questions will result in contempt, giving the individual a chance to comply with an unequivocal demand. There must be no ambiguity about whether the citizen is jeopardizing her liberty. The onus is on the government to dot all i's and cross all t's. Unwavering respect for this core constitutional principle demands no less.

29. Eve Brensike Primus is a Professor of Law at the University of Michigan Law School with expertise in criminal law, criminal procedure, as well as constitutional law. She said:

In order to be guilty of a criminal offense for refusing to testify or produce papers during a Congressional inquiry under 2 U.S.C. § 192, a subpoenaed witness must *willfully* refuse to answer any question pertinent to the question under inquiry. In a trilogy of cases in 1955, the Supreme Court made it clear that, “unless the witness is clearly apprised that the committee demands [her] answer notwithstanding [her] objections, there can be no conviction under § 192 for refusal to answer that question.” *Quinn v. United States*, 349 U.S. 155, 166 (1955); *see also Emspak v. United States*, 349 U.S. 190, 202 (1955); *Bart v. United States*, 349 U.S. 219, 222 (1955). Without such appraisal, “there is lacking the element of deliberateness necessary” to establish the willful mental state required by the statute. *Emspak v. United States*, 349 U.S. 190, 202 (1955).

The Supreme Court further emphasized that “[t]he burden is upon the presiding member to make clear the directions of the committee....” *Quinn v. United States*, 349 U.S. 155, 166 n.34 (1955) (quoting *United States v. Kamp*, 102 F. Supp. 757, 759 (D.D.C.)). The witness must be “confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt.” *Quinn v. United States*, 349 U.S. 155, 166 (1955); *see also Bart v. United States*, 349 U.S. 219, 222 (1955) (requiring that the committee give the witness a specific direction to answer before a conviction for contempt can lie).

In neither of the hearings at which Ms. Lerner testified did Chairman Issa expressly overrule her objections and explicitly direct her to answer the committee’s questions or face contempt proceedings. Having never been given an order to answer questions, Ms. Lerner could not *willfully* refuse to answer under § 192.

30. David Jaros is an Assistant Professor of Law at the University of Baltimore School of Law who teaches courses in criminal law and procedure. He said:

“A critical component of due process is that a defendant must have fair notice that their actions will expose them to criminal liability. To hold Ms. Lerner in contempt, the congressional committee must have done more than just inform Ms. Lerner that it had found that her voluntary statements waived her Fifth Amendment Rights. The Committee must have also clearly demanded that she respond to the questions notwithstanding her objections. Failing to do that is fatal to the charge.”

31. Alex Whiting is a former criminal prosecutor at the International Criminal Court (ICC) in The Hague and a Professor at Harvard Law School with expertise in criminal law, criminal trials and appeals as well as prosecutorial ethics. He said:

Proceeding with contempt against Lois Lerner on the basis of this record would be both unwise and unfair. Because of the risk of politicization in the congressional investigation and oversight process, it is particularly important that due process be scrupulously followed at all times and that the Committee take the maximum steps to ensure that witnesses are afforded all of their legal rights and protections. The record here falls short of meeting this standard. As others have noted, federal prosecutors would rarely if ever seek to deny a witness his or her Fifth Amendment privilege based on the arguments advanced here. Further, with regard to contempt, Congress should provide, as is the practice in courts, clear warnings to the witness that refusal to answer the questions will result in contempt proceedings and then give the witness every opportunity to answer the questions. That practice was not followed in this case. Fairness and a concern for the rights of witnesses who testify before Congress dictate that the Committee take great care in following the proper procedures before considering the drastic step of seeking a finding of contempt. Proceeding with contempt under these circumstances, and on this record, seriously risks eroding the Committee's legitimacy.

32. **On April 6, 2014, Morton Rosenberg sent a memo to the Oversight Committee Democratic staff based on his review of Chairman Issa's March 25, 2014 memo from House Counsel. This memo directly rebuts the arguments raised by House Counsel in defense of Chairman Issa's actions on March 5, 2014.**

April 6, 2014

To: [REDACTED]
Deputy Chief Counsel, Minority
House Committee on Oversight
& Government Reform

From: Morton Rosenberg
Legislative Consultant

Re: Comments on House General Counsel Opinion

This is in response to your request for my comments on the House General Counsel's (HGC) March 25 opinion critiquing my March 12 memo for Ranking Member Cummings. In that opinion the HGC readily concedes that the Supreme Court in *Quinn, Emspak*, and *Bart* requires that in order for a congressional committee to successfully prosecute a subpoenaed witness's refusal answer pertinent questions after he has invoked his Fifth Amendment rights, it must be shown that the "witness is clearly apprised that the committee demands his answer notwithstanding his objections", *Quinn*, 349 U.S. at 196; a committee must "directly overrule [a witness's] claims of self-incrimination;" *Bart*, 349 at 222; and the witness must be "confronted with a clear-cut choice between compliance and non-compliance, between answering the question and risking prosecution for contempt." *Emspak*, 349 U.S. at 202. HGC Op. at 10-12. The HGC asserts that the Committee followed the High Court's requirements by "directly" overruling Ms. Lerner's privilege claim by its passage of a resolution specifically determining that she had voluntarily waived her constitutional rights in her opening exculpatory statement at the May 22, 2013 hearing and subsequent authentication of a document, and by communicating that committee action to her; and, "indirectly", by "demonstrating" that it had "specifically directed the witness to answer." *Id.*, 10-11, 12-15.

Both assertions are meritless. The June 28, 2013 resolution stands alone as a committee opinion (which was resisted and challenged by the witness's counsel) and is without any immediate legal consequence until the question of its legal substantiality is considered and resolved as a threshold issue by a court in criminal contempt prosecution under 2 U.S.C. 192 or civil enforcement proceeding to require the withheld testimony. By itself, the resolution, and the communication of its existence, is not a demand for an answer to a propounded question recognized by the Supreme Court trilogy. In fact, a perusal of the record of events relied on by the HGC indicates that there never has been at any time during 10 month pendency of the subject hearing a specific committee overruling of any of Ms. Lerner's numerous invocations of constitutional privilege at the time they were made or thereafter, nor any effective direction to her to respond. As a consequence, she "was left to speculate about the risk of possible prosecution for contempt; [s]he was not given a clear choice between standing on [her] objection and compliance with a committee ruling." *Bart*, 349 U.S. at 223.

More, particularly, after making her controverted opening statement and authentication of a previous document submission to an IG, Chairman Issa advised Ms. Lerner that she had effectively waived her constitutional rights and asked her to obtain her counsel's advice. She then announced her refusal to respond to any further questions, thereby invoking her privilege, to which the Chairman responded that "we will take your refusal as a refusal to testify." It may be noted that Lerner's counsel had advised the committee before the hearing that she was likely to claim privilege. The hearing proceeded without further testimony from the witness. Before adjournment, Chairman Issa announced that the question had arisen whether Ms. Lerner had waived her rights and that he would consider that issue and "look into the possibility of recalling her and insisting that she answer questions in light of a waiver." The committee thereafter sought and received input on the waiver issue, including the written views of Lerner's counsel. On June 28, 2013, after debate amongst the members, a resolution, presumably prepared and vetted by House Counsel and/or committee counsel, was passed by a 22-17 vote. The text of the committee resolution reads as follows:

Resolved, That the Committee on Oversight and Government Reform determines that 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 IRS rules or regulations," and/or "not provided false information to this or any other congressional committee."

Nothing in the language of the Committee's June 28, 2013 resolution can be even be remotely construed as an *explicit* rejection of Ms. Lerner's Fifth Amendment privilege at the May 22 hearing. It is solely and exclusively concerned with the question whether Ms. Lerner voluntarily waived her privilege at that hearing. A rejection of a future claim in a resumed hearing may be implicit in the resolution's language, but that rejection, under *Quinn*, *Emspak*, and *Bart*, would have had to have been expressly directed at the particular claim when raised by the witness.

After a lapse of eight months, the Chairman decided to resume his questioning of Ms. Lerner and reminded her attorney, by letter dated February 25, 2014, that he had recessed the earlier hearing "to allow the committee to determine whether she had waived her asserted Fifth Amendment right [and that] [t]he Committee subsequently determined that Ms. Lerner in fact had waived that right." The Chairman then, for the first time, asserted "[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." Lerner's counsel simply responded the next day that the "[w]e understand that the Committee voted that she had waived her rights," but with no acknowledgement that any express rejection of a

privilege claim had taken place. HGC Op. at 7-8. When the hearing resumed on March 5, the Chairman opened by detailing past events. He again erroneously described what had occurred at the June 28, 2012 committee business meeting: "...[T]he committee approved a resolution rejecting Ms. Lerner's claim of Fifth Amendment privilege based on her waiver...." He then inconsistently followed up by stating "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 voluntary exculpatory statement and a document authentication. The Chairman concluded that if the witness continued to refuse to answer questions, "the committee may proceed to consider whether she should be held in contempt." HGC Op. at 9. After being recalled and sworn in, Ms. Lerner was asked a question to which she responded that she had not waived her Fifth Amendment right and then asserted her privilege in refusing to answer that question. She continued to invoke privilege with respect to every subsequent question until the Chairman abruptly adjourned the hearing. As was detailed in my March 12 statement, the Chairman never expressly rejected her privilege claims at that hearing, individually or collectively, and thus she was never confronted with the risk of not replying.

Whether a witness has waived her Fifth Amendment protections is a preliminary, threshold issue that must be resolved by a reviewing court prior to grappling with the efficacy of a charge of criminal contempt for refusal to answer. The Supreme Court has long recognized that "Although the privilege against self-incrimination must be claimed, when claimed it is guaranteed by the Constitution....Waiver of constitutional rights... is not lightly to be inferred. A witness cannot properly be held after claim to have waived his privilege...upon vague and uncertain evidence." *Smith v. United States*, 337 U.S. 137, 150 (1949). Here, again, the Court's 1955 trilogy is instructive. In *Emspak* the Court was confronted with a Government claim that the petitioner had waived his rights with respect to one count of his indictment. The Court rejected the claim, emphasizing the context of the situation and its sense of the need to protect the integrity of the constitutional protection at stake. The witness was being questioned about his associations and expressed apprehension that the committee was "trying to perhaps frame people for possible criminal prosecution" and that "I think I have the right to reserve whatever rights I have." He was then asked, "Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?" *Emspak* relied, "No. I don't think this committee has a right to pry into my associations. That is my own position."

Analogizing the situation to the one encountered in the *Smith* case, the Court held that "[I]n the instant case, we do not think that petitioner's 'No' answer can be treated as a waiver of his previous express claim under the Fifth Amendment. At most, as in the *Smith* case, petitioner's 'No' is equivocal. It may have merely represented a justifiable refusal to discuss the reasons underlying petitioner's assertion of the privilege; the privilege would be of little avail if a witness invoking it were required to disclose the precise hazard which he fears. And even if petitioner's answer were taken as responsive to the question, the answer would still be consistent with a claim of privilege. The protection of the Self-Incrimination

Clause is not limited admissions that ‘would subject [a witness] to criminal prosecution’; for this Court has repeatedly held that ‘Whether such admissions by themselves would support a conviction under a criminal statute is immaterial’ and that the privilege extends to to admissions that may only tend to incriminate. In any event, we cannot say that the colloquy between the committee and the petitioner was sufficiently unambiguous to warrant waiver here. To conclude otherwise would be to violate this Court’s own oft-repeated admonition that the courts must ‘indulge every reasonable presumption against waiver of fundamental rights.’” *Emspak*, 349 U.S. at 196. Then the Court turned to the question whether the committee appropriately rejected petitioner’s privilege claims.

These passages from *Emspak* are presented not to argue about the validity of the Committee’s waiver resolution but to demonstrate that its conclusion is preliminary, not yet legally binding, and subject to judicial review and does not constitute the express rejection of the privilege required by the Supreme Court. However, as was indicated in my March 12 memo, extant case law, in addition to *Emspak*, makes a finding of waiver problematic; and past congressional practice accepting similar voluntary exculpatory statements further undermines the efficacy of the Committee’s June 28, 2013 resolution. See, Michael Stern, www.pointoforder.com/2013/05/23/lois-lerner-and-waiver-of-fifth-amendment-privilege.

The consequence of the HGC’s failure to “directly” establish “that the entity—here, the Oversight Committee—specifically overruled the witness’ objection,” HGC Op. at 10, is that it totally undermines the second prong of its argument: that “indirectly” it has “demonstrate[ed] that the congressional entity specifically directed the witness to answer.” *Id.* at 11. The HGC references three such purported directions. First, the Chairman’s statement 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.” As has been demonstrated above, the Committee resolution in fact did not expressly reject an invocation of privilege; Lerner’s counsel’s immediate reply to that statement was to convey his understanding that the resolution dealt only with the question of waiver; and Ms. Lerner’s immediate response to the Chairman’s initial question to her at the March 5 hearing was to assert her belief that she had had not waived her privilege rights and then to invoke her privilege. Second, the HGC quotes remarks by three members at the June 28, 2013 Committee meeting that issued the waiver determination that speculate that Ms. Lerner might be held in contempt. And, third, the Chairman’s verbal observation at the end of his opening remarks at the March 5 hearing that if she continued to refuse to answer questions, “the [C]ommittee *may* proceed to consider whether she should be held in contempt.” Thus the “indirect’ support relies predominantly on the incorrect factual and legal premise that the Committee had communicated a rejection of her privilege claims in its waiver resolution and ambiguous statements by members and the Chairman about the risk of contempt. But, again, when the March 5 questioning took place, the Chairman never expressly overruled her objections or demanded a response.

The HGC's unsuccessful effort to demonstrate that the Committee has both "directly" overruled Ms. Lerner's claims of constitutional privilege and "indirectly...specifically directed the witness to answer," also belies, contradicts and undermines his argument that the Supreme Court's trilogy did not require the Committee to both reject Ms. Lerner's assertions of privilege and to direct her to answer. The rationale of the Court's establishment these foundational requirements for a contempt prosecution was to assure that a "witness is confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt." That would seem to clearly encompass both a rejection of a claim and a demand for an answer, with the latter containing some notion or sense of a prosecutorial risk. In most instances that I can think of, one without the other is simply insufficient to meet the bottom line of the Court's rationale. The great pains the HGC has unsuccessfully taken here to show that the Committee complied with both requirements raises serious doubts as to his reading of the Court's requirements.

The HGC opinion unfairly diminishes the historical and legal significance of the 1955 trilogy as well as the lessons of contempt practice since those rulings. The Court in those cases (and others subsequent to them) was attempting to send a strong message to Congress generally, and the House Un-American Activities Committee and its chairman in particular, that it would no longer countenance the McCarthyistic tactics evidenced in those proceedings. The Court in *Quinn* wrote a paean in support of the continued vitality of the privilege demanding a liberal application: "Such liberal construction is particularly warranted in a prosecution of a witness for refusal to answer, since the respect normally accorded the privilege is then buttressed by the presumption of innocence accorded a defendant in a criminal trial. To apply the privilege narrowly or begrudgingly to treat it as an historical relic, at most merely to be tolerated--is to ignore its development and purpose." The *Quinn* Court did observe that no specific verbal formula was required to protect its investigative prerogatives, but it did underline that the firm rules iterated and reiterated in all three cases—clear rejections of a witness's constitutional objections, demands for answers, and notice that refusals would risk criminal prosecution—believe any intent to allow palpable ambiguity. Together with later Court rulings condemning the absence or public unavailability of committee procedural rules, or the failure to abide by standing rules, and the uncertainty of the subject matter jurisdiction and authority of investigating committees, we today have an oversight and investigatory process that is broad and powerful but restrained by clear due process requirements.

My own Zelig-like experience with contempt proceedings was that committees that have faithfully adhered to the script propounded by the Court's trilogy have found it extraordinarily useful in achieving sought after information disclosures. Normally, the criminal contempt process is principally designed to punish noncompliance, not to force disclosure of withheld documents or testimony. That has been the role of inherent contempt or civil enforcement proceedings. But in the dozens of criminal contempt citations voted against cabinet-level officials and private parties by subcommittees, full committees or by a House since 1975 there has been an almost universal success in obtaining full or significant cooperation before actual criminal proceedings were commenced. See generally, [REDACTED]

[REDACTED], *Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure*, CRS Report RL34097 (August 12, 2012). Two such inquiries involving private parties are useful examples for present purposes. In 1998 the Oversight subcommittee of the House Commerce Committee began investigating allegations of undue political influence by an office developer, Franklin Haney, in having the General Services Administration locate the Federal Communications Commission in one of his new buildings. Subpoenas were issued to the developer and his attorneys. Attorney-client privilege was asserted by the developer and the law firm. A contempt hearing was called at which the developer and the representative of the firm were again asked to comply and refused, claiming privilege. The chair rejected the claims and advised the witnesses that continued noncompliance would result in a committee vote of contempt. The witnesses continued their refusals and the committee voted them in contempt. At the conclusion of the vote, the representative of the law firm rose and offered immediate committee access to the documents if the contempt vote against the firm was rescinded. The committee agreed to rescind the citation. Six months later the District of Columbia Bar Association Ethics Committee ruled that the firm had not violated its obligation of client confidentiality in the face of a subcommittee contempt vote that put them legal jeopardy. See, *Contempt of Congress Against Franklin I. Haney*, H. Rept. 105-792, 105th Cong., 2d Sess. (1998).

A second illustrative inquiry involved the Asian and Pacific Affairs subcommittee of House Foreign Affairs' investigation looking into real estate investment work by two brothers, Ralph and Joseph Bernstein, a real property investor and lawyer respectively, on behalf of President Ferdinand Marcos of the Philippines and his wife Imelda. The subcommittee was pursuing allegations of vast holdings in the United States by the Marcoses (some \$10 billion) that emanated in large part from U.S. government development funding. The Bernsteins refused to answer any questions about their investment work or even whether they knew the Marcoses, claiming attorney-client privilege. The subcommittee following appropriate demands and rejections of the asserted privilege, voted to report a contempt resolution to the full committee, which in turn presented a report and resolution to the House that was adopted in February 1986. Shortly thereafter, and before an indictment was presented to a grand jury, the Bernsteins agreed to supply the subcommittee with information it required. See, H. Rept. 99-462 (1986) and 132 Cong. Rec. 3028—62 (1986).

I continue to believe a criminal contempt proceeding under the present circumstances would be found faulty by a reviewing court.

Elijah E. Cummings
Rep. Elijah E. Cummings

Carolyn B. Maloney
Rep. Carolyn B. Maloney

Eleanor Holmes Norton
Rep. Eleanor Holmes Norton

John F. Tierney
Rep. John F. Tierney

Wm. Lacy Clay
Rep. Wm. Lacy Clay

Stephen F. Lynch
Rep. Stephen F. Lynch

Jim Cooper
Rep. Jim Cooper

Gerald E. Connolly
Rep. Gerald E. Connolly

Jackie Speier
Rep. Jackie Speier

Matthew A. Cartwright
Rep. Matthew Cartwright

L. Tammy Duckworth
Rep. L. Tammy Duckworth

Robin Kelly
Rep. Robin Kelly

Danny K. Davis
Rep. Danny K. Davis

Peter Welch
Rep. Peter Welch

Tony Cardenas
Rep. Tony Cardenas

Steven Horsford
Rep. Steven Horsford

Michelle Lujan Grisham
Rep. Michelle Lujan Grisham

Mr. ISSA. Mr. Speaker, by direction of the Committee on Oversight and Government Reform, I call up the resolution (H. Res. 574) recommending that the House of Representatives find Lois G. Lerner, Former Director, Exempt Organizations, Internal Revenue Service, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 568, the resolution is considered read.

The text of the resolution is as follows:

HOUSE RESOLUTION 574

Resolved, That because Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service, offered a voluntary statement in testimony before the Committee, was found by the Committee to have waived her Fifth Amendment Privilege, was informed of the Committee's decision of waiver, and continued to refuse to testify before the Committee, Ms. Lerner shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. Sec. 192 and 194, the Speaker of the House of Representatives shall certify the report of the Committee on Oversight and Government Reform, detailing the refusal of Ms. Lerner to testify before the Committee on Oversight and Government Reform as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Ms. Lerner be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

The SPEAKER pro tempore. The resolution shall be debatable for 50 minutes, equally divided and controlled by the chair and ranking minority member of the Committee on Oversight and Government Reform or their designees.

After debate on the resolution, it shall be in order to consider a motion to refer if offered by the gentleman from Maryland (Mr. CUMMINGS), or his designee, which shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent.

The gentleman from California (Mr. ISSA) and the gentleman from Maryland (Mr. CUMMINGS) each will control 25 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. ISSA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and insert extraneous material into the RECORD for the resolution made in order under the rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ISSA. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, on May 22, 2013, the committee started a hearing to inves-

tigate allegations that the IRS had, in fact, used a flawed process in reviewing applications for tax-exempt status.

To wit, I subpoenaed Lois Lerner to testify at that hearing because she was head of IRS' Exempt Organization's Division, the office that executed and, we believe, targeted conservative groups. The two divisions of the IRS most involved with the targeting were the EO Determinations unit in Cincinnati and the EO Technical unit in Washington, D.C., headed by Lois Lerner.

Before the hearing, Ms. Lerner's lawyer notified the committee that she would invoke her Fifth Amendment privilege and decline to answer any questions from our committee members. Instead of doing so, Ms. Lerner read a voluntary statement—self-selected statement that included a series of specifics declarations of her innocence.

She said:

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 committee.

She then refused to answer our questions. She invoked her Fifth Amendment right. She wouldn't even answer questions about declarations she made during her opening statement.

Mr. Speaker, that is not how the Fifth Amendment is meant to be used. The Fifth Amendment is protection. It is a shield. Lois Lerner used it as a sword to cut and then defend herself from any response.

A witness cannot come before the committee to make a voluntary statement—self-serving statement and then refuse to answer questions. You don't get to use the public hearing to tell the press and the public your side of the story and then invoke the Fifth.

Additionally, Mr. Speaker, after invoking the Fifth, when asked about previous testimony she had made and documents, she answered and authenticated those and then, again, went back to asserting her Fifth Amendment rights.

It is disappointing that things have come to this point. Lois Lerner had almost a year to reconsider her decision not to answer questions to Congress.

POINT OF ORDER

Mr. LYNCH. Mr. Speaker, point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. LYNCH. The gentleman was recognized for 2 minutes. It is way past 2 minutes. I was just wondering if we were keeping track of time.

The SPEAKER pro tempore. Would the gentleman from California like to yield himself additional time?

Mr. ISSA. I would be happy to anytime the Chair tells me my time has expired.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. ISSA. Mr. Speaker, I yield myself an additional 30 seconds.

In the meantime, after invoking, she gave a no-strings-attached interview to

the Justice Department. This was said to the press entirely voluntarily before a large gathering. Her position with respect to complying with a duly issued subpoena has become clear. She won't. Her testimony is a missing piece of an investigation into IRS targeting.

We have now conducted 40 transcribed interviews and reviewed hundreds of thousands of documents.

Mr. Speaker, the facts lead to Lois Lerner.

I reserve the balance of my time.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Just shy of 1 year ago, the Treasury Inspector General for Tax Administration reported the IRS had used inappropriate criteria to review applicants for tax-exempt status.

The very same day, Chairman ISSA went on national TV, before he received a single document or interviewed a single witness, and said the following: "This was the targeting of the President's political enemies effectively, and lies about it during the election year."

Republicans have spent the past year trying to prove these allegations. The IRS has spent more than \$14 million responding to Congress and has produced more than a half a million pages of documents. We have interviewed 39 witnesses, 40 witnesses, IRS witnesses, Treasury Department employees; and after all of that, we have not found any evidence of White House involvement or political motivation.

Yesterday, I issued a report with key portions from the nearly 40 interviews conducted by the committee to date; and these were witnesses, Mr. Speaker, called by the majority. These interviews showed, definitively, that there was no evidence of any White House direction or political bias; instead they describe in detail how the inappropriate terms were first developed and how there was inadequate guidance on how to process the application.

Now, let me be clear that I am not defending Ms. Lerner. I wanted to hear what she had to say. I have questions about why she was unaware of the inappropriate criteria for more than a year after they were created. I want to know why she did not mention the inappropriate criteria in her letters to Congress, but I could not vote to violate an individual's Fifth Amendment rights, just because I want to hear what she has to say.

A much greater principle is at stake here today, the sanctity of the Fifth Amendment rights for all citizens of the United States of America; and I will not walk a path that has been tread by Senator McCarthy and the House Un-American Activities Committee.

In this case, a vote for contempt not only would endanger the rights of American citizens, but it would be a pointless and costly exercise.

When Senator McCarthy pursued a similar case, the judge dismissed it. The Supreme Court has said that a witness does not waive her rights by professing her innocence.

In addition, more than 30 independent experts have now come forward to conclude that Chairman ISSA botched the contempt procedure by not giving Ms. Lerner the proper warnings at the March 5 hearing, when he rushed to cut off my microphone and adjourn the hearing before any Democrat had the chance to utter a syllable.

For instance, Stan Brand, who served as the House Counsel from 1976 to 1983, concluded that Chairman ISSA's actions were "fatal to any subsequent prosecution."

The experts who came forward are from all across the country and all across the political spectrum. J. Richard Broughton, a member of the Republican National Lawyers Association and a law professor, concluded that Ms. Lerner "would likely have a defense to any ensuing criminal prosecution for contempt pursuant to the existing Supreme Court precedent."

I didn't say that. The Republican National Lawyers Association member said that.

Rather than squandering our valuable resources, pursuing a contempt vote that more than 30 independent experts have concluded will fail in court, we should release the nearly 40 transcripts, in their entirety, that have not yet been made public and allow all Americans to read the unvarnished facts for themselves.

Mr. Speaker, I reserve the balance of my time.

Mr. ISSA. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. JORDAN).

Mr. JORDAN. Mr. Speaker, I thank the chairman for yielding.

Look, here is what we know: Lois Lerner was at the center of this scandal right from the get-go.

We know that she waived her Fifth Amendment rights on two separate occasions. She came in front of the committee, as the chairman pointed out, and made multiple factual statements. When you do that, when you make all kinds of assertions, you then don't get a chance to say: oh, now, I invoke my Fifth Amendment privileges.

She waived it a second time when she agreed to be interviewed by the Department of Justice. Think about that. She is willing to sit down with the people who can put her in jail, but she is not willing to answer our questions.

When you waive it in one proceeding, you can't exercise it somewhere else, according to the case law here in the District of Columbia.

Here is what we also know: John Koskinen, the new IRS Commissioner, says it may take as many as 2 years for him to get us all Lois Lerner's emails.

Most importantly, we know Lois Lerner and the Internal Revenue Service systematically targeted American citizens, systematically targeted groups for exercising their First Amendment rights.

Think about that for a second, Mr. Chairman. Think about your First Amendment rights, freedom of the

press, freedom of religion, freedom of association, freedom of assembly, freedom of speech—and speech, in particular—that is political. To speak out against your government, your most fundamental right, that is what they targeted.

So to get to the truth, we need to use every tool we can to compel Ms. Lerner, the lady at the center of the scandal, to come forward and answer our questions so the American people can understand why their First Amendment rights were targeted because we know—we know the criminal investigation at the Department of Justice is a sham. They have already leaked to The Wall Street Journal. No one is going to be prosecuted.

They already had the head of the Executive Branch, the President of the United States, go on national television and say no corruption, not even a smidgeon; and the person leading the investigation is a maxed-out contributor to the President's campaign.

We know that is not going to work

□ 1630

The only route to the truth is through the House of Representatives and compelling Ms. Lerner to answer our questions. That is why this resolution is so important. That is why I am supporting it. That is why I hope my colleagues on the other side will support it as well. It is about this most fundamental right, and Ms. Lerner is at the center of the storm. We want her simply—simply—to answer the questions.

Mr. CUMMINGS. Mr. Speaker, I would say to the gentleman, as Professor Green of Fordham University has said, it is explicit that a person does not waive a Fifth Amendment right by answering questions outside of a formal setting or by making statements that were not under oath, when he referred to the issue of her making statements to the Justice Department.

With that, I yield 2 minutes to the distinguished gentlelady from California (Ms. SPEIER), a member of our committee.

Ms. SPEIER. I thank the ranking member for his leadership and for the opportunity to say a few words here on the floor.

Mr. Speaker, I am not here to defend Lois Lerner today, but I am here to defend the Constitution and every American's right to assert the Fifth Amendment so as not to incriminate themselves, and every single Member of this body should be as committed to doing the same thing. I am also here to defend the integrity of the committee and the rules of that committee.

Lois Lerner pled the Fifth Amendment before our committee, and she has professed her innocence, pure and simple. Thirty independent legal experts have said that the proceedings were constitutionally deficient to bring a contempt proceeding. They were constitutionally deficient because the chair did not overrule Ms. Lerner's

Fifth Amendment assertion and order her to answer the questions. And as long as that deficiency is there, there is no reason to move forward with that effort today.

But let's move on to the bigger picture: Every single 501(c)(4) that was in the queue before the IRS could have self-certified; they didn't even need to be in that queue. So whether or not there was a list of progressive organizations and conservative organizations that they were using to somehow get to the thousands of applications that they had, they could have moved aside and self-certified.

There have been 39 witnesses before this committee. There have been 530 pages of documents. There is no smoking gun. But the other side is locked and loaded. They are just shooting blanks.

Mr. ISSA. Mr. Speaker, if they hadn't made their applications, perhaps they wouldn't have been asked the inappropriate, abusive questions like, What books do you read? Who are your donors? as has happened.

With that, I yield 1 minute to the distinguished gentleman from Virginia (Mr. CANTOR), the leader of the House.

Mr. CANTOR. I thank the gentleman from California, Chairman ISSA, for yielding.

Mr. Speaker, I rise today in strong support of this resolution to hold Ms. Lois Lerner in contempt. The substance of this resolution should not be taken lightly. The contempt of the U.S. House of Representatives is a serious matter and one that must be taken only when duly warranted. There is no doubt in my mind the conditions have been met for today's action.

Mr. Speaker, there are few government abuses more serious than using the IRS to punish American citizens for their political beliefs. The very idea of the IRS being used to intimidate and silence critics of a certain political philosophy is egregious. It is so egregious that it has practically been a cliché of government corruption in works of fiction for decades, ever since President Nixon's administration.

Yet, Mr. Speaker, unfortunately, in this instance, under Ms. Lerner's watch, this corruption became all too real. Conservatives were routinely targeted and silenced by the IRS leading up to the 2012 election, unjustly and with malice. Those targeted were deprived of their civil right to an unbiased administration of the law. These citizens, these moms and dads simply trying to play within the rules and make their voices heard, were left waiting without answers until Election Day had come and gone.

Liberal groups were not targeted, as my colleagues across the aisle like to claim. Only conservative groups were deliberately singled out because of their political beliefs, and they were subjected to delays, inappropriate questions, and unjust denials.

Mr. Speaker, the American people are owed a government that they can

trust, not a government that they fear. The only way to rebuild this trust is to investigate exactly how these abuses occurred and to ensure that they never happen again. Whether you are a conservative or a liberal, a Republican or a Democrat or hold any other political or philosophical position, your rights must be protected from this administration and all those that come after it.

For nearly a full year, Lois Lerner has refused to testify before this House about the singling out and targeting of conservative organizations. She spoke up and gave a detailed assertion of her innocence and then refused to answer questions. She later spoke with DOJ attorneys for hours but still refused to answer a lawful subpoena and testify to the American public. As a public servant, she decided to forgo cooperation, to forgo truth and transparency.

In 2013, Ms. Lerner joked in one uncovered email that perhaps she could get a job with Organizing for America, President Obama's political arm. This is no surprise. Our committees have found that Ms. Lerner used her position to unfairly deny conservative groups equal protection under the law. Ms. Lerner impeded official investigations. She risked exposing, and actually may have exposed, confidential taxpayer information in the process. Day after day, action after action, Ms. Lerner exposed herself as a servant to her political philosophy, rather than a servant to the American people.

This, Mr. Speaker, is why the House has taken the extraordinary action of referring Ms. Lerner to the Department of Justice for criminal prosecution and is why we will request a special counsel to investigate this case.

Not only has the President asserted that there is "not even a smidgeon of corruption" at the IRS, but leaks from the Department of Justice have indicated that no one will be prosecuted. That is not surprising, as a top donor to the President's campaign is playing a key role in their investigation, potentially compromising any semblance of independence and justice. An independent, nonpartisan special prosecutor is needed to ensure a fair investigation that all Americans can trust.

Mr. Speaker, the American people deserve to know the full context of why these actions were taken. As early as 2010, leading Democratic leaders were urging the IRS to take action against conservative groups. How and why was the decision made to take action against them?

The American people, Ms. Lerner's employers, deserve answers. They deserve accountability. They deserve to know that this will never happen again, no matter what your political persuasion. The American people deserve better.

Because of Ms. Lerner's actions, because of her unwillingness to fully testify, and because she has refused to legally cooperate with this investigation, I urge my colleagues in the House to hold Ms. Lerner in contempt.

Mr. CUMMINGS. I yield 3 minutes to the distinguished gentleman from Massachusetts (Mr. LYNCH).

Mr. LYNCH. I thank the gentleman from Maryland for yielding.

Mr. Speaker, in response to those recent allegations, I do want to point out that our committee did look at the question of political motivation in selecting tax exemption applications. We asked the inspector general, Russell George, on May 17, 2013, in a hearing before the Ways and Means Committee: "Did you find any evidence of political motivation in the selection of tax-exempt applications?" The inspector general who investigated this case testified in response: "We did not, sir."

Mr. Speaker, I rise in strong opposition to this contempt resolution. What began as a necessary and compelling bipartisan investigation into the targeting of American citizens by the Internal Revenue Service has now deteriorated into the very sort of dangerous and careless government overreaching that our committee was set out to investigate in the first place.

The gentleman from California commenced this investigation in May of 2013 by stating the following during his opening statement: "When government power is used to target Americans for exercising their constitutional rights, there is nothing we, as Representatives, should find more important than to take it seriously, get to the bottom of it, and eradicate the behavior."

I would remind the chairman that our solemn duty as lawmakers, to safeguard the constitutional rights of every American, does not only extend to cases where a powerful Federal department has deprived citizens of freedoms vested in the First Amendment, rather we must be equally vigilant when the power of government is brought down on Americans who have asserted their rights under the Fifth Amendment. And it is guaranteed that no person shall be compelled to be a witness against him- or herself nor be deprived life, liberty, and property without due process of law. In our system where "innocent until proven guilty" lies at the bedrock of our constitutional protections, Ms. Lerner's brief assertions of innocence, her 36 words, should not be enough to vitiate her Fifth Amendment constitutional rights.

Regrettably, this contempt resolution utterly fails to reflect the seriousness with which we should approach the constitutional issue at stake here. In the face of Supreme Court precedent and a vast body of legal expert opinion holding that Ms. Lerner did not, in fact, waive her Fifth Amendment privilege by professing her innocence, Chairman ISSA has moved forward with contempt proceedings without even affording the members of our own committee the opportunity to receive public testimony from legal experts on this important constitutional question.

As held by the Supreme Court in 1949 in *Smith v. United States*:

Testimonial waiver is not to be lightly inferred . . . and the courts accordingly indulge every reasonable presumption against finding a testimonial waiver.

Chairman ISSA has also chosen to pursue contempt against Ms. Lerner after refusing an offer from her attorney for a brief 1-week delay so that his client could finally provide the testimony that Members on both sides of this aisle have been asking for.

These legally flawed contempt proceedings bring us no closer to receiving Ms. Lerner's testimony and have only served to divert our time, focus, and resources away from our rightful inquiry into the troubling events at the IRS. They are also reflective of the partisan manner in which this \$14 million investigation—so far—has been conducted to date.

Chairman ISSA has refused to release the full transcripts of the now 39 transcribed interviews conducted by committee staff with relevant IRS and Treasury officials. He has also recently released two staff reports on these events that were not even provided to the Democratic members prior to their release.

In closing, I urge my colleagues to join me in opposing this resolution.

Mr. ISSA. Mr. Speaker, I would like to correct the record. It is now 40 transcribed interviews, and we have received 12,000 emails from Lois Lerner today. So that \$14 million probably went up a little bit because today the IRS finally turned over some of the documents they owed this committee under subpoena for over half a year.

I now yield 2 minutes to the distinguished gentleman from Florida (Mr. MICA).

Mr. MICA. I thank the chairman for yielding.

Mr. Speaker, there is probably nothing more sacred to Americans, nothing more important to protect, than the democratic electoral process which has made this, by far, the greatest country in the world, giving everyone an opportunity to participate.

□ 1645

We are here today to hold Lois Lerner in contempt. It has been stated she didn't have her rights recognized. She has the right to take the Fifth. She has done that under the Constitution. We brought her in twice, May 22, 2013, and March 2014. She began—and you can see the tapes—declaring her innocence. Even before that, when it was pointed out that she was at the heart of this matter—in fact, everyone, her employees, when she tried to throw them under the bus, they said she threw them under a convoy of Mack trucks.

Every road leads to Lois Lerner. Lois Lerner held the Congress of the United States in contempt and is holding it in contempt. Lois Lerner held the electoral process that is so sacred to the country in contempt. Lois Lerner has held the American people and the process that they cherish and the chief financial agency, the IRS—whom we all

have to account to—as a tool to manipulate a national election. This was a targeted, directed, and focused attempt, and every road leads to Lois Lerner.

She has had twice the opportunity to come before Congress and to tell the whole truth and nothing but the truth, and she has failed to do that. I urge that we hold Lois Lerner in contempt. That is our responsibility, and it must be done.

Mr. CUMMINGS. Mr. Speaker, with all due respect to the gentleman who just spoke, even the IG found that Lois Lerner did not learn about these inappropriate terms until about a year afterwards, the IG that was appointed by a Republican President.

With that, I yield 3 minutes to the gentleman from Virginia (Mr. CONNOLLY), a distinguished member of our committee.

Mr. CONNOLLY. Mr. Speaker, I thank my dear friend, the distinguished ranking member of the Oversight and Government Reform Committee. I think, Mr. Speaker, if the Founders were here today and if they had witnessed the proceedings on the Oversight and Government Reform Committee with respect to Ms. Lois Lerner, they would have unanimously reaffirmed their commitment to the Fifth Amendment because rights were trampled on, frankly, starting with the First Amendment rights of the ranking member himself, who was cut off and not allowed to speak even after the chairman availed himself of the opportunity for an opening statement and no fewer than seven questions before cutting off entirely the ranking member of our committee.

But then we proceeded to trample on the Fifth Amendment while we were at it, and case law is what governs here. The court has said the self-incrimination clause, the Fifth Amendment, must be accorded liberal construction in favor of the right it was intended to secure since the respect normally accorded the privilege is buttressed by the presumption of innocence accorded to the defendant in a criminal trial. In other words, it is the same. It is the equivalent of the presumption of innocence.

Madison said that if all men—and he meant all men and women, I am sure—were angels, we wouldn't need the Fifth Amendment. Lois Lerner is not to be defended here. She is not a heroic character. But she is a citizen who has an enumerated right in the Constitution of the United States. The relevant case, besides *Quinn v. the United States*, comes from the 1950s. A U.S. citizen, Diantha Hoag, was taken before the permanent subcommittee, and she was asked questions. She, also, like Lois Lerner, had a prefatory statement declaiming her innocence that she was not a spy, she had not engaged in subversion, and then she proceeded to invoke her Fifth Amendment, just like Lois Lerner.

In fact, the difference is Ms. Hoag actually once in a while answered “yes”

or “no” to some questions put to her. She was found to be in contempt. The chairman of the committee jumped on it, just like our chairman did, and said, aha, gotcha. Two years later, the court found otherwise. The court unanimously ruled that Ms. Hoag had not waived her Fifth Amendment right. She was entitled to a statement of innocence, and that didn't somehow vitiate her invocation of her Fifth Amendment right, and her Fifth Amendment right was upheld.

This is about trampling on the constitutional rights of U.S. citizens—and for a very crass reason, for a partisan, political reason. We heard the distinguished majority leader, my colleague and friend from Virginia, assert something that is absolutely not true, which is that only conservative groups were targeted by the IRS. That is not true, and we have testimony it is not true. Words like “Occupy,” “ACORN,” and “progressive” were all part of the so-called BOLO list. They, too, were looked at.

This was an incompetent, ham-handed effort by one regional office in Cincinnati by the IRS. Was it right? Absolutely not. But does it rise to the level of a scandal, or the false assertion by the chairman of our committee on television, as the ranking member cited, that somehow it goes all the way to the White House picking on political enemies? Flat out untrue, not a scintilla of evidence that that is true. And to have the entire House of Representatives now voting on the contempt citation and declaring unilaterally that a U.S. citizen has waived her constitutional rights does no credit to this House and is a low moment that evokes the spirit of Joe McCarthy from a long ago era. Shame on us for what we are about to do.

Mr. ISSA. Mr. Speaker, nobody answered the debunking that we put out, this document, nobody. This document makes it clear it was all about targeting and abusing conservative groups, and the gentleman from Virginia knows that very well.

With that, it is my honor to yield 2 minutes to the gentleman from Oklahoma (Mr. LANKFORD), who has championed so many of these issues in our investigations.

Mr. LANKFORD. Mr. Speaker, about 3 years ago, all of our offices starting getting phone calls from constituents saying they are being asked very unusual questions by the IRS. They were applying for non-profit status. They were patriot groups, they were Tea Party groups, and they were constitutional groups. Whatever their name might be, they were getting these questions coming back in. Questions like: Tell us, as the IRS, every conversation you have had with a legislator and the contents of those conversations. Tell us, and give us copies of the documents that are only given to members of your organization. If there is a private part of your Web site that is only set aside for members, show us all of those

pages. And by the way, all of those questions were prefaced with a statement from the IRS as, whatever documents you give us will also be made public to everyone.

So the statement was: Tell us what you privately talked about with legislators, and tell us what only your members get because we are going to publish it.

So, of course, we started to get questions about that. The inspector general starts an investigation on that, and on May the 10th of last year, 2013, Lois Lerner stands up in a conference, plants a question in the audience to talk about something completely irrelevant to the conference so she can leak out that this investigation is about to be burst out. Four days later, the inspector general launches this investigation and says that conservative groups have been unfairly targeted—298 groups have their applications held, isolated. They were asked for all these things, and when they turned documents in, they were stored. The initial accusation was that this was a crazy group from Cincinnati that did this.

So our committee happened to bring in these folks from Cincinnati. They all said they wanted to be able to advance these applications, and they were told, no, hold them. We asked the names of the people in Washington who told them to hold them. We brought those folks in. They said they wanted to also move them, and they were told by the counsel's office to hold them.

As we continued to work through point after point, through person after person, all of them come back to Lois Lerner's office, Lois Lerner, who had come in before us May 22, 2013, made a long statement professing her innocence, saying she had done nothing wrong, had broken no law, and then said: I won't answer questions.

What is at stake here is a constitutional principle: can a person stand before a court or before the Congress and make a long statement saying “I have done nothing wrong” and then choose to not answer questions? This is a precedent before every Congress from here on out and in front of every court. Can this be done?

We would say no. It is not just a statement about accepting that she is guilty, though all the evidence leads back to her and her office. It is that if you have the right to remain silent, do you actually remain silent during that time period?

Mr. CUMMINGS. Mr. Speaker, I would say to the gentleman that we are talking about the constitutional rights of a United States citizen, and we do not have the right to remain silent, as Members of Congress, if those rights are being trampled on.

I yield 3 minutes to the gentleman from Maryland (Mr. HOYER), the distinguished leader.

Mr. HOYER. Mr. Speaker, if this is a precedent, it is a bad precedent. It is a dangerous precedent. It is a precedent that we ought not to make. “Read the

Constitution," I heard over and over and over again. I have read probably the opinions of 25 lawyers whom I respect from many great institutions in this country, none of whom, as I am sure the ranking member has pointed out, none of whom believe that the precedent supports this action.

Mr. Speaker, what a waste of the people's time for Congress to spend this week on politics and not policy. We are about to vote on a resolution that is really a partisan, political message. Everyone here agrees—everyone—that the IRS should never target anyone based on anything other than what they owe in taxes, not their political beliefs or any other traits other than their liability and their opportunities to pay their fair share to the United States of America.

In fact, during an exhaustive investigation into the IRS, Chairman ISSA's committee interviewed 39 witnesses, analyzed more than 530,000 pages, and could not find the conspiracy they were looking for—that they always look for, that they always allege. Fourteen million dollars of taxpayer money has already been spent on this investigation, and all that was found was that which we already knew: that the division led by Ms. Lerner suffered from fundamental administrative and managerial shortcomings that bore no connection to politics or to partisanship.

Independent legal experts have concluded that Chairman ISSA's efforts to hold Ms. Lerner in contempt of Congress is constitutionally deficient. But this resolution before us today is, of course, not meant to generate policy. It is meant to generate headlines. Republicans, once again, are showing that they are more interested in partisan, election-year gimmicks than working in a bipartisan way to tackle our country's most pressing challenges. We ought to turn to the important matters of creating jobs, raising the minimum wage, and restoring emergency unemployment for those who are struggling to find work—issues the American people overwhelmingly support and want their Congress to address.

Mr. Speaker, I urge my colleagues to give this partisan resolution the vote it deserves and defeat it so that we can turn to the people's business.

In closing, let me say this, Mr. Speaker. There are 435 of us in this body.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. CUMMINGS. I yield the gentleman an additional 30 seconds.

Mr. HOYER. I thank the gentleman.

Mr. Speaker, I urge all of my colleagues, do not think about party on this vote. Think about precedent. Think about this institution. Think about the Constitution of the United States of America. And if you haven't read, read some of the legal opinions that say you have to establish a predicate before you can tell an American that they will be held criminally liable if they don't respond to your questions.

That is what this issue is about. It is not about party, it is not about any of us, but about the constitutional protections that every American deserves and ought to be given.

Mr. CUMMINGS. Mr. Speaker, may I inquire how much time each side has remaining?

The SPEAKER pro tempore. The gentleman from Maryland has 8¼ minutes remaining. The gentleman from California has 14¾ minutes remaining.

Mr. CUMMINGS. Mr. Speaker, I reserve the balance of my time.

□ 1700

Mr. ISSA. Mr. Speaker, I simply want to correct the record. Earlier, a minority Member stated that, with 35 words said by Lois Lerner, our count is 305. Hopefully, their inaccuracy of their experts will be considered the same.

With that, I yield 2 minutes to the gentleman from Arizona (Mr. GOSAR).

Mr. GOSAR. Mr. Speaker, I rise in support of this resolution. The people's House has thoroughly documented Lois Lerner's trespasses, including her history of targeting conservative groups, as well as the rules and laws she has broken. In fact, there is a 443-page committee report supporting these allegations.

We know that Ms. Lerner refuses to comply with a duly-issued subpoena from the House Oversight and Government Reform Committee, and without Ms. Lerner's full cooperation, the American public will not have the answer it needs from its government.

My friends across the aisle have continuously cried foul over this legitimate investigation; but where is their evidence to put this issue to rest?

Let me say that I do not enjoy holding any Federal official in contempt or pursuing criminal charges because doing so means that we have a government run amuck and a U.S. Attorney General who does not uphold the rule of law. Such a predicament is a lose-lose situation for all Americans and our Constitution.

As uncomfortable as it may be, it is our job to proceed in the name of government accountability. I support this resolution, and it is way past time for contempt for Lois Lerner.

Mr. CUMMINGS. Mr. Speaker, I yield 2 minutes to the gentleman from Vermont (Mr. WELCH).

Mr. WELCH. Mr. Speaker, I thank the gentleman.

Mr. Speaker, there is a reason that the American people hold the Congress of the United States in such lowest esteem. We are providing them with some additional basis to have that opinion, and this here is what it is.

Number one, this was an important investigation. We should do it. We should do it energetically, and we should do it together. Instead, information was constantly withheld from the minority.

Our own ranking member was cut off with really quite a bold gesture by the

chairman at a certain point; and it created an impression that it was going to be a one-sided affair, rather than a balanced, cooperative approach. That is essential to having any credibility.

The second thing is: What do we do about Lois Lerner who took the Fifth? We have a debate about whether the manner in which she did that caused her to waive that Fifth Amendment privilege. That is a fair and square question.

Your side thinks she waived it and, therefore, should be held in contempt. Our side—and I think we have the weight of legal opinion—said she didn't waive it; but you know what, that is a legal question, and there is a document called the Constitution that separates the powers.

Whether this person crossed the line or didn't is a legal determination to be made by judges, not by a vote of Congress. Since when did Congress get to vote on judicial issues?

If we want this to be resolved in a way that has any credibility, it should be decided by the courts. Send this to the courts. Let the judges decide whether this was a waiver or it wasn't; but the idea that a Congress—this time run by Republicans, next time run by Democrats—can have a vote to make a legal determination about the rights of a citizen is in complete conflict with the separation of powers in our Constitution.

Mr. ISSA. Mr. Speaker, I thank the gentleman from Vermont in advance for his "yes" vote on this because the only way to send this to the court to be decided is to vote "yes." In fact, we are not trying Lois Lerner. We are determining that she should be tried. The question should be before a Federal judge.

With that, I yield 2 minutes to the gentlewoman from Wyoming (Mrs. LUMMIS), a member of the committee.

Mrs. LUMMIS. Mr. Speaker, I contend that, in the interest of protecting the constitutional rights of the hard-working taxpayers of this country from the behavior of the IRS, from Lois Lerner—herself a lawyer—who understands that you can waive your right to remain silent as to matters to which you chose to testify, and that she did that. She said: I have done nothing wrong, I have broken no laws.

Subsequently, we find out that she blamed the IRS employees in Cincinnati for wrongdoing that was going on here in Washington, D.C., that she was targeting conservative groups and only conservative groups, thereby violating their First Amendment constitutional rights.

The Oversight Committee needs to find the truth, and to that end, we need answers from Lois Lerner. The committee has sought these answers for more than a year. Lerner's refusal to truthfully answer these questions posed by the committee cannot be tolerated. I urge a "yes" vote and, following that, swift action by the Justice Department to ensure that Lois Lerner

provides answers on exactly what the IRS was up to.

Mr. CUMMINGS. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. DANNY K. DAVIS), a member of the committee.

Mr. DANNY K. DAVIS of Illinois. Mr. Speaker, I think all of us agree that one of the responsibilities of our committee is to investigate and try to make sure that the laws are carried out the way we intended and to try and make sure that the money is being spent the way we intended for it to be spent.

It seems to me that we have spent \$14 million, up to this point, investigating this one issue; and while I think the investigations are designed to tell us something we don't know, we have not learned anything new. We have not learned of any kind of conspiracy. We have not learned of any kind of underhandedness.

The only thing that we know is that we have said to a United States citizen that you cannot invoke the Fifth and say: I have a right not to answer questions if I think it is going to damage me.

I would much rather see us spend the \$14 million creating jobs, providing educational opportunities for those who need it, doing something that will change the direction and the flavor of the economics of our country, rather than wasting \$14 million more on continuous investigations. I vote "no."

Mr. ISSA. Mr. Speaker, it is my distinct honor to yield 2 minutes to the gentleman from Georgia (Mr. COLLINS).

Mr. COLLINS of Georgia. Mr. Speaker, I appreciate the chairman yielding me this time.

Mr. Speaker, it is amazing. The American people still have not received answers that they deserve, I believe, from Lois Lerner. Just sitting here on the floor and listening for the last few minutes, it just really amazes me about what is being said.

It is said that, if the chairman had done this or if we had done something else, if we had not done this, and maybe she would have had more time, and maybe we would have found out the truth. Well, maybe if I turn my head sideways and squinted real hard, maybe she would have talked then.

But she did talk. She said a lot of things, including making 17 different factual assertions, and then decided: oops, don't want to talk anymore.

Here is the problem: no one has said or even implied that you can't assert your Fifth Amendment right. That has never been said on this floor. It has never been asserted by any member of the Republican Party.

What has been asserted is you can't come in and you can't say: I have done nothing wrong, no problem, I am clean; and, oh, by the way, quit asking because I am not going to answer any of your questions.

When you do that, then you are taking advantage of a system that you are not supposed to be taking advantage

of. She could have walked in, from minute one, and said: Mr. Chairman, with all due respect, I am not going to answer a question. I am asserting my Fifth Amendment right.

She did not do that, and what we have now is not a waste of time. I believe there are a lot of things. The Republican majority is working on economic development, but I think one of the things we have to reassert in this country is trust, and right now, our American people do not trust us, and they do not believe that the government is in their favor.

Instances like this, when they are being asked inappropriate questions, when they are trying to fulfill their rights and freedom of speech, this is why we are here. You can't keep doing it.

Ms. Lerner needs to be held in contempt because all I have found on the floor of this House today is arguments that keep coming, that remind me of the song from Pink Floyd. I am just comfortably numb at this point because the arguments don't matter.

We never said she couldn't use her Fifth Amendment right. She just chose to say: I didn't do anything wrong.

That is not the way this process works, Ms. Lerner. It is time to testify.

Mr. CUMMINGS. I would say to the gentleman that is leaving the floor now who just spoke: the arguments do matter. This is still the United States of America. We still have constitutional rights, which we declare we will uphold every 2 years.

I yield 2 minutes to the distinguished gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, if the point of a contempt resolution is to find out what Lois Lerner knows, what the committee wants to know, whether there was a deliberate targeting of citizens for political reasons.

The fact is that the committee passed up the opportunity to learn this information. It asked her attorney: Would you tell us what she would tell us?

It is called a proffer. Indeed, her attorney sent a letter to the chairman offering to provide a proffer. That is the information we want to know. This proffer would detail what Ms. Lerner would testify.

Instead of accepting that proffer, the chairman went on national television and claimed that this written offer never happened. The chairman, therefore, never obtained the proffer that the attorney was willing to offer, the information which is the only reason we should be on this floor at all.

When the ranking member tried to ask about it at a hearing in March, the chairman famously cut off his microphone and closed down the hearing in one of the worst examples of partisanship the committee has ever seen.

The chairman did something similar when Ms. Lerner's attorney offered to have her testify with a simple one-week extension, Mr. Speaker, since the attorney had obligations out of town.

Rather than accept this offer to get the committee the information that is at the bottom of this contempt matter today, the chairman went on national television and declared, inaccurately, that she would testify without the extension. Of course, that meant nothing could happen. There was no trust left.

Clearly, what the committee wanted was a Fifth Amendment show hearing, in violation of Ms. Lerner's rights. They wanted a contempt citation vote. That is the political contempt citation vote scheduled today. It will never hold up in the courts of the United States of America.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

I have worked long and hard with the gentlewoman from the District of Columbia. She is a good person, but her facts simply are 100 percent wrong. Every single one of her assertions were simply not true. You can go to pages 11, 12, and 13 of this 400-plus page report, and you can see none of those statements are true.

We would have accepted a proffer from the attorney. We were not given one; although I will say he did tell us, one time, we wouldn't like what she said if she said something. When I went on national television, I did so because of written communication that indicated that she would appear and testify.

Additionally, the gentlelady did make one point that was very good. It was very good. The attorney told us that she needed another week to prepare, which we were willing to give her; but when we learned it was actually inconvenient for the attorney to necessarily prep her, we said, if he would come in with his client and agree that she was going to testify, we would recess and give her the additional week.

When they came in that day, no such offer was on the table from her attorney, but, in fact, he said she had decided that she simply didn't want to speak to us—not that she was afraid of incrimination—because you can't be afraid of incrimination and not afraid, back and forth. That is pretty clear.

Her contempt for our committee was, in fact, contempt for the body of Congress, while she was happy to speak at length, apparently, with the Department of Justice, perhaps with that \$6,000 or \$7,000 contributor to President Obama that is so involved in that investigation.

With that, I yield 2 minutes to the gentleman from Michigan (Mr. BENTIVOLIO).

□ 1715

Mr. BENTIVOLIO. Mr. Speaker, I stand in support of this resolution recommending that the House of Representatives find Lois Lerner in contempt of Congress.

Our Pledge of Allegiance ends with the words, "with liberty and justice for all." Lois Lerner's actions have made it nearly impossible for us to follow those ideals for the victims of the IRS

targeting scandal. She has placed obstacle after obstacle in front of our pursuit for the truth, worrying that her ideology and the actions of a corrupt Federal agency will be exposed.

I ask my colleagues to join our effort in promoting transparency in our government. As Members of Congress, it is our job to protect rights, not take them away.

Mr. CUMMINGS. I reserve the balance of my time.

Mr. ISSA. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. FARENTHOLD), a member of the committee.

Mr. FARENTHOLD. Mr. Speaker, I am here today because I do believe Lois Lerner waived her Fifth Amendment right to testify, and by so doing and not answering our questions, she was in contempt of Congress.

The other side makes a big deal about this being political and preserving constitutional rights, but the way the system is supposed to work: we will find Ms. Lerner in contempt; the Justice Department will then go to court; there will be a full hearing in the court. And this may very well make it to the United States Supreme Court.

Her rights will be protected, but we have also got to protect the rights of the people. We are the people's House. It is our job to get to the bottom of the scandals that are troubling the American people so that we can regain the trust of the American people.

You know, it is healthy to be skeptical of your government, but when you don't believe a word that comes out of the mouth of the administration, there is a real problem.

We have got to reclaim our power here. We are struggling. I don't think the Justice Department is going to pursue this. I think the same thing will happen to Ms. Lerner that happened with Mr. Holder—the Justice Department is going to decline to move forward with it—but we have got to do our job.

I also want to point out that we have got to deal with these people who are in contempt of Congress. For that reason, I have H.R. 4447 that is pending before this House that would withhold the pay of anyone in contempt of Congress. We have got to use the power of the purse and everything we have got to reclaim the power of the purse and the power that the Constitution gave this body to get to the truth and be the representatives of the people.

Mr. CUMMINGS. I reserve the balance of my time.

Mr. ISSA. Mr. Speaker, I now yield 1 minute to the gentleman from Texas (Mr. GOHMERT), who, by the way, is, in fact, a constitutional scholar in his own right.

Mr. GOHMERT. Mr. Speaker, I was struck by the comments by the minority whip instructing us to check the Constitution. That really struck me, because I believe I recall him standing up and applauding in this Chamber

when the President said: If Congress doesn't do its job, I will basically do it for them. So someone that would do that doesn't need to be giving lectures on the Constitution.

We have powers under the Constitution that we have got to protect. When someone stands up and exerts their innocence repeatedly and then attempts to take the Fifth Amendment right, it is not there. This is the next step. It will preserve the sanctity and the power of this body, whether it is Democrats or Republicans in charge or anyone who attempts to skirt justice and provide truth.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

As I close, I want to remind all of my colleagues, several references have been made to the oath that we take every 2 years in this Chamber. Every 2 years we stand in this Chamber and we say:

I do solemnly swear that I will support and defend the Constitution against all enemies, foreign and domestic.

It is the first words we say.

It is interesting that at the beginning of that swearing in is that we will defend the Constitution of the United States of America. Yesterday we had a very interesting argument in rules when one of the members of the Rules Committee questioned whether when one becomes a public employee, whether they then lose their rights as an American citizen. It is clear that those rights do stand, no matter whether you are a public servant or whether you are a janitor at some coffee shop.

We are in a situation today where we need to be very clear what is happening. Not since McCarthy has this been tried, that is the stripping away of an American citizen's constitutional right not to incriminate themselves and then holding them in contempt criminally, McCarthy. We are better than that. We are so much better.

The idea that somebody can come in after their lawyer has sent a letter in saying they are going to take the Fifth, then the lawyer comes in, sits behind them while they take the Fifth, then the person says they are taking the Fifth, and then suddenly when they say, "I declare my innocence," we say, "Gotcha."

The Supreme Court has said this is not a gotcha moment. It is not about that. The Supreme Court has said these rights, no matter how much we may not like the person who we are talking about, no matter how much we may think they are hiding, they have rights. That is what this is all about.

Mr. Speaker, I urge my colleagues to make sure that they vote against this, because this is about generations yet unborn, how they will view us during our watch.

I yield back the balance of my time.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

I regret that we have to be here today. If it is within my power, if at any time Lois Lerner comes forward to

answer our questions, I am fully prepared to hear what she has to say, and at that point I would certainly ask that the criminal prosecution be dropped. It may not be within my power after today.

For more than a year, our committee has sought to get her testimony. For nearly a year we have sought to get her to testify honestly. It was shocking to us on the committee, on the top of the dais, that a lawyer represented by a distinguished lawyer would play fast and loose with the Fifth Amendment assertion. It is a pretty straightforward process to assert your rights. In fact, her attorney may have planned all along to have a controversy. I will never know.

What I do know is we asserted that she had waived because we were advised by House counsel, an independent organization, that she had. We continue to investigate, and only today, nearly a year after a subpoena was issued, the Treasury, the IRS, actually gave us another 12,000 emails. Like earlier emails, they indicate a deeply political individual, partisan in her views, who apparently was at the center of deciding that when the President, in this well, objected to Citizens United, that it meant they wanted us to fix it, and she was prepared to do it. That is for a different court to decide.

The only question now is did she in fact give testimony, then assert the Fifth Amendment, then give some more testimony, and can we have that kind of activity.

We have dismissed other people who came before our committee, asserted their Fifth Amendment rights. After enough questions to know that they were going to continue to assert, we dismissed them. We have a strong record of respecting the First, the Fourth, the Fifth, the Sixth Amendment and so on. That is what this Congress does, and we do it every day, and our committee does it.

Rather than listen to debate here which was filled with factual inaccuracies, refuted in documentation that is available to the American people, rather than believe that the minority's assertion should carry the day because the gentleman from Georgia said if about eight different if-thens, then they would vote for this, well, I believe that the gentleman from Vermont said it very well when he said: We shouldn't be doing this. We shouldn't be finding her guilty. This should be before a judge. He may not have understood what he was saying, because what he was saying is exactly what we are doing. We are putting the question of did she properly waive or not and should she be back before us or be held in contempt and punished for not giving it.

This won't be my decision. This will be a lifetime-appointment, nonpartisan Federal judge. The only thing we are doing today is sending it for that consideration. If the court rules that in fact her conduct was not a waiver, then

we will have a modern update to understand the set of events here.

We will still have the same problem, which is Lois Lerner was at the center of an operation that systematically abused Americans for their political beliefs, asked them inappropriate questions, delayed and denied their approvals.

The minority asserted, well, they could have self-selected. Maybe they could have, maybe they should have, but it wouldn't change the fact that under penalty of perjury the IRS was asking them inappropriate questions which they intended to make public.

The IRS is an organization that we do not have confidence in now as Americans. We need to reestablish that, and part of it is understanding how and why a high-ranking person at the IRS so blatantly abused conservative groups in America that were adverse to the President, no doubt. But that should not be the basis under which you get scrutinized, audited, or abused, and yet it clearly was.

Mr. Speaker, it is essential we vote "yes" on contempt. Let the court decide, but more importantly, let the American people have confidence that we will protect their rights from the IRS.

With that, I urge support, and I yield back the balance of my time.

Mr. POSEY. Mr. Speaker, in March of 2012, then-IRS Commissioner Douglas Shulman assured Congress: "there is no targeting of conservative groups." Yet, I continued to hear stories from constituents telling me a different story. On April 23, 2012, I joined with 62 of my House colleagues in writing the IRS Commissioner inquiring further about the possible targeting. We were assured that the rules were being applied fairly and that there was no targeting or delay of processing applications from conservative groups.

In April of 2013, top IRS official Lois Lerner revealed in a public forum that the agency had been discriminating against more than 75 groups with conservative sounding names like "Tea Party" or "Patriot" in the run-up to the 2012 election the very time we were inquiring. Ms. Lerner actually went so far as to plant a question in the audience about the issue. Ms. Lerner's admission came just days before the release of an internal Treasury Inspector General audit that documented that the IRS had been misleading Congress.

When asked by Members of the House about the targeting, Miss Lerner has refused to answer our questions on multiple occasions, prompting the House to find her in contempt of Congress. The rights of hundreds and perhaps thousands of ordinary Americans have been violated, and I am most concerned about making sure that justice is pursued in protecting their rights.

Further allegations of abuse have been made by other conservative groups. The IRS admitted that someone violated the law and leaked confidential taxpayer information on a Republican Senatorial candidate. Disclosing confidential taxpayer information is one of the worst things an IRS employee can do—it's a felony, punishable with a \$5,000 fine and up to five years in prison. The Treasury Inspector General noted eight instances of unauthorized

access to records, with at least one willful violation, yet Attorney General Eric Holder has failed to prosecute. Why?

Earlier this year I led an effort with the support of over fifty of my House colleagues demanding that Attorney General Eric Holder appoint an independent special prosecutor to investigate these IRS abuses. Instead, A.G. Holder has appointed a partisan Democrat to lead the Justice Department's internal investigation who has donated thousands of dollars to the President's campaign and other Democrat campaigns. This is completely unacceptable.

It's long past time that we have a real and thorough investigation conducted by an objective investigator. Thousands of American citizens deserve to see justice pursued rather than have these abuses swept, under the rug.

The SPEAKER pro tempore. All time for debate on the resolution has expired.

Pursuant to clause 1(c) of rule XIX, further consideration of House Resolution 574 is postponed.

APPOINTMENT OF SPECIAL COUNSEL TO INVESTIGATE INTERNAL REVENUE SERVICE

Mr. GOODLATTE. Mr. Speaker, pursuant to House Resolution 568, I call up the resolution (H. Res. 565) calling on Attorney General Eric H. Holder, Jr., to appoint a special counsel to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service, and ask for its immediate consideration.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 568, the resolution is considered read.

The text of the resolution is as follows:

H. RES. 565

Whereas in February of 2010, the Internal Revenue Service ("IRS") began targeting conservative nonprofit groups for extra scrutiny in connection with applications for tax-exempt status;

Whereas on May 14, 2013, the Treasury Inspector General for Tax Administration (TIGTA) issued an audit report entitled, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review";

Whereas the TIGTA audit report found that from 2010 until 2012 the IRS systematically subjected tax-exempt applicants to extra scrutiny based on inappropriate criteria, including use of the phrases "Tea Party", "Patriots", and "9/12";

Whereas the TIGTA audit report found that the groups selected for extra scrutiny based on inappropriate criteria were subjected to years-long delay without cause;

Whereas the TIGTA audit report found that the groups selected for extra scrutiny based on inappropriate criteria were subjected to inappropriate and burdensome information requests, including requests for information about donors and political beliefs;

Whereas on January 27, 2010, in his State of the Union Address, President Barack Obama criticized the Citizens United v. Federal Election Commission decision, saying: "With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the flood-

gates for special interests—including foreign corporations—to spend without limit in our elections";

Whereas throughout 2010, President Barack Obama and congressional Democrats publicly criticized the Citizens United decision and conservative-oriented tax-exempt organizations;

Whereas the Exempt Organizations Division within the IRS's Tax-Exempt and Government Entities Division has jurisdiction over the processing and determination of tax-exempt applications;

Whereas on September 15, 2010, Lois G. Lerner, Director of the Exempt Organizations Division, initiated a project to examine political activity of 501(c)(4) organizations, writing to her colleagues, "[w]e need to be cautious so it isn't a per se political project";

Whereas on October 19, 2010, Lois G. Lerner told an audience at Duke University's Sanford School of Public Policy that "everybody" is "screaming" at the IRS "to fix the problem" posed by the Citizens United decision;

Whereas on February 1, 2011, Lois G. Lerner wrote that the "Tea Party matter [was] very dangerous," explaining "This could be the vehicle to go to court on the issue of whether Citizen's [sic] United overturning the ban on corporate spending applies to tax exempt rules";

Whereas Lois G. Lerner ordered the Tea Party tax-exempt applications to proceed through a "multi-tier review" involving her senior technical advisor and the Chief Counsel's office of the IRS;

Whereas Carter Hull, a 48-year veteran of the Federal Government, testified that the "multi-tier review" was unprecedented in his experience;

Whereas on June 1, 2011, Holly Paz, Director of Rulings and Agreements within the Exempt Organizations Division, requested the tax-exempt application filed by Crossroads Grassroots Policy Strategies for review by Lois G. Lerner's senior technical advisor;

Whereas in June 2011, Lois G. Lerner ordered the Tea Party cases to be renamed because she viewed the term "Tea Party" to be "pejorative";

Whereas on March 22, 2012, IRS Commissioner Douglas Shulman was specifically asked about the targeting of Tea Party groups applying for tax-exempt status during a hearing before the House Committee on Ways and Means, to which he replied, "I can give you assurances . . . [t]here is absolutely no targeting.";

Whereas on April 26, 2012, IRS Exempt Organizations Director Lois G. Lerner informed the House Committee on Oversight and Government Reform that information requests were done in "the ordinary course of the application process";

Whereas on May 4, 2012, IRS Exempt Organizations Director Lois G. Lerner provided to the House Committee on Oversight and Government Reform specific justification for the IRS's information requests;

Whereas prior to the November 2012 election, the IRS provided 31 applications for tax-exempt status to the investigative website ProPublica, all of which were from conservative groups and nine of which had not yet been approved by the IRS, and Federal law prohibits public disclosure of application materials until after the application has been approved;

Whereas the initial "test" cases developed by the IRS were applications filed by conservative-oriented Tea Party organizations;

Whereas the IRS determined, by way of informal, internal review, that 75 percent of the affected applications for 501(c)(4) status

were filed by conservative-oriented organizations;

Whereas on January 24, 2013, Lois G. Lerner e-mailed colleagues about Organizing for Action, a tax-exempt organization formed as an offshoot of President Barack Obama's election campaign, writing: "Maybe I can get the DC office job!";

Whereas on May 8, 2013, Richard Pilger, Director of the Election Crimes Branch of the Department of Justice's Public Integrity Section, spoke to Lois G. Lerner about potential prosecution for false statements about political campaign intervention made by tax-exempt applicants;

Whereas on May 10, 2013, IRS Exempt Organizations Director Lois G. Lerner apologized for the IRS's targeting of conservative tax-exempt applicants during a speech at an event organized by the American Bar Association;

Whereas the Ways and Means Committee determined that, of the 298 applications delayed and set aside for extra scrutiny by the IRS, 83 percent were from right-leaning organizations;

Whereas the Ways and Means Committee also determined that, as of Lois G. Lerner's May 10, 2013 apology, only 45 percent of the right-leaning groups set aside for extra scrutiny had been approved, while 70 percent of left-leaning groups and 100 percent of the groups with "progressive" names had been approved;

Whereas the Ways and Means Committee has also determined that, of the groups that were inappropriately subject to demands to divulge confidential donors, 89 percent were right-leaning;

Whereas on May 15, 2013, Attorney General Holder testified before the Judiciary Committee that the Department of Justice would conduct a "dispassionate" investigation into the IRS matter, and "[t]his will not be about parties . . . this will not be about ideological persuasions . . . anybody who has broken the law will be held accountable";

Whereas on May 15, 2013, President Barack Obama called the IRS's targeting "inexcusable" and promised that he would "not tolerate this kind of behavior in any agency, but especially in the IRS, given the power that it has and the reach that it has into all of our lives";

Whereas the Attorney General has stated that the Department of Justice's investigation involves components from the Civil Rights Division and the Public Integrity Section;

Whereas the Civil Rights Division of the Department of Justice has a history of politicization, as evident in the report by the Department of Justice Office of Inspector General entitled, "A Review of the Operations of the Voting Rights Section of the Civil Rights Division";

Whereas Barbara Bosserman, a trial attorney in the Civil Rights Division who in the past several years has contributed nearly \$7,000 to the Democratic National Committee and President Barack Obama's political campaigns, is playing a leading role in the Department of Justice's investigation;

Whereas the Public Integrity Section communicated with the IRS about the potential prosecution of tax-exempt applicants;

Whereas on December 5, 2013, President Barack Obama declared in a national television interview that the IRS's targeting of conservative tax-exempt applicants was caused by a "bureaucratic" "list" by employees in "an office in Cincinnati";

Whereas on April 9, 2014, the House Committee on Ways and Means referred Lois G. Lerner to the Department of Justice for criminal prosecution;

Whereas the House Committee on Ways and Means found that Lois G. Lerner used

her position to improperly influence agency action against conservative tax-exempt organizations, denying these groups due process and equal protection rights as guaranteed by the United States Constitution, in apparent violation of section 242 of title 18, United States Code;

Whereas the House Committee on Ways and Means found that Lois G. Lerner targeted Crossroads Grassroots Policy Strategies while ignoring similar liberal-leaning tax-exempt applicants;

Whereas the House Committee on Ways and Means found that Lois G. Lerner impeded official investigations by knowingly providing misleading statements to the Treasury Inspector General for Tax Administration, in apparent violation of section 1001 of title 18, United States Code;

Whereas the House Committee on Ways and Means found that Lois G. Lerner may have disclosed confidential taxpayer information, in apparent violation of section 6103 of the Internal Revenue Code;

Whereas former Department of Justice officials have testified before a subcommittee of the House Committee on Oversight and Government Reform that the circumstances of the Administration's investigation of the IRS's targeting of conservative tax-exempt applicants warrant the appointment of a special counsel;

Whereas Department of Justice regulations counsel attorneys to avoid the "appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution";

Whereas since May 15, 2013, the Department of Justice and the Federal Bureau of Investigation have refused to cooperate with congressional oversight of the Administration's investigation of the IRS's targeting of conservative tax-exempt applicants;

Whereas on January 13, 2014, unnamed officials at the Department of Justice leaked to the media that no criminal charges would be appropriate for IRS officials who engaged in the targeting activity, which undermined the integrity of the Department of Justice's investigation;

Whereas on February 2, 2014, President Barack Obama stated publicly that there was "not even a smidgen of corruption" in connection with the IRS targeting activity;

Whereas on April 16, 2014, electronic mail communications between the Department of Justice and the IRS were released showing that the Department of Justice considered prosecuting conservative nonprofit groups for engaging in political activity that is legal under Federal law, which damaged the integrity of the Department and undermined its investigation; and

Whereas the Code of Federal Regulations requires the Attorney General to appoint a Special Counsel when he or she determines—

(1) that criminal investigation of a person or matter is warranted,

(2) that investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances, and

(3) that under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the statements and actions of the IRS, the Department of Justice, and the Obama Administration in connection with this matter have served to undermine the Department of Justice's investigation;

(2) the Administration's efforts to undermine the investigation, and the appointment of a person who has donated almost seven

thousand dollars to President Obama and the Democratic National Committee in a lead investigative role, have created a conflict of interest for the Department of Justice that warrants removal of the investigation from the normal processes of the Department of Justice;

(3) further investigation of the matter is warranted due to the apparent criminal activity by Lois G. Lerner, and the ongoing disclosure of internal communications showing potentially unlawful conduct by Executive Branch personnel;

(4) given the Department's conflict of interest, as well as the strong public interest in ensuring that public officials who inappropriately targeted American citizens for exercising their right to free expression are held accountable, appointment of a Special Counsel would be in the public interest; and

(5) Attorney General Holder should appoint a Special Counsel, without further delay, to investigate the IRS's targeting of conservative nonprofit advocacy groups.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. GOODLATTE) and the gentlewoman from Texas (Ms. JACKSON LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H. Res. 565.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

On May 10, 2013, the Internal Revenue Service admitted to inappropriately targeting conservative groups for extra scrutiny in connection with their applications for tax-exempt status.

□ 1730

President Obama denounced this behavior as "outrageous" and "unacceptable" and stated that the IRS "as an independent agency requires absolute integrity, and people have to have confidence that they're applying the laws in a nonpartisan way." He pledged that the administration would "find out exactly what happened" and would make sure wrongdoers were "held fully accountable."

In testimony before my committee on May 15, 2013, Attorney General Holder testified that the Department of Justice would conduct a "dispassionate" investigation into the IRS's admitted targeting of conservative groups. The Attorney General promised me and the members of the Judiciary Committee that "this will not be about parties, this will not be about ideological persuasions, and anyone who has broken the law will be held accountable."

Unfortunately, that appears to be where the administration's commitment to pursuing this investigation ended. We have all seen the testimony

from conservative groups stating that they had yet to be interviewed by the Department of Justice investigators more than a year after the allegations came to light. Additionally, the administration has sought to undermine whatever investigation the DOJ was conducting at every opportunity.

Earlier this year, unnamed Department of Justice officials leaked information to *The Wall Street Journal* suggesting that the Department does not plan to file criminal charges over the IRS's targeting of conservative groups. When asked who leaked this information to the media and if the Department plans to prosecute the leaker once identified, Attorney General Holder admitted that he has not looked into this leak.

Additionally, on Super Bowl Sunday, President Obama stated that there was "not even a smidgen of corruption" in connection with the IRS targeting.

Finally, as we all know, the Department of Justice appointed Barbara Bosserman, an attorney in the notoriously politicized Civil Rights Division, to head the investigation. Ms. Bosserman has donated more than \$6,000 to President Obama's campaigns in 2008 and 2012.

The relevant regulations require the Attorney General to appoint a special counsel when he determines three circumstances exist:

First, that criminal investigation of a person or matter is warranted;

Second, that investigation or prosecution of that person or matter by a United States Attorney's Office or litigating division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances;

And third, that under the circumstances, it would be in the public interest to appoint an outside special counsel to assume responsibility for the matter.

It should be noted that these regulations require the Attorney General to exercise subjective discretion. However, there should be little doubt to any neutral observer that the requirements for appointing a special counsel have been satisfied.

First, as shown in the Ways and Means Committee's referral letter to the Department of Justice, there are serious allegations that IRS officials, including former Director of Exempt Organizations Lois Lerner, violated Federal law by targeting conservative groups and by releasing tax confidential information to the media. We also know that troubling information continues to come to light about this matter, including that the Department of Justice considered prosecuting conservative nonprofit groups for engaging in political activity that is legal under Federal law.

Second, it is clear that a conflict of interest exists between DOJ investigators and this administration. As a legal matter, determining whether a conflict of interest exists requires a determina-

tion of whether external interests—one's own or those of other clients or third persons—are likely to impact the exercise of independent professional judgment. In addition to Ms. Bosserman's clear conflict of interest, this administration's statements and actions have repeatedly served to undermine the Department of Justice investigation and have created an indisputable conflict of interest.

Third, it is equally clear that appointing an outside special counsel to investigate this matter would be in the public interest. The American people are very concerned that their government has targeted individual American citizens for harassment solely on the basis of their political beliefs.

The American people deserve to know who ordered the targeting, when the targeting was ordered, and why. For many Americans, the IRS is the primary way they interact with the Federal Government. To now have the IRS acting as a politicized organization that persecutes citizens for their political beliefs shakes the core of American democracy. Under the circumstances, this administration cannot credibly investigate this matter. It is time for the Attorney General to appoint an independent, professional special counsel to get to the bottom of this.

I reserve the balance of my time.

Ms. JACKSON LEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as I begin this discussion today, I rise in opposition to H. Res. 565. I want to lay the premise of the discussion as I begin to explain why the question of "why?" is not answered. I would imagine that the question of "why?" will not be answered by the conclusion of this debate.

The premise of the resolution H. Res. 565 is on the Federal regulations 601, 600.2, and 600.3. On the face of the resolution, in the facts, there is no evidence under either of the two initial ones. And that is, first, there has been no elimination of the question of whether there is a criminal investigation or whether there should be; and the grounds for appointing a special counsel include whether or not they determine such an investigation is needed, and that the investigation or prosecution of the person or matter by the United States Attorney's Office would present a conflict of interest. Then the circumstances will be in the public interest. None of those criteria have been met.

First of all, in a May 7 letter most recently, the U.S. Department of Justice has said there is an ongoing determination of criminal investigation, an ongoing investigation into all of the allegations. From the Ways and Means, from the Oversight Committee there is an ongoing U.S. Department of Justice investigation.

Now, I believe in congressional oversight, but I also believe in rational congressional oversight, which means, why

are we asking for special counsel when the Department of Justice is in the middle of an active investigation? There has been no conclusion, there has been no suggestion that there will not be a further investigation or criminal investigation, and there is no proven conflict of interest.

The Department of Justice employee that has been mentioned by the majority:

One, is not lead counsel, as evidenced in a letter dated February 3, 2014;

And two, President Obama is not the point of this investigation, as I understand it, and the individual made private free speech donations in the course of a campaign.

Are you suggesting that a public employee does not have the private personal right, First Amendment right, of freedom of speech? I would think not.

So I rise in strong opposition to H. Res. 565. There are no grounds for it. The Justice Department is working and it is investigating. Again, for those of you who are unaware of the legal authority undergirding this resolution, it is based on a series of regulations promulgated by the Justice Department that has been adhered to by Republican and Democratic administrations. You may not like the results of it, but it gives the criteria for authorizing the Attorney General to appoint a special counsel "when he or she determines that criminal investigation of a person or matter is warranted."

There is an ongoing investigation. That means that at the conclusion, or when all of the data and information is reviewed, that decision is still to be made. There is no closure now to suggest that the Department of Justice has not done what it is supposed to do.

In sum, these circumstances are that the Justice Department's prosecution will present a conflict of interest for the Department and that it would be in the public interest for a special counsel to assume responsibility.

This measure that we are debating today, however, utterly fails to meet any of that criteria.

The sponsors of H. Res. 565 make bald, unsupported conflict of interest allegations against a mid-level career attorney whose only fault was to engage in lawful, constitutionally protected political activity, of which I have spoken, and is not the lead counsel—definitively is not the lead counsel.

We have two distinct and qualified experts: Bruce Green, a former Federal prosecutor and current professor of law at Fordham Law School, and Daniel Richman, an expert in criminal procedure from Columbia, who clearly articulate no basis for experts conflict of interest. In fact, the ranking member of the Oversight and Government Reform Committee issued a report earlier this week detailing that committee's yearlong investigation of the IRS efforts to screen applicants for their tax exempt status.

Among this report's principal findings are that over the course of lengthy

and detailed interviews of 39 witnesses, absolutely no evidence of White House involvement was identified. Not a single one of these witnesses' interviews revealed any evidence of political motivation.

These interviewees included IRS employees who identified themselves as Republicans, Democrats, Independents, and others who had no political affiliation.

Another fact that the supporters of this measure ignore is that there already is, as I have indicated, an ongoing investigation by the Justice Department in this matter, and they are complying with the structure of the appointment process for a special counsel. There has been no determination of conflict. There has been no determination that we are ending the investigation to the lack of satisfaction of the United States Congress. We are in an ongoing investigation.

600.2 of the Code, as I mentioned, of the Federal Regulations explicitly authorizes the Attorney General to direct an initial investigation in lieu of appointing a special counsel to determine whether grounds can even exist to warrant the appointment of a special counsel. But an easy manner, other than a resolution on the floor of the House: a simple letter could have been written to the Attorney General for his consideration.

So what is this resolution about? To begin with, it is pure political theater. Rather than simply writing a letter to the Attorney General asking him to appoint a special counsel, which is the time-honored way to do this, the House leadership has resorted to using a resolution that is subject to floor debate and, of course, C-SPAN coverage, but has no real legal effect.

Even The Wall Street Journal's editorial board, which is certainly not a partisan entity as it relates to its advocacy of President Obama or its administration, which is not a bastion of liberalism, noted in an editorial published a year ago that "calling for a special prosecutor is a form of cheap political grace that gets a quick headline at the cost of less political accountability."

I would rather have us working together, Mr. Speaker. I would rather us get to the facts. I would rather that the professional men and women of the U.S. Department of Justice be allowed to pursue this investigation unbiased and thorough.

Rather than promoting greater transparency, the appointment of a special counsel, as the Wall Street Journal points out, would have the opposite result. The Journal explains:

With a special prosecutor, the probe would immediately move to the shadows, and the administration and the IRS would use it as an excuse to limit its cooperation with Congress. Special prosecutors aren't famous for their speed. If there were no indictments, whatever the prosecutor has discovered would stay secret. And even if specific criminal charges were filed, the facts of an indictment couldn't stray far from the four corners of the violated statute.

Beyond proving the specific case in court, a special prosecutor will not be as concerned with the larger public policy consequences and political accountability. We could be doing other things, and we could not be spending \$14 million.

There has been no basis for this resolution to pass, and I ask my colleagues to oppose this resolution.

With that, I reserve the balance of my time.

Mr. Speaker, I rise in strong opposition to H. Res. 565.

For those of you who are unaware of the legal authority undergirding this resolution, it is based on a series of regulations promulgated by the Justice Department.

In pertinent part, section 600.1 of title 28 of the Code of Federal Regulations authorizes the Attorney General to appoint a special counsel "when he or she determines that criminal investigation of a person or matter is warranted," under certain specified circumstances.

In sum, these circumstances are that the Justice Department's prosecution would present a conflict of interest for the Department and that it would be in the public interest for a special counsel to assume responsibility for this matter.

This measure that we are debating today, however, utterly fails to meet any of these criteria.

The sponsors of H. Res. 565 make bald, unsupported conflict of interest allegations against a mid-level career attorney whose only fault was to engage in lawful—constitutionally protected—political activity.

In fact, the Ranking Member of the Oversight and Government Reform Committee issued a report earlier this week detailing that Committee's year-long investigation of the IRS efforts to screen applicants for their tax-exempt status.

Among this report's principal findings are that: over the course of lengthy and detailed interviews of 39 witnesses involved in this matter, absolutely no evidence of White House involvement was identified; and not a single one of these 39 witness interviews revealed any evidence of political motivation.

These interviewees included IRS employees who identified themselves as Republicans, Democrats, Independents, and others who had no political affiliation.

Another fact that the supporters of this measure ignore is that there already is an ongoing investigation by the Justice Department into this matter.

Indeed, section 600.2 of title 28 of the Code of Federal Regulations explicitly authorizes the Attorney General to direct an initial investigation—in lieu of appointing a special counsel—to determine whether grounds even exist to warrant the appointment of a special counsel.

So what is this resolution really about?

To begin with, it's pure political theater. Rather than simply writing a letter to the Attorney General asking him to appoint a special counsel, which is the time-honored way to do this, the House Leadership has resorted to using a resolution that is subject to floor debate and C-span coverage, but has no real legal effect.

Even the Wall Street Journal's Editorial Board, which is not a bastion of liberalism, noted in an editorial published a year ago that

"calling for a special prosecutor is a form of cheap political grace that gets a quick headline at the cost of less political accountability."

And, rather than promoting greater transparency, the appointment of a special counsel, as the Wall Street Journal points out, would have the opposite result. The Journal explains:

With a special prosecutor, the probe would immediately move to the shadows, and the Administration and the IRS would use it as an excuse to limit its cooperation with Congress. Special prosecutors aren't famous for their speed If there were no indictments, whatever the prosecutor has discovered would stay secret. And even if specific criminal charges were filed, the facts of an indictment couldn't stray far from the four corners of the violated statute.

Beyond proving his specific case in court, a special prosecutor will not be as concerned with the larger public policy consequences and political accountability.

The Wall Street Journal concludes by pointing out the obvious:

Congress can do the investigating first, and if it discovers criminal behavior it can make that known and refer the cases and evidence to Mr. Holder, who will then be accountable if he refuses to act.

Unfortunately, the real scandal here is that this foolhardy witch hunt directed at the IRS has cost American taxpayers well in excess of \$14 million dollars, money that we all know could have been better spent.

And now we are wasting limited floor time on this charade rather than taking up the issues that the American people urgently need this Congress to act upon.

These include: fixing our broken immigration system; increasing the minimum wage; strengthening our Nation's economic recovery; creating more jobs; extending unemployment insurance; and helping students struggling with overwhelming educational loan debt, which now exceeds one trillion dollars.

These are real issues that affect real people across America. This is where we should be focusing our resources.

Accordingly, I urge my colleagues to reject this ill-conceived measure.

Mr. GOODLATTE. Mr. Speaker, at this time, it is my pleasure to yield 3 minutes to the gentleman from Texas (Mr. POE), a member of the Judiciary Committee.

Mr. POE of Texas. Mr. Speaker, I thank the gentleman for yielding.

This is about real people. One of those is my friend and constituent down in Houston, Texas, by the name of Catherine Engelbrecht. She is the founder of True the Vote and King Street Patriots in Houston, Texas, and she became intimidated and harassed by our very own government, all because she dared to speak her mind and engage in politics, a right that she is guaranteed under the Constitution.

□ 1745

It all began when Catherine Engelbrecht, a businesswoman, applied for nonprofit status in 2010 for True the Vote, which is a voter integrity group, and King Street Patriots; and so began the tidal wave of government inquiries and harassment.

She said it best in her testimony before Congress:

We applied for nonprofit status in 2010. Since then, the IRS has run us through a gauntlet of analysts and hundreds of questions over and over and over again. They've requested to see each and every tweet I've ever tweeted and each and every Facebook post I've ever posted. They've asked to know every place I've ever spoken since our inception, who was in the audience, and everywhere I intend to speak in the future.

This is our government—our government oppressing someone—at its worst.

There is even more. We have learned that the IRS even asked her group and others for their donor lists. This level of detail goes well beyond the business of the IRS.

It didn't stop there. All of a sudden, the Federal Government's snooping included six visits by the FBI, where they would sit in the auditoriums when she was speaking.

Two of those visits, apparently, were by the terrorist inspection—or investigation—division of the FBI. They had numerous and multiple unannounced visits from OSHA, from the ATF, and even from the Texas equivalent of the EPA.

Now, was this just a coincidence that all of these groups were investigating True the Vote and also investigating King Street Patriots? Or was it collusion?

We really don't know. Unfortunately, our Justice Department has lost credibility with the American public on investigating the IRS. We need things to be right, and things need to look right. We need to have a special counsel.

I would like to conclude with a statement that was made during the Abramoff investigation by Senators in 2006 about having a special counsel:

The highly political context of the allegations and charges may lead some to surmise that political influence may compromise the investigation . . . because this investigation is vital to restoring the public's faith in its government. Any appearance of bias, special favor, or political consideration would be a further blow to democracy. The appointment of a special counsel would ensure that the investigation and the prosecution will proceed without fear or favor and provide the public with full confidence that no one is above the law.

Signed, Barack Obama, 2006.

And that's just the way it is.

The SPEAKER pro tempore. The gentleman from Virginia has 11½ minutes remaining, and the gentlewoman from Texas has 11½ minutes remaining.

Ms. JACKSON LEE. Mr. Speaker, it is my pleasure to yield 1½ minutes to the gentlelady from New Mexico, Congresswoman MICHELLE LUJAN GRISHAM, a former official of the New Mexico State Government.

Ms. MICHELLE LUJAN GRISHAM of New Mexico. Thank you to my colleague.

Mr. Speaker, Federal law clearly states that tax-exempt social welfare groups must exclusively promote social welfare, and yet the IRS continues to allow these groups to engage in partisan political activity, instead of in their social welfare missions.

This has allowed social welfare nonprofits to spend over a quarter of a bil-

lion dollars on partisan political activities while keeping their donors secret. Congress has known about this issue for years, and it has done absolutely nothing.

Mr. Speaker, I came to Congress to solve problems on behalf of the American people, and this resolution does absolutely nothing to solve the underlying problem that we have identified at the IRS.

As long as Congress continues to ignore the fact that social welfare organizations are actively engaged in political activity, social welfare groups will continue spending hundreds of millions of dollars on partisan political campaign activities in direct contradiction to current Federal law and congressional intent.

So I urge my colleagues to vote against this very partisan resolution, as it doesn't solve any underlying problems, and, instead, pass legislation that enforces Federal law and that prohibits tax-exempt social welfare groups from engaging in partisan political activity.

Mr. GOODLATTE. Mr. Speaker, it is now my pleasure to yield 5 minutes to the gentleman from Ohio (Mr. JORDAN), a member of the Judiciary Committee and the author of this resolution.

Mr. JORDAN. I thank the chairman of the Judiciary Committee for yielding and for all of his good work.

Mr. Speaker, the gentlelady from Texas said in her opening statement that there has been no conclusion to the investigation. Yes, there has, and Ms. Lerner knows it.

Why do you think Ms. Lerner is willing to sit down with the Justice Department and answer their questions? She knows the fix is in. She knows it has already been prejudged and decided.

When the Department of Justice leaks to The Wall Street Journal that no one is going to be referred for prosecution, she knows she is just fine. The investigation is over. They are not doing it.

When the President, who is the highest elected official in this land, goes on national television and says there is nothing there, not even a smidgen, Ms. Lerner knows the fix is in.

Let's review the facts with a quick timeline. On May 10 of last year, Ms. Lerner goes in front of a bar association group here in town and, with a planted question, tells that group and tells the whole country that conservative groups were targeted for exercising their First Amendment free speech rights.

She did that before the inspector general's report was made public. It is unprecedented what she did, not only in her actions, but in her spilling the beans before the report was issued.

On May 13, we get the report from the inspector general that says, in fact, the targeting of conservative groups did take place at the IRS.

On May 14 of last year, the Attorney General launches a criminal investiga-

tion and says that what took place was outrageous and unacceptable, and the President of the United States says that what took place was inexcusable.

In June of last year, in the Judiciary Committee, we had then-FBI Director Mueller in front of the committee, and we asked him three simple questions: Who is the lead agent? How many agents have you assigned to the case? Have you talked to any of the victims?

This was a month into this. This was the biggest story in the country at the time, and the FBI Director's response was: I don't know. I don't know. I don't know.

There were seven written inquiries to Justice, asking: Can you tell us some basics about the investigation? Who is, in fact, leading it? Is it truly Barbara Bosserman, as we believe?

Everyone tells us—the witnesses we have interviewed: she is leading the investigation.

How many agents have you assigned? There were seven different inquiries with no responses from the Department of Justice.

On January 13 of this year, as I said earlier, the FBI leaks to The Wall Street Journal that no one is going to be referred for prosecution.

In February, the President says no corruption, not even a smidgen; then we learned Barbara Bosserman, a maxed-out contributor to the President's campaign, was leading the investigation.

Now, take that fact pattern, and apply it to the elements that the Attorney General looks at when you are deciding if you are going to have a special prosecutor. The chairman pointed out, in his opening statement, three elements the Code of Federal Regulations requires for the AG to appoint a special counsel.

It is when he determines these three things:

One, that a criminal investigation of a person or of a matter is warranted; of course, it is warranted. The AG already said it was. This is a big matter. This is a violation of people's First Amendment rights, and the Ways and Means Committee has already said Ms. Bosserman should be referred for prosecution.

The second element, that the investigation by the United States Attorneys' Office or by the litigating division of the Department of Justice would present a conflict of interest for the Department; if we don't have a conflict of interest here, I don't know where we do.

The President has prejudged the outcome, the FBI has leaked to The Wall Street Journal that no one is going to be prosecuted, prejudging the outcome, and the lead investigator is a maxed-out contributor to the DNC and to the President's campaign.

Finally, the third element, that it would be in the public interest to appoint an outside special counsel; frankly, I would think the Attorney General would want this.

There are all kinds of Americans who think this thing is not being done in an impartial and fair manner. I would think the Attorney General would want to pick someone who is above reproach, that he would want to pick someone whom everyone agrees is going to do a fair job.

Why have this cloud hanging over the investigation that the person leading it gave \$6,750 to the President's campaign? That is all this asks.

This should be something that the administration should want to do because it clears up, in people's minds all across this country, that we are going to get to the truth and that we are going to have a real investigation.

Never forget what took place here. This is so important. People's most fundamental right—your right to speak out and the First Amendment right to speak out against your government—was targeted.

That is why we need to get to the truth, and that is why we need a special counsel who will do a real investigation.

Ms. JACKSON LEE. Mr. Speaker, I yield myself such time as I may consume.

I think it is important to state that one of the provisions that is not in the regulation for establishing a special counsel is that it is a "get you" procedure. It is not a "got you" procedure. It follows an orderly process of which the Department of Justice is engaged.

I would like to introduce into the RECORD a letter dated February 3, 2014, that indicates that the Justice Department's lawyer who has been charged with leading the investigation is not leading the investigation. He is part of a team.

OFFICE OF THE
DEPUTY ATTORNEY GENERAL,
Washington, DC, February 3, 2014.

Hon. JIM JORDAN,
Chairman, Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR CHAIRMAN JORDAN: This responds to your letter to an attorney in the Civil Rights Division, dated January 31, 2014, again requesting her testimony at a Subcommittee hearing on February 6, 2014, regarding the Department of Justice's ongoing criminal investigation into the Internal Revenue Service's treatment of groups applying for tax exempt status. To reiterate, consistent with longstanding Department policy, no Department representative will be in a position to provide testimony about this ongoing law enforcement matter.

As a preliminary matter, we disagree with your allegation that because of the attorney's engagement in lawful political activity, she has a conflict of interest regarding the investigation. Your letter of January 28, 2014, selectively quoted the Department regulation concerning the disqualification of employees from investigations based on personal or political relationships, and alleged that "at the very least, [the attorney's] participation in the investigation runs afoul of this regulation." A careful review of 28 C.F.R. 45.2, however, shows that this is not true. That regulation provides that an employee should not participate in an inves-

tigation if he or she has "a personal or political relationship" with a person or organization substantially involved in the conduct being investigated or who has a specific and substantial interest in the investigation's outcome. The regulation defines a "political relationship" as "close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof," and defines "personal relationship" as a "close and substantial connection of the type normally viewed as likely to induce partiality" and states that employees are presumed to have a personal relationship with spouses, parents, children, and siblings, and that other relationships must be judged on an individual basis. Accordingly, consistent with this regulation, the attorney whose integrity you have unfairly questioned has neither a political nor personal relationship that disqualifies her from the investigation. We also note again that, contrary to the assertion in your letter of January 28, 2014, this attorney was not assigned to lead the investigation, but rather is a member of a team that includes representatives of the Criminal Division, the Civil Rights Division, the Federal Bureau of Investigation, and the Treasury Inspector General for Tax Administration.

We agree with your view that "[t]he American people deserve to have complete confidence that the Administration is conducting through and unbiased investigation." Accordingly, it is imperative that we avoid actions—such as testifying before Congress about this pending criminal investigation—that could give rise to a perception that the criminal investigation is subject to undue influence by elected officials. We reiterate that consistent with longstanding policy, in order to protect the integrity of our investigation, we are not in a position to provide you with any non-public information about this ongoing matter. This policy is intended to protect the effectiveness and integrity of the criminal justice process, as well as the privacy interests of third parties. It is neither new nor partisan, but rather based upon longstanding views of Department officials, both Democrat and Republican alike. While we respect the important role of congressional oversight, we believe that our provision of the testimony you have requested would be inconsistent with our commitment to principles of justice and the independence of our law enforcement efforts.

As the Attorney General stated in his testimony before the Senate Judiciary Committee on January 29, 2014, "[t]he men and women of the Justice Department have for time immemorial put aside whatever their political leanings are and conducted investigations in a way that relies only on facts and the law," and we do not "have any basis to believe that the people who are engaged in this investigation are doing so in a way other than investigations are normally done—that is, by looking at the facts, applying the law to those facts and reaching the appropriate conclusions." We request that you allow the Department employees responsible for this investigation to conduct it without demands for disclosures or other interference that would be inconsistent with their commitment to the integrity of the criminal justice process. We appreciate your interest in this investigation and, as the Attorney General has explained, we will be in a better position to provide Congress with information about our decisions in this matter when it is concluded.

Sincerely,

JAMES M. COLE,
Deputy Attorney General.

Ms. JACKSON LEE. Mr. Speaker, it is my privilege to yield 3 minutes to

the gentleman from Florida (Mr. DEUTCH), a member of the House Judiciary Committee.

Mr. DEUTCH. I thank my friend, the gentlelady from Texas.

Mr. Speaker, we have learned a great deal, since the allegations surfaced, that IRS officials discriminated against political-leaning groups that were seeking tax-exempt 501(c)(4) status. I joined with many of my Republican colleagues in condemning the notion that politics in any way influenced the behavior of the IRS.

We learned that the IRS kept a list of key words that triggered extra review, a misguided practice that we are grateful has since stopped. We also learned that the IRS targeted more liberal-leaning groups than conservative ones, meaning there was no conservative witch-hunt.

What my colleagues on the other side of the aisle have apparently failed to learn, however, is that the clear solution to this problem is to get the IRS out of the business of evaluating political conduct.

I wholeheartedly agree with my colleagues that the IRS has no business meddling in our elections, but we don't need a special counsel to make this stop.

Applications for 501(c)(4) tax-exempt status exploded after the Citizens United decision because special interests found a new way to secretly funnel money into our elections. Let me tell you how it works.

Because these groups aren't required to disclose their donors, wealthy special interests that are bent on influencing the political process for their benefit anonymously give to the 501(c)(4). The 501(c)(4) then funnels the money to the super-PAC; and, voila, there are millions of secret dollars influencing our elections.

We ought to be working together in a bipartisan way to get secret money out of our elections. I asked the Treasury Department to review the murky regulations on the books, to revise the rules to restore integrity to 501(c)(4) status and to ensure that taxpayers are never again forced to subsidize blatant political behavior.

I would have hoped that my colleagues in the majority would have joined me in that effort. Instead, Republican leaders responded by attempting to block Treasury from fixing these broken rules and from forcing these secret givers to tell us who they are and what they want from this Congress.

I am afraid there is only one explanation for this latest partisan resolution. I hope I am wrong. I hope I am wrong in that my Republican colleagues don't actually want to protect secret money in our elections. I hope I am wrong in that the GOP does not want to protect the billionaires and the corporations that want to conceal themselves from the American people and believe that they have the right to funnel millions of dollars through 501(c)(4)'s into super-PACs in order to corrupt our elections.

I ask my colleagues to prove me wrong. Prove me wrong by working in a bipartisan way to protect the American people from helping sham special interest groups influence elections on the taxpayers' dime. Let's bring transparency and accountability back to our elections. Reject this sham resolution, and prove me wrong.

Mr. GOODLATTE. Mr. Speaker, at this time, it is my pleasure to yield 3 minutes to the gentleman from Florida (Mr. DESANTIS), a member of the Judiciary Committee.

Mr. DESANTIS. Mr. Speaker, a year ago, when news broke that the IRS had been targeting Americans based on their political beliefs, the President of the United States said that it was outrageous. He said that: we demand full accountability.

Attorney General Eric Holder said that it was outrageous and unacceptable. Everybody agreed this was serious. Everybody agreed that this required a serious investigation; yet, as we sit here a year later, it is clear that we have not seen the action that we were promised.

First of all, the Department of Justice had been discussing with the IRS, as late as May of 2013, the possibility that some of these groups that had been targeted could end up being prosecuted criminally. The DOJ actually had a role with the IRS.

□ 1800

We know that the investigation is being led by somebody who is a big contributor to President Obama's reelection campaign.

Of course, at the Super Bowl earlier this year, the President said the investigation was essentially over. Nothing happened, he said. No, not even a smidgen of impropriety. And, of course, the Department of Justice has leaked to the media that no prosecutions will in fact occur.

And when the President said as a senator in 2006 that the highly political context of the allegations and charges may lead some to surmise that political influence may compromise the investigation because this investigation is vital to restoring the public's faith in government, any appearance of bias, special favor, or political consideration would be a further blow to our democracy, that basically applies to what we have now.

The American people don't want their government targeting them and targeting their First Amendment rights. If that is done and power is abused, they need to be held accountable.

But when this is all said and done, I think the American people want to have confidence that this was looked at in a fair manner. And when you have all these political considerations swirling around, I don't think many Americans have confidence that the Department of Justice is doing this in a way that is not conflicted.

And, don't forget, the entire context of this whole scandal was targeting es-

entially the President's political opposition in the run-up to his reelection campaign.

So I am proud to stand here supporting this resolution. I think voting "yes" on it is voting "yes" for transparency and accountability in government.

The SPEAKER pro tempore. The gentleman from Virginia has 4 minutes remaining. The gentlelady from Texas has 6½ minutes remaining.

Ms. JACKSON LEE. Mr. Speaker, I yield myself such time as I may consume.

Let me just say very quickly that the entire premise of the gentleman's comments have been proven absolutely wrong. Thirty-nine witnesses never said one moment that the Presidential election of 2012 was in any way involved in this particular issue.

In addition, this is a bipartisan investigation because we have the Treasury Inspector General for Tax Administration appointed by a Republican and who is a Republican working with the Department of Justice.

I yield 5 minutes to the gentleman from Michigan (Mr. LEVIN), the distinguished ranking member of the Ways and Means Committee, who has had a detailed investigation and oversight from his committee on this issue.

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, let me sum up what this is really all about.

This hallowed institution must not be turned into a campaign arm of either political party. That is what the House Republicans are exactly doing here.

It has been a year since multiple committee investigations began into the IRS handling of 501(c)(4) organization applications, and Republicans are no closer to finding evidence to back up their baseless allegations of a "White House enemies list," as they said, or a "White House culture of coverup," as a Republican said on day one.

So here is what has been going on.

More than 250 employees at the IRS have worked more than 100,000 hours and sent nearly 700,000 pages of documents to Ways and Means in response to Republican requests. More than 60 interviews have been conducted. Also, \$14 million in taxpayer money has been spent by the IRS responding to congressional investigations.

And here is what we know.

Documents show that the IRS used inappropriate criteria to treat progressive groups as they did for conservative groups. There was never any evidence of White House involvement. Nada.

There was never any evidence of political motivation. In fact, before the flawed audit was published last May, the IG's head of investigations reviewed 5,500 pages of documents and determined that there was "no indication that pulling these selected applications was politically motivated." Instead,

the head of investigations said the cases were consolidated due to "unclear processing directions."

Republicans have indicated that they think this action today is necessary because the Department of Justice did not react quickly enough to the referral of information from Ways and Means on Lois Lerner that was sent last month. There is a letter from the Department of Justice saying that they have received this information and have referred it to those in charge of the IRS investigation at Justice.

The Republicans say they want an independent investigation, but what they really want to do is to interrupt the investigation going on and preempt it with their own political theater.

Indeed, talking about fixation, their political fixation, I say this not only to my colleagues but to every one of our citizens: this is the House of Representatives, not a political circus.

I ask my colleagues to see this for what it is worth and vote "no" on the resolution.

Ms. JACKSON LEE. Mr. Speaker, could you give us how much time is remaining on both sides, please?

The SPEAKER pro tempore. The gentlewoman from Texas has 2½ minutes remaining. The gentleman from Virginia has 4 minutes remaining.

Ms. JACKSON LEE. I am sure my kind friend from Virginia will yield me some additional time, but I will use what I have.

Let me try to bring us together, Mr. Speaker.

Yesterday, in the Rules Committee, there was a collegial moment when we said, Let's clarify the law.

If there is anything the Democrats and Republicans agree with, it is that ineptness, wrongness, misdirection was obviously evident in the equal targeting of all groups—groups that had the name "progressive," "Occupy," and others.

As Members of Congress, none of us want the citizens of the United States to be in any way intimidated by a government that is here to help them. And I stand here saying we can come together to ensure that all of our government agencies work well.

The President made the point in May of 2013 that if in fact the IRS personnel engaged in the kind of practices that have been reported on and were intentionally targeting conservative groups—and it has been noted by the witnesses in the Oversight Committee that they were targeting other groups as well—Occupy, progressive—then that is outrageous, and there is no place for it.

There is no conflict in this.

What we are now debating is a fallacy of the appointment of a special counsel and the \$14 million and the 700,000 pages of unredacted documents, more than 250 people who have been responding to congressional inquiries.

I will include in the RECORD an April 23, 2014, letter to Congressman SANDER LEVIN that talks about the litany of requests that the IRS has been requested to do.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, April 23, 2014.

Hon. SANDER LEVIN,
Ranking Member, Committee on Ways and
Means, House of Representatives, Wash-
ington, DC.

DEAR MR. LEVIN: I am responding to your
request for documents relating to tax ex-
empt advocacy organizations.

Since May of last year, the Internal Re-
venue Service has been collecting, reviewing,
and producing materials in response to a
number of Congressional requests, including
those from you and your Committee. In
order to provide you and your staff our full
cooperation in addressing this matter, more
than 250 people, including attorneys, litigation
support staff, and other IRS personnel
have worked more than 100,000 hours.

With this production, we have produced,
including special requests from individual
committees, nearly 700,000 pages of
unredacted documents to the Senate Finance
and House Ways and Means Committees,
which are authorized to receive I.R.C. §6103
information. We also have produced, includ-
ing special requests from individual commit-
tees, over 530,000 pages, redacted as required
by section 6103, to the Senate Permanent
Subcommittee on Investigations and the
House Government Reform and Oversight
Committee. Our productions have prioritized
the custodians, subject matters, and search
terms when and as requested.

We have responded to more than fifty Con-
gressional letters and hundreds of informal
Congressional requests.

We have facilitated more than sixty tran-
scribed interviews by Congressional staff of
current and former IRS employees.

IRS personnel have answered questions re-
lated to the subjects of these investigations
at 18 Congressional hearings.

The IRS document production was col-
lected from IRS hard copy and electronic
files, including documents from 83 individual
custodians.

This production consists of documents
from multiple custodians; the materials are
Bates-stamped IRSR0000617700—
IRSR0000645643 and IRSR0000649674—
IRSR0000650117.

Additionally, we are reproducing docu-
ments that were previously produced with
non-6103 redactions, which have been re-
moved in this production. These documents
are Bates-stamped as follows:

Table with 2 columns: Begin Bates, End Bates. Lists document IDs from IRSR0000572647 to IRSR0000593400.

For your convenience, we are also pro-
viding this set of documents in PDF.

If you have any questions, please contact
me or have your staff contact me.

Sincerely,

LEONARD OURSLER.

National Director for Legislative Affairs.

Ms. JACKSON LEE. I also will in-
clude in the RECORD a May 7, 2014, let-
ter that emphasizes that this is a bi-
partisan investigation. The inspector
general of the Tax Administration, ap-
pointed by George Bush, is working
with the U.S. Department of Justice. It
negates very visibly any suggestion of
conflict of interest or that this is a bi-
ased investigation.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 7, 2014.

Hon. DAVE CAMP,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your
letter of April 9, 2014, providing the Depart-
ment of Justice (the Department) informa-
tion and documents that the Committee on
Ways and Means (the Committee) has ob-
tained in the course of its ongoing investiga-
tion into allegations of targeting by the In-
ternal Revenue Service of organizations
based on their political views.

As you may know, the Department has an
ongoing criminal investigation into the
IRS's treatment of groups applying for tax-
exempt status, which is being conducted
jointly with the Treasury Inspector General
for Tax Administration (TIGTA). We appre-
ciate your concern and will carefully con-
sider the Committee's findings as part of our
investigation into these allegations.

We hope that this information is helpful.
Please do not hesitate to contact this office
if we may provide assistance in this or any
other matter.

Sincerely,

PETER J. KADZIK,

Principal Deputy Assistant Attorney General.

Ms. JACKSON LEE. In addition, I
think it is very important to note that
we are the Congress and the adminis-
tration. But I take great issue in sug-
gesting the lack of integrity of our em-
ployees in the Federal Government and
that they would do anything to under-
mine an official investigation.

The letter that we received on Feb-
ruary 23, 2014, debunks any personal re-
lationship of this single attorney in a
single office with any one political can-
didate from a personal perspective.

A donation, yes. But are you sug-
gesting that that individual has no pri-
vate right to enterprise their free
speech?

There is no close identification with
an elected official, no relationship with
families and children.

And so, Mr. Speaker, I ask my col-
leagues to vote against this resolution
that is not grounded in any substance,
does not meet the standard of 600.1,
600.2, and finds no conflict. This is no
investigation that is over. There is no
suggestion that they are not, in es-
sence, investigating all parties, and
that there will not be a conclusion that
will ultimately make a decision that is
unbiased as to whether or not persons
will be criminally prosecuted.

And so this resolution does not meet
the standard. It is, again, taking up
space on the floor. I would like to see

unemployment insurance and immigra-
tion reform here. I would like to help
the American people and help job legis-
lation to make a difference here in the
United States Congress.

I have other documents I will add
into the RECORD, Mr. Speaker. These
letters are experts saying there is no
conflict of interest.

COLUMBIA UNIVERSITY LAW SCHOOL,
New York, NY, February 5, 2014.

Re Prosecutorial Disqualification

Hon. DONALD K. SHERMAN,
Counsel, Committee on Oversight and Govern-
ment Reform, House of Representatives,
Washington, DC.

DEAR MR. SHERMAN: Although I lack deep
familiarity with the matter you are inquir-
ing about, I can offer some brief thoughts on
the questions you have posed to me, speci-
fically:

Do past political contributions by a career
prosecutor to a Presidential campaign or po-
litical party create a conflict of interest in a
multi-agency investigation regarding allega-
tions of political targeting by federal agency
officials?

Do past political contributions by a career
prosecutor to a Presidential campaign or po-
litical party create grounds for disqualifica-
tion arising from a personal or "political re-
lationship" under 28 C.F.R. §45.2 in a multi-
agency investigation regarding allegations
of misconduct of federal agency officials?

Is it appropriate for Department of Justice
leadership to check the political donations
made by a career prosecutor before assigning
that person to join a multi-agency investiga-
tion involving victims claiming that they
were treated unfairly because of their politi-
cal beliefs?

For background: I am currently the Paul
J. Kellner Professor of Law at Columbia Law
School. For the past twenty years, my schol-
arship has focused on criminal procedure and
federal criminal enforcement issues. I teach
courses in Criminal Procedure, Evidence,
Federal Criminal Law, and a Sentencing
seminar. Before entering academia, I served
as an assistant U.S. Attorney in the South-
ern District of New York, and ultimately
was the Chief Appellate Attorney in that Of-
fice. Since leaving government service in
1992, I have served as a consultant for var-
ious federal agencies, including the Justice
Department's Office of the Inspector Gen-
eral, and I have been retained as defense
counsel or a consultant in a number of crimi-
nal and civil matters.

You have posed these questions with re-
spect to a specific Justice Department em-
ployee who, according to publically available
FEC data, donated amounts totaling \$4250 to
political campaign funds related to the
Democratic Party and Barack Obama in 2004,
and \$2000 to funds relating to President
Obama in 2012. Any claim that these con-
tributions, in of themselves, create a conflict
of interest or should be cause for disquali-
fication for a career prosecutor investigating
allegations of political targeting in the Ex-
ecutive Branch strikes me as meritless.

28 CFR 45.2 is bars an employee from par-
ticipating "in a criminal investigation or
prosecution if he has a personal or political
relationship with:

- (1) Any person or organization substan-
tially involved in the conduct that is the
subject of the investigation or prosecution;
or
(2) Any person or organization which he
knows has a specific and substantial interest
that would be directly affected by the out-
come of the investigation or prosecution.
And it goes on to define a "political rela-
tionship" as

a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof. . . .

Simple past campaign contributions do not come close to meeting this standard. Indeed, were they to do so, the conflict concerns would extend as much to employees who had donated to the party out of office, since presumably that party would be gain from any findings of impropriety by the current Administration. It would similarly be highly inappropriate for Justice Department officials, in putting an investigative team together to inquire into the legal political contributions that line prosecutors have made in their private capacity. In my experience, one of the glories of the Justice Department—worthy of celebration, not undermining—is the non-partisan way in which line prosecutors have done their work as Administrations come and go. The last thing we want is to divide them into political affinity groups.

Very truly yours,

DANIEL RICHMAN.

FORDHAM UNIVERSITY SCHOOL OF
LAW,
New York, NY, February 4, 2014.

c/o
DONALD K. SHERMAN,
Counsel, Committee on Oversight and Government Reform, Washington, DC.

Re “The IRS Targeting Investigation”—
Hearing scheduled for February 6, 2014

TO THE CHAIRMAN AND MEMBERS OF THE COMMITTEE: I understand that your Committee is considering how conflict of interest laws apply to federal prosecutors. Specifically, do career federal prosecutors who previously contributed to the presidential campaign or political party of the incumbent President have a conflict of interest that precludes them from investigating federal agency officials? I submit this letter to explain why this scenario does not comprise a conflict of interest under prevailing ethics standards and law.

INTRODUCTION

By way of introduction, I am a former federal prosecutor and, as a legal academic, have spent much of the past 27 years studying questions of legal, judicial, prosecutorial and government ethics.

I served as an Assistant U.S. Attorney in the Southern District of New York from 1983 to 1987, after serving as a judicial law clerk. I served under U.S. Attorney Rudolph W. Giuliani throughout my time in the U.S. Attorney's Office. Before leaving in 1987, I served as Deputy Chief Appellate Attorney and Chief Appellate Attorney in the Criminal Division. My responsibilities included advising other prosecutors on legal and ethical questions.

Since 1987, I have taught full-time at Fordham Law School, where I now direct the Stein Center for Law and Ethics. For the past 27 years, I have taught courses relating to legal ethics and criminal law and procedure, including a seminar on “Ethics in Criminal Advocacy.” As an academic, I have written more than 25 articles on prosecutors' ethics and I have spoken widely on this subject, including at programs of the U.S. Department of Justice, the National Association of Former United States Attorneys, the American Bar Association (ABA), and other national, state and local organizations and entities. I have also engaged in substantial professional service involving legal ethics generally and prosecutors' ethics particularly. Among other things, I have chaired the ABA Criminal Justice Section and that

Section's ethics committee, chaired the New York State Bar Association's ethics committee, and served for more than a decade on the committee that drafts the national bar examination on lawyers' professional responsibility (the MPRE).

While teaching law full-time, I have also engaged in various part-time public service relating to issues of government integrity. I served as Associate Counsel in the Office of Independent Counsel Lawrence Walsh (the Iran/Contra prosecutor) and as a consultant to the N.Y.S. Commission on Government Integrity (under Fordham's then-Dean, John Feerick). In 1995, then-Mayor Giuliani appointed me to serve on the five-member New York City Conflicts of Interest Board, which interprets and enforces the city's conflicts of interest law for government officials and employees. I was subsequently reappointed and served on the Board until early 2005.

Finally, in light of the subject of this letter, I note that I am registered to vote as an “independent.”

DISCUSSION

I understand that this Committee is considering the following three questions among others) on which I hope to be of assistance.

1. Do past political contributions by a career prosecutor to a Presidential campaign or political party create a conflict of interest in a multi-agency investigation regarding allegations of political targeting by federal agency officials?

As lawyers, federal prosecutors are governed by the professional conduct rules of the states in which they work. In most states, these rules are based on the ABA Model Rules of Professional Conduct. All state codes of professional conduct for lawyers include provisions on conflicts of interest. In general, the rules provide that a lawyer has a conflict of interest if there is a significant risk that the lawyer's representation will be materially limited by the lawyer's personal interest.

As “ministers of justice,” prosecutors are expected to conduct investigations and prosecutions without regard to partisan political considerations. Indeed, the ABA Standards governing prosecutors' conflicts of interest provide: “A prosecutor should not permit his or her professional judgment or obligations to be affected by his or her own political . . . interests.” One can envision situations in which prosecutors' political interests would significantly limit their ability to pursue justice evenhandedly, and in such situations, prosecutors would be obligated to step aside. An elected prosecutor's investigation of a campaign rival would surely be one such situation.

I understand that in an investigation of possible misconduct by public officials, the particular prosecutor's political affiliation or level of political engagement might seem to matter. A prosecutor who contributed financially to the winning side might be suspected of favoring officials in the incumbent administration or of harboring an interest in avoiding embarrassment to the administration. A prosecutor who contributed financially to the losing side might be suspected of bias against the incumbents or of desiring to embarrass them. Even a prosecutor who made no financial contribution but who voted for one side or the other might be suspected of bias or favoritism.

Under the prevailing legal and ethical understandings, however, this scenario does not constitute a conflict of interest. The relevant standards for prosecutors—e.g., the ABA rules and standards and the National District Attorneys Association standards—do not forbid prosecutors from making political contributions. Nothing in the rules or standards requires prosecutors who made

contributions to recuse themselves from cases involving public officials. This is in contrast to rules of judicial conduct that forbid judges from making contributions to political organizations and candidates. Prosecutors are not held to the same level of neutrality and nonpartisanship as judges. As the Supreme Court has observed, “the strict requirements of neutrality cannot be the same for . . . prosecutors as for judges.”

Likewise, judicial decisions do not support the premise that prosecutors who make campaign contributions have a conflict of interest in cases of political significance. In criminal cases, the question of whether a prosecutor has a conflict of interest may be raised by a criminal defendant or by an individual who is the subject of a criminal investigation. Additionally, in some jurisdictions, prosecutors who perceive that they have a conflict of interest may ask the court to appoint an independent prosecutor. Thus, courts have had occasion to issue opinions regarding whether a particular prosecutor must be disqualified, or an independent prosecutor appointed, because of an alleged conflict. Prosecutors who have prior lawyer-client relationships, or family or business relationships, with a defendant or potential defendant are ordinarily understood to have a significant personal interest that may impair their impartiality. But no court would seriously entertain a claim that the prosecutor should be disqualified from investigating or prosecuting officials of an executive-branch agency because the prosecutor previously made political donations supporting or opposing the incumbent president or the president's party.

2. Do past political contributions by a career prosecutor to a Presidential campaign or political party create grounds for disqualification arising from a personal or “political relationship” under 28 C.F.R. §45.2 in a multi-agency investigation regarding allegations of misconduct of federal agency officials?

Federal prosecutors are subject to 28 C.F.R. §45.2, which requires prosecutors to be disqualified from cases in which they have a personal or “political relationship” with the subject of the investigation or with another person or organization having a specific and substantial interest in the investigation or prosecution. The provision defines a disqualifying “political relationship” to mean “a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof” (emphasis added).

Section 45.2 plainly does not apply to a career prosecutor who contributed to the incumbent president's campaign or political party. The provision is very limited. It applies only to a prosecutor whose close identification with an official, candidate, party or organization arises from the prosecutor's prior service as a principal adviser to the official or candidate or as a principal official of the party or organization that is the subject of the investigation or otherwise an interested party. Few, if any, federal prosecutors fit into that category. A campaign contributor does not, because he or she is not “a principal adviser” or a “principal official.”

That this federal regulation has a “narrow definition of a disqualifying political conflict of interest” was noted in *In re: Independent Counsel Kenneth W. Starr*, where the court of appeals refused to revive an ethics grievance, filed against Independent Counsel Kenneth Starr, maintaining that the Independent Counsel had a conflict of interest in the Whitewater investigation arising out of his political affiliation with the Republican Party. In a concurring opinion, Circuit

Judge Loken explained that “it is not surprising that federal law does not restrict or disqualify prosecutors on the basis of vaguely defined political conflicts of interest,” and that “even a brief look at history will confirm [that] judicial reluctance to question a prosecutor’s background is even more important” in an investigation of government misconduct. That history includes the appointment of corruption investigators and prosecutors from “highly partisan backgrounds and [with] strong personal political ambitions.” Making a campaign contribution reflects a low level of political involvement by comparison.

3. Is it appropriate for Department of Justice leadership to check the political donations made by a career prosecutor before assigning that person to join a multi-agency investigation involving victims claiming that they were treated unfairly because of their political beliefs?

As discussed above, a career prosecutor assigned to investigate a federal official would not have a conflict of interest simply because the prosecutor contributed to one or the other party or to one or the other presidential candidate. I am unaware of any federal or state jurisdiction in which prosecutors investigating or prosecuting government corruption cases are limited to those who are so politically disengaged. Because political donations are not a relevant consideration in making assignments, it would not be appropriate for Department of Justice leadership to check career prosecutors’ political donations before assigning them to an investigation.

There has never been a political-affiliation litmus test for prosecutors engaged in government corruption investigations or other investigations of government officials. Rather, it should be assumed that prosecutors, as professionals, will put their political preferences to the side, because their fundamental allegiance is to the rule of law and to pursuing justice.

Very truly yours,

BRUCE A. GREEN,
Louis Stein Professor of Law.

Ms. JACKSON LEE. Oppose this present resolution and let’s move on to come together and effectively work on behalf of the American people.

I yield back the balance of my time.
Mr. GOODLATTE. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, in response to the gentleman from Texas and the gentleman from Michigan, who said that this hallowed institution should not be turned into a campaign arm of either political party, I totally agree with the gentleman’s assertion. I also believe that he would agree with me that the Internal Revenue Service should not be turned into a political arm of any administration.

The IRS—the tax collectors—have the most unenviable job. And they are despised by most Americans coming to collect their taxes from them. To politicize that organization, to turn it into an organization that the American people mistrust, is an abuse.

The contention that the IRS targeted progressives is debunked by this staff report prepared by the House of Representatives Committee on Oversight and Government Reform dated April 7, 2014, just 1 month ago.

I will read from the conclusion of that report:

Evidence available to the committee contradicts Democrats’ claims about bipartisan targeting. Although the IRS’s BOLO list included entries for liberal-oriented groups, only Tea Party applicants received systematic scrutiny because of their political beliefs. Public and nonpublic analyses of IRS data show that the IRS routinely approved liberal applications while holding and scrutinizing conservative applications. Even training documents produced by the IRS indicate stark differences between liberal and conservative applications: “progressive” applications are not considered “Tea Parties.” These facts show one unyielding truth: Tea Party groups were targeted because of their political beliefs, liberal groups were not.

And from the executive summary:

For months, the administration and congressional Democrats have attempted to downplay the IRS’s misconduct. First, the administration sought to minimize the fallout by preemptively acknowledging the misconduct in response to a planted question at an obscure Friday morning tax-law conference. When that strategy failed, the administration shifted to blaming “rogue agents” and “line-level” employees for the targeting. When those assertions proved false, congressional Democrats baselessly attacked the character and integrity of the inspector general. Their attempt to allege bipartisan targeting is just another effort to distract from the fact that the Obama IRS systematically targeted and delayed conservative tax-exempt applicants.

The gentleman from Michigan is right: this institution should not be used, nor the IRS, to benefit either political party. And that is why an independent, professional special counsel should be appointed immediately by the Attorney General. Because the three tests for that appointment have already been met.

□ 1815

That is the reason why we are here today. A criminal investigation of a person or a matter is warranted. An investigation or prosecution of that person or matter by a United States Attorneys’ Office or litigating division of the Department of Justice would prevent a conflict of interest for the department.

All of these false assertions made over and over and over again show there is a conflict in this investigation by this administration.

Third, under those circumstances, it would be in the public interest to appoint an outside special counsel to assume responsibility for the matter.

It is time for that outside special counsel to be appointed, to take the politics out of this, and to make sure that the American people’s interest in having an Internal Revenue Service—the tax collectors of the country—not attempting to influence public policy, not taking ideological points of view in the enforcement of our tax law is not to take place.

The only way we can assure it is by having that special counsel appointed.

I urge my colleagues to support this resolution.

Mr. Speaker, I will insert an executive summary into the RECORD.

EXECUTIVE SUMMARY

In the immediate aftermath of Lois Lerner’s public apology for the targeting of

conservative tax-exempt applicants, President Obama and congressional Democrats quickly denounced the IRS misconduct. But later, some of the same voices that initially decried the targeting changed their tune. Less than a month after the wrongdoing was exposed, prominent Democrats declared the “case is solved” and, later, the whole incident to be a “phony scandal.” As recently as February 2014, the President explained away the targeting as the result of “bone-headed” decisions by employees of an IRS “local office” without “even a smidgeon of corruption.”

To support this false narrative, the Administration and congressional Democrats have seized upon the notion that the IRS’s targeting was not just limited to conservative applicants. Time and again, they have claimed that the IRS targeted liberal- and progressive-oriented groups as well—and that, therefore, there was no political animus to the IRS’s actions. These Democratic claims are flat-out wrong and have no basis in any thorough examination of the facts. Yet, the Administration’s chief defenders continue to make these assertions in a concerted effort to deflect and distract from the truth about the IRS’s targeting of tax-exempt applicants.

The Committee’s investigation demonstrates that the IRS engaged in disparate treatment of conservative-oriented tax-exempt applicants. Documents produced to the Committee show that initial applications transferred from Cincinnati to Washington were filed by Tea Party groups. Other documents and testimony show that the initial criteria used to identify and hold Tea Party applications captured conservative organizations. After the criteria were broadened in July 2012 to be cosmetically neutral, material provided to the Committee indicates that the IRS still intended to target only conservative applications.

A central plank in the Democratic argument is the claim that liberal-leaning groups were identified on versions of the IRS’s “Be on the Look Out” (BOLO) lists. This claim ignores significant differences in the placement of the conservative and liberal entries on the BOLO lists and how the IRS used the BOLO lists in practice. The Democratic claims are further undercut by testimony from IRS employees who told the Committee that liberal groups were not subject to the same systematic scrutiny and delay as conservative organizations.

The IRS’s independent watchdog, the Treasury Inspector General for Tax Administration (TIGTA), confirms that the IRS treated conservative applicants differently from liberal groups. The inspector general, J. Russell George, wrote that while TIGTA found indications that the IRS had improperly identified Tea Party groups, it “did not find evidence that the criteria [Democrats] identified, labeled ‘Progressives,’ were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited.” He concluded that TIGTA “found no indication in any of these other materials that ‘Progressives’ was a term used to refer cases for scrutiny for political campaign intervention.”

An analysis performed by the House Committee on Ways and Means buttresses the Committee’s findings of disparate treatment. The Ways and Means Committee’s review of the confidential tax-exempt applications proves that the IRS systematically targeted conservative organizations. Although a small number of progressive and liberal groups were caught up in the application backlog, the Ways and Means Committee’s review shows that the backlog was 83 percent conservative and only 10 percent were liberal-oriented. Moreover, the IRS approved 70

percent of the liberal-leaning groups and only 45 percent of the conservative groups. The IRS approved every group with the word “progressive” in its name.

In addition, other publicly available information supports the analysis of the Ways and Means Committee. In September 2013, USA Today published an independent analysis of a list of about 160 applications in the IRS backlog. This analysis showed that 80 percent of the applications in the backlog were filed by conservative groups while less than seven percent were filed by liberal groups. A separate assessment from USA Today in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve a single tax-exempt application filed by a Tea Party group. During that same period, the IRS approved “perhaps dozens of applications from similar liberal and progressive groups.”

The IRS, over many years, has undoubtedly scrutinized organizations that embrace different political views for varying reasons—in many cases, a just and neutral criteria may have been fairly utilized. This includes the time period when Tea Party organizations were systematically screened for enhanced and inappropriate scrutiny. But the concept of targeting, when defined as a systematic effort to select applicants for scrutiny simply because their applications reflected the organizations’ political views, only applied to Tea Party and similar conservative organizations. While use of term “targeting” in the IRS scandal may not always follow this definition, the reality remains that there is simply no evidence that any liberal or progressive group received enhanced scrutiny because its application reflected the organization’s political views.

For months, the Administration and congressional Democrats have attempted to downplay the IRS’s misconduct. First, the Administration sought to minimize the fallout by preemptively acknowledging the misconduct in response to a planted question at an obscure Friday morning tax-law conference. When that strategy failed, the Administration shifted to blaming “rogue agents” and “line-level” employees for the targeting. When those assertions proved false, congressional Democrats baselessly attacked the character and integrity of the inspector general. Their attempt to allege bipartisan targeting is just another effort to distract from the fact that the Obama IRS systematically targeted and delayed conservative tax-exempt applicants.

CONCLUSION

Democrats in Congress and the Administration have perpetrated a myth that the IRS targeted both conservative and liberal tax-exempt applicants. The targeting is a “phony scandal,” they say, because the IRS did not just target Tea Party groups, but it targeted liberal and progressive groups as well. Month after month, in public hearings and televised interviews, Democrats have repeatedly claimed that progressive groups were scrutinized in the same manner as conservative groups. Because of this bipartisan targeting, they conclude, there is no a “smidgeon of corruption” at the IRS.

The problem with these assertions is that they are simply not accurate. The Committee’s investigation shows that the IRS sought to identify and single out Tea Party applications. The facts bear this out. The initial “test” applications were filed by Tea Party groups. The initial screening criteria identified only Tea Party applications. The revised criteria still intended to identify Tea Party activities. The IRS’s internal review revealed that a substantial majority of applications were conservative. In short, the IRS treated conservative tax-exempt applica-

tions in a manner distinct from other applications, including those filed by liberal groups.

Evidence available to the Committee contradicts Democrats’ claims about bipartisan targeting. Although the IRS’s BOLO list included entries for liberal-oriented groups, only Tea Party applicants received systematic scrutiny because of their political beliefs. Public and nonpublic analyses of IRS data show that the IRS routinely approved liberal applications while holding and scrutinizing conservative applications. Even training documents produced by the IRS indicate stark differences between liberal and conservative applications: “‘progressive’ applications are not considered ‘Tea Parties.’” These facts show one unyielding truth: Tea Party groups were targeted because of their political beliefs, liberal groups were not.

Mr. GOODLATTE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the resolution has expired.

Pursuant to House Resolution 568, the previous question is ordered on the resolution.

The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. JACKSON LEE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

RECOMMENDING THAT LOIS G. LERNER BE FOUND IN CONTEMPT OF CONGRESS

The SPEAKER pro tempore. Pursuant to clause 1(c) of rule XIX, further consideration of House Resolution 574 will now resume.

The Clerk read the title of the resolution.

MOTION TO REFER

Mr. CUMMINGS. Mr. Speaker, I have a motion at the desk.

The SPEAKER pro tempore. The Clerk will report the motion to refer.

The Clerk read as follows:

Mr. Cummings moves to refer the resolution H. Res. 574 to the Committee on Oversight and Government Reform with instructions that the Committee carry out the following:

(1) Conduct a bipartisan public hearing with testimony from legal and constitutional experts on whether Lois Lerner waived her Fifth Amendment rights when she professed her innocence during a hearing before the Committee on May 22, 2013, and whether Chairman Darrell E. Issa complied with the procedures required by the Constitution to hold Ms. Lerner in contempt.

(2) As part of that public hearing and in relationship to Ms. Lerner’s profession of innocence in her testimony before the Committee, consider and release publicly the full transcripts of the following 39 interviews conducted by Committee staff of employees of the Internal Revenue Service and the Department of the Treasury, who discussed the actions that occurred within the Exempt Organizations Division that Ms. Lerner supervised and who identified no White House involvement or political motivation in the

screening of tax exempt applicants, with appropriate redactions as determined by Chairman Darrell E. Issa in consultation with Ranking Minority Member Elijah E. Cummings:

(A) Screening Agent, Exempt Organizations, Determinations Unit, Internal Revenue Service (May 30, 2013).

(B) Screening Group Manager, Exempt Organizations, Determinations Unit, Internal Revenue Service (June 6, 2013).

(C) Determinations Specialist I, Exempt Organizations, Determinations Unit, Internal Revenue Service (May 31, 2013).

(D) Determinations Specialist II, Exempt Organizations, Determinations Unit, Internal Revenue Service (June 13, 2013).

(E) Determinations Specialist III, Exempt Organizations, Determinations Unit, Internal Revenue Service (June 19, 2013).

(F) Group Manager I, Exempt Organizations, Determinations Unit, Internal Revenue Service (June 4, 2013).

(G) Group Manager II, Exempt Organizations, Determinations Unit, Internal Revenue Service (June 12, 2013).

(H) Program Manager for Exempt Organizations, Determinations Unit, Internal Revenue Service (June 28, 2013).

(I) Tax Law Specialist I, Exempt Organizations, Technical Unit, Internal Revenue Service (July 10, 2013).

(J) Tax Law Specialist II, Exempt Organizations, Technical Unit, Internal Revenue Service (June 14, 2013).

(K) Tax Law Specialist III, Exempt Organizations, Technical Unit, Internal Revenue Service (July 2, 2013).

(L) Tax Law Specialist IV, Exempt Organizations, Technical Unit, Internal Revenue Service (July 31, 2013).

(M) Group Manager, Exempt Organizations, Technical Unit, Internal Revenue Service (June 21, 2013).

(N) Manager I, Exempt Organizations, Technical Unit, Internal Revenue Service (July 16, 2013).

(O) Manager II, Exempt Organizations, Technical Unit, Internal Revenue Service (July 11, 2013).

(P) Director of Rulings and Agreements, and Director of Employee Plans Division, Tax Exempt Government Entities, Internal Revenue Service (Aug. 21, 2013).

(Q) Director of Rulings and Agreements and Technical Unit Manager, Exempt Organizations, Internal Revenue Service (May 21, 2013).

(R) Technical Advisor to the Division Commissioner, Tax Exempt and Government Entities, Internal Revenue Service (July 23, 2013).

(S) Senior Technical Advisor to the Director of Exempt Organizations I, Tax Exempt Government Entities, Internal Revenue Service (Oct. 29, 2013).

(T) Senior Technical Advisor to the Director of Exempt Organizations II, Tax Exempt Government Entities, Internal Revenue Service (Sept. 5, 2013).

(U) Former Senior Technical Advisor to the Division Commissioner, Tax Exempt Government Entities, Internal Revenue Service (Oct. 8, 2013).

(V) Counsel I, Office of Chief Counsel, Tax Exempt Government Entities, Internal Revenue Service (Aug. 9, 2013).

(W) Counsel II, Office of Chief Counsel, Tax Exempt Government Entities, Internal Revenue Service (July 26, 2013).

(X) Senior Counsel, Office of Chief Counsel, Tax Exempt Government Entities, Internal Revenue Service (July 12, 2013).

(Y) Deputy Division Counsel and Deputy Associate Chief Counsel, Office of Chief Counsel, Tax Exempt Government Entities, Internal Revenue Service (Aug. 23, 2013).

(Z) Division Counsel and Associate Chief Counsel, Office of Chief Counsel Tax Exempt Government Entities, Internal Revenue Service (Aug. 29, 2013).

(AA) Chief Counsel, Internal Revenue Service (Nov. 6, 2013).

(BB) Commissioner of the Tax-Exempt and Government Entities Division until December 2010, Internal Revenue Service (Sept. 23, 2013).

(CC) Commissioner of the Tax Exempt and Government Entities Division, December 2010–2013, Internal Revenue Service (Sept. 25, 2013).

(DD) Chief of Staff to the Commissioner, 2008–2012, Internal Revenue Service (Nov. 21, 2013).

(EE) Chief of Staff to the Commissioner, 2012–2013, Internal Revenue Service (Oct. 22, 2013).

(FF) Commissioner, 2008–2012, Internal Revenue Service (Dec. 4, 2013).

(GG) Deputy Commissioner of Services and Enforcement and Acting Commissioner, Internal Revenue Service (Nov. 13, 2013).

(HH) Attorney Advisor, Office of Tax Policy, Department of the Treasury (Feb. 3, 2014).

(II) Assistant Secretary for Tax Policy, Office of Tax Policy, Department of the Treasury (Jan. 16, 2014).

(JJ) Deputy Chief of Staff, Department of the Treasury (Feb. 11, 2014).

(KK) Chief of Staff, 2009–2013, Department of the Treasury (Feb. 4, 2014).

(LL) Chief of Staff, 2013, Department of the Treasury (Mar. 27, 2014).

(MM) General Counsel, Department of the Treasury (Feb. 26, 2014).

Mr. ISSA (during the reading). Mr. Speaker, I ask unanimous consent we dispense with the reading.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 568, the gentleman from Maryland (Mr. CUMMINGS) and the gentleman from California (Mr. ISSA) each will control 5 minutes.

The Chair recognizes the gentleman from Maryland.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume, and I rise in support of the motion to refer this matter back to committee.

Sixty years ago, the Supreme Court of the United States announced that the waiver of Fifth Amendment rights is “not lightly to be inferred.”

That is exactly what happened when the Oversight Committee held a party line vote finding that Lois Lerner waived her Fifth Amendment privilege without holding even one hearing with one legal expert.

Experts who have reviewed the record before the committee conclude that Ms. Lerner did not waive her Fifth Amendment rights by declaring her innocence.

Now, more than 30 independent legal experts have also come forward to conclude that the chairman, Chairman ISSA, botched the contempt procedure when he abruptly ended our committee hearing and cut off my microphone before any Democratic members had a chance to utter a single syllable.

In other words, these experts say a judge will likely throw this case out of court.

Let me be clear that I am not defending Lois Lerner’s mismanagement at the IRS; but as a Member of Congress, I have sworn, like my colleagues, to protect every citizen’s rights under the Constitution of the United States of America, and I do not take that obligation lightly.

I believe that it is irresponsible to move forward today without ever having held a single hearing to hear from a single legal expert on this constitutional question.

I asked for this hearing more than 9 months ago, but my request was rejected, so this motion would require the Oversight Committee to do what it should have done a long time ago.

This motion also would direct the committee to release publicly the full transcripts from all the interviews of the IRS and Treasury employees that our committee staff conducted during the investigation.

These 39 transcripts show that there is no evidence of any White House involvement or any political motivation in the IRS’ review of these tax-exempt applicants.

I remind the Speaker that these 39 witnesses are witnesses that were called by the majority. They are the ones who sat down with a bipartisan group of employees from the majority and the minority and went through the questioning.

Instead, these interviews show exactly how the employees in Cincinnati first developed the inappropriate criteria. They tell the story. They tell the story. They show how Lois Lerner failed to discover these criteria for more than a year and that, when she learned of them, she immediately ordered them to stop being used.

In June of last year, Chairman ISSA promised on national television that, at some point, he would release all of the transcripts. That needs to be done sooner, rather than later; but the chairman has repeatedly blocked my efforts to do so, even with his own redactions.

You may hear him say that he does not want to release transcripts now because they would provide a roadmap to our questions to future witnesses. I can understand that. I have made the same arguments myself on many occasions.

With all due respect, he crossed that bridge a long, long, long time ago. He has released selected excerpts from these transcripts on more than a dozen occasions, and he has allowed reporters to come into his committee offices to review some transcripts in their entirety.

It is time to put out the whole story, so the American people can read the facts for themselves, instead of just cherry-picking pieces leaked to further a political narrative.

I urge my colleagues to vote in favor of the motion.

Mr. Speaker, I reserve the balance of my time.

Mr. ISSA. Mr. Speaker, I rise in opposition to the motion and seek recognition in opposition.

The SPEAKER pro tempore. The gentleman from California is recognized for 5 minutes.

Mr. ISSA. Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. JORDAN).

Mr. JORDAN. Mr. Speaker, I thank the gentleman for yielding.

Let me just, in response to the ranking member, it is not 39 interviews; it is 40. We just did another one yesterday, and that is going to lead to another one because we learned information in that interview yesterday.

The minority staff has released parts of every single one of those depositions. We will release them all when we hear from Lois Lerner. We want to get to the truth. That is what this resolution is all about.

Here is what we did learn yesterday. In the 40th, Richard Pilger, from the Department of Justice said this:

In the fall of 2010, at the direction of the chief of the Public Integrity Section, Jack Smith, I contacted Lois Lerner at the IRS.

So we know now Justice and the IRS were working together back in 2010, all the more reason why we need to hear from Lois Lerner; and the only way to make that happen, the only way to get to the truth is through the House of Representatives using every tool we have to compel Ms. Lerner to come talk to us because we know the fix is in with the Justice Department’s investigation.

The fix is in. We all know that. The only route to the truth on something as fundamental as your free speech rights—First Amendment rights to exercise speech in a political fashion—is through the House of Representatives.

Mr. CUMMINGS. Mr. Speaker, I reserve the balance of my time.

Mr. ISSA. Mr. Speaker, can I inquire as to whether the minority is prepared to close?

Mr. CUMMINGS. Yes, we are.

Mr. Speaker, about how much time do I have?

The SPEAKER pro tempore. The gentleman from Maryland has 25 seconds remaining. The gentleman from California has 4 minutes remaining.

Mr. ISSA. I am prepared to close.

Mr. CUMMINGS. I am prepared to close.

Again, Mr. Speaker, there is nothing to hide. We need to release the transcripts, and just as significantly, we need to hear from the experts.

This is a very, very serious issue, and I think that Members of Congress deserve to have the expertise presented before them, so that they can make a judgment. A lot of our Members are laypersons, and I think that it is only appropriate, under these circumstances, that they be given this opportunity.

I would ask the Members to vote in favor of my motion.

Mr. Speaker, I yield back the balance of my time.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

I will close in the calmest possible way that I can. For more than 3½ years, I have tried to get cooperation from the minority. For more than 3 years, I have tried to get the cooperation of the minority, and I haven't gotten it.

I get it on things which don't lead to the President or to a Cabinet officer or to an administrative branch. This leads to an administrative branch under the Secretary of the Treasury.

When the minority says that if you would just refer this back and we just have an opinion, quite frankly, they produced these opinions. They sought out 30 people to rubberstamp the same basic opinion again and again, many of whom provided nothing other than we agree. I didn't say anything about that during debate. That is their right.

The ranking member says if we will just release those 39 documents—if he wants to destroy this investigation, he can release them. If he wants to show a roadmap, he can release them. These are not documents that are exclusive. They are documents that either one of us could choose to release.

Good practice is, as we continue investigating—and the questions and the answers from witnesses not be in their entirety released to create a roadmap, that is practice of good counsel, and the ranking member himself said he would have done the same thing in some cases.

We only learned, a matter of days ago, that people working in the office of the President had withheld, until a court ordered them to release the documents, showing that they invented, out of thin air, a false narrative as to what happened at Benghazi and why, asserting a video that, in fact, was not supported by the facts; and for a long time, since September 11, 2012, we had been misled.

In an ongoing investigation, one in which they would have you believe that Lois Lerner would have testified if she just had a week more, they have had months to see if they could get Lois Lerner back to testify. Of course, they can't. She never intended to testify.

This has all been a game of catch me if you can; I say I will, I say I won't.

Our evidence, as the ranking member said, does not lead to the Oval Office. At this point, it leads to Lois Lerner. At this point, Lois Lerner attempted to assert the President's position as to Citizens United, using her power to stop these 501(c)(4)'s from their free speech.

□ 1830

At this point, the indication is that Lois Lerner says one thing to the Justice Department and a different thing to Congress.

So as we consider the simple issue of did she waive her rights or not and get it, as the gentleman from Vermont suggested, before a judge, that is all that is before us today. And the idea that we would release, in their en-

tirety, those thousands of pages in order to give a road map to those yet to be deposed is wrong and inappropriate, and the gentleman knows it or he would have released them himself, which he has every right to do. But it would be irresponsible.

So I ask people to vote for contempt because it takes to an impartial Federal judge that question, a question already decided by our committee that had a vote, a question that will be voted the same way by the ranking member no matter how many experts are listened to. Go ahead and have the vote. Send it to a judge. Let a judge decide.

In the meantime, let's continue with the investigations as to the IRS' targeting of conservative groups, something that has been documented to have been inappropriate if you were conservative and not so much if you were moderate or liberal.

We have an individual who is at the center of it all. I have never alleged that it goes to the President. I have said that the Tea Party would clearly and fairly be described as enemies of or adverse to the President's policies, and I think that is pretty comfortable to understand. And they were targeted by somebody who politics with the President and who, quite frankly, was trying to overturn the Supreme Court decision in Citizens United in support of the President's position using her power.

And with that, I urge support and yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the motion to refer has expired.

Pursuant to House Resolution 568, the previous question is ordered on the motion to refer.

The question is on the motion to refer.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. CUMMINGS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to refer will be followed by 5-minute votes on the motion to recommit, if offered, adoption of House Resolution 574, and adoption of House Resolution 565.

The vote was taken by electronic device, and there were—yeas 191, nays 224, not voting 16, as follows:

[Roll No. 202]

YEAS—191

Barber	Butterfield	Clyburn
Bass	Capps	Cohen
Beatty	Capuano	Connolly
Becerra	Cardenas	Conyers
Bera (CA)	Carney	Cooper
Bishop (GA)	Carson (IN)	Costa
Bishop (NY)	Cartwright	Courtney
Blumenauer	Castor (FL)	Crowley
Bonamici	Castro (TX)	Cuellar
Brady (PA)	Chu	Cummings
Bralley (IA)	Cicilline	Davis (CA)
Brown (FL)	Clarke (NY)	Davis, Danny
Brownley (CA)	Clay	DeFazio
Bustos	Cleaver	DeGette

Delaney	Larsen (WA)	Price (NC)
DeLauro	Larson (CT)	Quigley
DelBene	Lee (CA)	Rahall
Deutch	Levin	Rangel
Dingell	Lewis	Richmond
Doggett	Lipinski	Roybal-Allard
Doyle	Loeb sack	Ruiz
Duckworth	Lofgren	Ruppersberger
Edwards	Lowenthal	Ryan (OH)
Ellison	Lowe y	Sánchez, Linda T.
Engel	Lujan Grisham (NM)	Sanchez, Loretta
Enyart	Luján, Ben Ray (NM)	Sarbanes
Esty	Lynch	Schakowsky
Farr	Maffei	Schiff
Fattah	Maloney,	Schneider
Foster	Carolyn	Schrader
Frankel (FL)	Maloney, Sean	Scott (VA)
Fudge	Matheson	Scott, David
Gabbard	Matsui	Serrano
Gallego	McCarthy (NY)	Sewell (AL)
Garamendi	McCollum	Shea-Porter
Garcia	McDermott	Sherman
Grayson	McGovern	Sinema
Green, Al	McIntyre	Sires
Green, Gene	McNerney	Slaughter
Grijalva	Meeks	Smith (WA)
Gutiérrez	Meng	Speier
Hahn	Michaud	Swalwell (CA)
Hanabusa	Miller, George	Takano
Hastings (FL)	Moore	Thompson (CA)
Higgins	Moran	Thompson (MS)
Himes	Murphy (FL)	Tierney
Holt	Nadler	Titus
Honda	Napolitano	Tonko
Horsford	Neal	Tsongas
Hoyer	Negrete McLeod	Van Hollen
Huffman	Nolan	Vargas
Israel	O'Rourke	Veasey
Jackson Lee	Owens	Vela
Jeffries	Pallone	Velázquez
Johnson, E. B.	Pascrell	Visclosky
Kaptur	Pastor (AZ)	Walz
Keating	Payne	Wasserman
Kelly (IL)	Perlmutter	Schultz
Kennedy	Peters (CA)	Waters
Kildee	Peters (MI)	Waxman
Kilmer	Peterson	Welch
Kind	Pingree (ME)	Wilson (FL)
Kirkpatrick	Pocan	Yarmuth
Kuster	Polis	
Langevin		

NAYS—224

Aderholt	Dent	Huelskamp
Amash	DeSantis	Huizenga (MI)
Amodei	DesJarlais	Hultgren
Bachmann	Diaz-Balart	Hunter
Bachus	Duncan (SC)	Issa
Barletta	Duncan (TN)	Jenkins
Barr	Ellmers	Johnson (OH)
Barrow (GA)	Farenthold	Johnson, Sam
Barton	Fincher	Jolly
Benishek	Fitzpatrick	Jones
Bilirakis	Fleischmann	Jordan
Bishop (UT)	Fleming	Joyce
Black	Flores	Kelly (PA)
Blackburn	Forbes	King (IA)
Brady (TX)	Fortenberry	King (NY)
Bridenstine	Foxx	Kinzinger (IL)
Brooks (AL)	Franks (AZ)	Kline
Brooks (IN)	Frelinghuysen	Labrador
Broun (GA)	Gardner	LaMalfa
Buchanan	Garrett	Lamborn
Bucshon	Gerlach	Lance
Burgess	Gibbs	Lankford
Byrne	Gibson	Latham
Calvert	Gingrey (GA)	Latta
Camp	Gohmert	LoBiondo
Campbell	Goodlatte	Long
Cantor	Gosar	Lucas
Capito	Gowdy	Luetkemeyer
Carter	Granger	Lummis
Cassidy	Graves (GA)	Marchant
Chabot	Graves (MO)	Marino
Chaffetz	Griffith (VA)	Massie
Coffman	Grimm	McAllister
Cole	Guthrie	McCarthy (CA)
Collins (GA)	Hall	McCaul
Collins (NY)	Hanna	McClintock
Conaway	Harper	McHenry
Cook	Harris	McKeon
Cotton	Hartzler	McKinley
Cramer	Hastings (WA)	McMorris
Crenshaw	Heck (NV)	Rodgers
Culberson	Hensarling	Meadows
Daines	Herrera Beutler	Meehan
Davis, Rodney	Holding	Messer
Denham	Hudson	Mica

Miller (FL) Rogers (AL) Stivers
 Miller (MI) Rogers (KY) Stockman
 Miller, Gary Rogers (MI) Stutzman
 Mullin Rohrabacher Terry
 Mulvaney Rokita Thompson (PA)
 Murphy (PA) Rooney Thornberry
 Neugebauer Ros-Lehtinen Tiberi
 Noem Roskam Tipton
 Nugent Ross Turner
 Nunes Rothfus Upton
 Olson Royce Valadao
 Palazzo Runyan Wagner
 Paulsen Ryan (WI) Walberg
 Pearce Salmon Walden
 Perry Sanford Walorski
 Petri Scalise Weber (TX)
 Pittenger Schock Webster (FL)
 Pitts Schweikert Wenstrup
 Poe (TX) Scott, Austin Westmoreland
 Pompeo Sensenbrenner Whitfield
 Posey Sessions Williams
 Price (GA) Shimkus Wilson (SC)
 Reed Shuster Wittman
 Reichert Simpson Wolf
 Renacci Smith (MO) Womack
 Ribble Smith (NE) Woodall
 Rice (SC) Smith (NJ) Yoder
 Rigell Smith (TX) Yoho
 Roby Southerland Young (AK)
 Roe (TN) Stewart Young (IN)

NOT VOTING—16

Bentivolio Eshoo Nunnelee
 Boustany Griffin (AR) Pelosi
 Clark (MA) Hinojosa Rush
 Coble Hurt Schwartz
 Crawford Johnson (GA)
 Duffy Kingston

□ 1855

Messrs. YOUNG of Indiana, SESSIONS, TERRY, MCKINLEY, CANTOR, and KELLY of Pennsylvania changed their vote from “yea” to “nay.”

Ms. LORETTA SANCHEZ of California, Ms. BROWN of Florida, Messrs. THOMPSON of Mississippi, GRIJALVA, FARR, and BARBER changed their vote from “nay” to “yea.”

So the motion to refer was rejected. The result of the vote was announced as above recorded.

Stated against:

Mr. HURT. Mr. Speaker, I was not present for rollcall vote No. 202, on referring the resolution on H. Res. 574 to Government Operations. Had I been present, I would have voted “nay.”

Mr. BENTIVOLIO. Mr. Speaker, on rollcall No. 202 I was unavoidably detained. Had I been present, I would have voted “no.”

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CUMMINGS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 231, nays 187, not voting 13, as follows:

[Roll No. 203]

YEAS—231

Aderholt Bishop (UT) Byrne
 Amash Black Calvert
 Amodei Blackburn Camp
 Bachmann Boustany Campbell
 Bachus Brady (TX) Cantor
 Barber Bridenstine Capito
 Barletta Brooks (AL) Carter
 Barr Brooks (IN) Cassidy
 Barrow (GA) Broun (GA) Chabot
 Barton Buchanan Chaffetz
 Benishek Bucshon Coffman
 Bilirakis Burgess Cole

Collins (GA) Jones
 Collins (NY) Jordan
 Conaway Joyce
 Cook Kelly (PA)
 Cotton King (IA)
 Cramer King (NY)
 Crueshaw Kinzinger (IL)
 Culberson Klaine
 Daines Labrador
 Davis, Rodney LaMalfa
 Denham Lamborn
 Dent Lance
 DeSantis Lankford
 DesJarlais Latham
 Diaz-Balart Latta
 Duncan (SC) LoBiondo
 Duncan (TN) Long
 Eilmers Lucas
 Farenthold Luetkemeyer
 Fincher Lummis
 Fitzpatrick Marchant
 Fleischmann Marino
 Fleming Massie
 Flores McAllister
 Forbes McCarthy (CA)
 Fortenberry McCaul
 Foxx McClintock
 Franks (AZ) McHenry
 Frelinghuysen McIntyre
 Gardner McKeon
 Garrett McKinley
 Gerlach McMorris
 Gibbs Rodgers
 Gibson Meadows
 Gingrey (GA) Meehan
 Gohmert Messer
 Goodlatte Mica
 Gosar Miller (FL)
 Gowdy Miller (MI)
 Granger Miller, Gary
 Graves (GA) Mullin
 Graves (MO) Mulvaney
 Griffith (VA) Murphy (FL)
 Grimm Murphy (PA)
 Guthrie Neugebauer
 Hall Noem
 Hanna Nugent
 Harper Nunes
 Harris Olson
 Hartzler Palazzo
 Hastings (WA) Paulsen
 Heck (NV) Pearce
 Hensarling Perry
 Herrera Beutler Peterson
 Holding Petri
 Hudson Pittenger
 Huelskamp Pitts
 Huizenga (MI) Poe (TX)
 Hultgren Pompeo
 Hunter Price (GA)
 Hurt Rahall
 Issa Reed
 Jenkins Yoho
 Johnson (OH) Renacci
 Johnson, Sam Ribble
 Jolly

NAYS—187

Bass Cooper
 Beatty Costa
 Becerra Courtney
 Bera (CA) Crowley
 Bishop (GA) Cuellar
 Bishop (NY) Cummings
 Blumenauer Davis (CA)
 Bonamici Davis, Danny
 Brady (PA) DeFazio
 Braley (IA) DeGette
 Brown (FL) Delaney
 Brownley (CA) DeLauro
 Bustos DelBene
 Butterfield Deutch
 Capps Dingell
 Capuano Doggett
 Cárdenas Doyle
 Carney Duckworth
 Carson (IN) Edwards
 Cartwright Ellison
 Castro (FL) Engel
 Castro (TX) Enyart
 Chu Eshoo
 Cicilline Esty
 Clarke (NY) Farr
 Clay Fattah
 Cleaver Poster
 Clyburn Frankel (FL)
 Cohen Fudge
 Connolly Gabbard
 Conyers Gallego

Langevin Nadler
 Larsen (WA) Napolitano
 Larson (CT) Neal
 Lee (CA) Negrete McLeod
 Levin Nolan
 Lewis O'Rourke
 Lipinski Owens
 Loeb sack Pallone
 Lofgren Pascrell
 Lowenthal Pastor (AZ)
 Lowey Payne
 Lujan Grisham Perlmutter
 Roskam (NM) Peters (CA)
 Ross Luján, Ben Ray Peters (MI)
 Rothfus (NM) Pingree (ME)
 Royce Lynch
 Runyan Maffei
 Ryan (WI) Maloney,
 Salmon Carolyn
 Sanford Maloney, Sean
 Scalise Matheson
 Schock Matsui
 Schweikert McCarthy (NY)
 Scott, Austin McCollum
 Sensenbrenner McDermott
 Sessions McGovern
 Shimkus Mc Nerney
 Shuster Meeks
 Simpson Meng
 Smith (MO) Michaud
 Smith (NE) Miller, George
 Smith (NJ) Moore
 Smith (TX) Moran
 Southerland
 Stewart
 Stivers
 Stockman
 Stutzman
 Terry
 Thompson (PA)
 Thornberry
 Tiberi
 Tipton
 Turner
 Upton
 Valadao
 Wagner
 Walberg
 Walden
 Walorski
 Webster (TX)
 Webster (FL)
 Wenstrup
 Westmoreland
 Whitfield
 Williams
 Wilson (SC)
 Wittman
 Wolf
 Womack
 Woodall
 Yoder
 Yoho
 Young (AK)
 Young (IN)

NOT VOTING—13

Bentivolio Griffin (AR) Pelosi
 Clark (MA) Hinojosa Rush
 Coble Honda
 Crawford Kingston
 Duffy Nunnelee

□ 1902

So the resolution was agreed to. The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. BENTIVOLIO. Mr. Speaker, on rollcall No. 203, I was unavoidably detained. Had I been present, I would have voted “yes.”

APPOINTMENT OF SPECIAL COUNSEL TO INVESTIGATE INTERNAL REVENUE SERVICE

The SPEAKER pro tempore. The unfinished business is the vote on the resolution (H. Res. 565) calling on Attorney General Eric H. Holder, Jr., to appoint a special counsel to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service, on which the yeas and nays were ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 250, nays 168, not voting 13, as follows:

[Roll No. 204]

YEAS—250

Aderholt Bilirakis Burgess
 Amash Bishop (UT) Bustos
 Amodei Black Byrne
 Bachmann Blackburn Calvert
 Bachus Boustany Camp
 Barber Brady (TX) Campbell
 Barletta Bridenstine Cantor
 Barr Brooks (AL) Capito
 Barrow (GA) Brooks (IN) Carter
 Barton Broun (GA) Cassidy
 Benishek Brownley (CA) Chabot
 Bentivolio Buchanan Chaffetz
 Bera (CA) Bucshon Coffman

Cole	Jones	Renacci
Collins (GA)	Jordan	Ribble
Collins (NY)	Joyce	Rice (SC)
Conaway	Kelly (PA)	Rigell
Cook	King (IA)	Roby
Cotton	King (NY)	Roe (TN)
Cramer	Kinzinger (IL)	Rogers (AL)
Crenshaw	Kline	Rogers (KY)
Culberson	Kuster	Rogers (MI)
Daines	Labrador	Rohrabacher
Davis, Rodney	LaMalfa	Rokita
DelBene	Lamborn	Rooney
Denham	Lance	Ros-Lehtinen
Dent	Lankford	Roskam
DeSantis	Latham	Ross
DesJarlais	Latta	Rothfus
Diaz-Balart	Lipinski	Royce
Duncan (SC)	LoBiondo	Ruiz
Duncan (TN)	Loeback	Runyan
Ellmers	Long	Ryan (WI)
Esty	Lucas	Salmon
Farenthold	Luetkemeyer	Sanford
Fincher	Lummis	Scalise
Fitzpatrick	Maffei	Schneider
Fleischmann	Marchant	Schock
Fleming	Marino	Schweikert
Flores	Massie	Scott, Austin
Forbes	Matheson	Sensenbrenner
Fortenberry	McAllister	Sessions
Foster	McCarthy (CA)	Shimkus
Fox	McCaul	Shuster
Franks (AZ)	McClintock	Simpson
Frelinghuysen	McHenry	Sinema
Gabbard	McIntyre	Smith (MO)
Garcia	McKeon	Smith (NE)
Gardner	McKinley	Smith (NJ)
Garrett	McMorris	Smith (TX)
Gerlach	Rodgers	Southerland
Gibbs	Meadows	Stivers
Gibson	Meehan	Stockman
Gohmert	Messer	Stutzman
Goodlatte	Mica	Terry
Gosar	Miller (FL)	Thompson (PA)
Gowdy	Miller (MI)	Thornberry
Granger	Miller, Gary	Tiberi
Graves (GA)	Mullin	Tipton
Graves (MO)	Mulvaney	Tsongas
Griffith (VA)	Murphy (FL)	Turner
Grimm	Murphy (PA)	Upton
Guthrie	Neugebauer	Valadao
Hall	Noem	Wagner
Hanna	Nugent	Walberg
Harper	Nunes	Walden
Harris	Olson	Walorski
Hartzler	Owens	Walz
Hastings (WA)	Palazzo	Weber (TX)
Heck (NV)	Paulsen	Wenstrup
Hensarling	Pearce	Westmoreland
Herrera Beutler	Perry	Whitfield
Holding	Peters (CA)	Williams
Hudson	Peterson	Wilson (SC)
Huelskamp	Petri	Wittman
Huizenga (MI)	Pittenger	Wolf
Hultgren	Pitts	Womack
Hunter	Poe (TX)	Woodall
Hurt	Pompeo	Yoder
Issa	Posey	Yoho
Jenkins	Price (GA)	Young (AK)
Johnson (OH)	Rahall	Young (IN)
Johnson, Sam	Reed	
Jolly	Reichert	

NAYS—168

Bass	Connolly	Frankel (FL)
Beatty	Conyers	Fudge
Becerra	Cooper	Gallego
Bishop (GA)	Costa	Garamendi
Bishop (NY)	Courtney	Grayson
Blumenauer	Crowley	Green, Al
Bonamici	Cuellar	Green, Gene
Brady (PA)	Cummings	Grijalva
Braley (IA)	Davis (CA)	Gutiérrez
Brown (FL)	Hahn	Hahn
Butterfield	DeFazio	Hanabusa
Capps	DeGette	Hastings (FL)
Capuano	Delaney	Heck (WA)
Cárdenas	DeLauro	Higgins
Carney	Deuth	Himes
Carson (IN)	Dingell	Holt
Cartwright	Doggett	Honda
Castor (FL)	Doyle	Horsford
Castro (TX)	Duckworth	Hoyer
Chu	Edwards	Huffman
Cicilline	Ellison	Israel
Clarke (NY)	Engel	Jackson Lee
Clay	Enyart	Jeffries
Cleaver	Eshoo	Johnson (GA)
Clyburn	Farr	Johnson, E. B.
Cohen	Fattah	Kaptur

Keating	Michaud	Schrader
Kelly (IL)	Miller, George	Scott (VA)
Kennedy	Moore	Scott, David
Kildee	Moran	Serrano
Kilmer	Nader	Sewell (AL)
Kind	Napolitano	Shea-Porter
Kirkpatrick	Neal	Sherman
Langevin	Negrete McLeod	Sires
Larsen (WA)	Nolan	Slaughter
Larson (CT)	O'Rourke	Smith (WA)
Lee (CA)	Pallone	Speier
Levin	Pascrell	Swalwell (CA)
Lewis	Pastor (AZ)	Takano
Lofgren	Payne	Thompson (CA)
Lowenthal	Perlmutter	Thompson (MS)
Lowe	Peters (MI)	Tierney
Lujan Grisham	Pingree (ME)	Titus
(NM)	Pocan	Tonko
Luján, Ben Ray	Polis	Van Hollen
(NM)	Price (NC)	Vargas
Lynch	Quigley	Veasey
Maloney,	Rangel	Vela
Carolyn	Richmond	Velázquez
Maloney, Sean	Roybal-Allard	Visclosky
Matsui	Ruppersberger	Wasserman
McCarthy (NY)	Ryan (OH)	Schultz
McCollum	Sánchez, Linda	T. Waters
McDermott	T. Sanchez, Loretta	Waxman
McGovern	Sarbanes	Welch
McNerney	Schakowsky	Wilson (FL)
Meeks	Schiff	Yarmuth
Meng		

NOT VOTING—13

Clark (MA)	Griffin (AR)	Rush
Coble	Hinojosa	Schwartz
Crawford	Kingston	Webster (FL)
Duffy	Nunnelee	
Gingrey (GA)	Pelosi	

□ 1910

So the resolution was agreed to.
The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. DUFFY. Mr. Speaker, on Wednesday, May 7, 2014, I was at home in Wisconsin taking care of my amazing wife and our new baby daughter. Had I been present, I would have voted in the following ways: H. Res. 574—A Resolution Recommending that the House of Representatives find Lois G. Lerner, Former Director, Exempt Organizations, Internal Revenue Service, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform “*yea*,” H.R. 863—To establish the Commission to Study the Potential Creation of a National Women’s History Museum of 2013, as amended “*yea*,” H. Con. Res. 83—Authorizing the use of Emancipation Hall in the Capitol Visitor Center for an event to celebrate the birthday of King Kamehameha “*yea*,” H. Res. 565—Calling on Attorney General Eric H. Holder, Jr., to appoint a special counsel to investigate the targeting of conservative non-profit groups by the Internal Revenue Service “*yea*.”

CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO THE ACTIONS OF THE GOVERNMENT OF SYRIA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 113-108)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Foreign Affairs and ordered to be printed:

To The Congress of the United States:

Section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), provides for the automatic termination of a national emergency, unless, within 90 days prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice stating that the national emergency with respect to the actions of the Government of Syria declared in Executive Order 13338 of May 11, 2004—as modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012—is to continue in effect beyond May 11, 2014.

The regime’s brutal war on the Syrian people, who have been calling for freedom and a representative government, endangers not only the Syrian people themselves, but could yield greater instability throughout the region. The Syrian regime’s actions and policies, including supporting terrorist organizations and impeding the Lebanese government’s ability to function effectively, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to continue in effect the national emergency declared with respect to this threat and to maintain in force the sanctions to address this national emergency.

In addition, the United States condemns the Assad regime’s use of brutal violence and human rights abuses and calls on the Assad regime to stop its violent war and allow a political transition in Syria that will forge a credible path to a future of greater freedom, democracy, opportunity, and justice.

The United States will consider changes in the composition, policies, and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future.

BARACK OBAMA.
THE WHITE HOUSE, May 7, 2014.

□ 1915

ELECTRIFY AFRICA ACT OF 2014

Mr. ROYCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2548) to establish a comprehensive United States Government policy to assist countries in sub-Saharan Africa to develop an appropriate mix of power solutions for more broadly distributed electricity access in order to

support poverty alleviation and drive economic growth, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2548

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Electrify Africa Act of 2014”.

SEC. 2. PURPOSE.

The purpose of this Act is to encourage the efforts of countries in sub-Saharan Africa to improve access to affordable and reliable electricity in Africa in order to unlock the potential for economic growth, job creation, food security, improved health, education and environmental outcomes, and poverty reduction.

SEC. 3. FINDINGS.

Congress finds that—

(1) 589,000,000 people in sub-Saharan Africa, or 68 percent of the population, did not have access to electricity, as of 2010;

(2) in sub-Saharan Africa, electricity services are highly unreliable and they are at least twice as expensive for those with electricity access compared to other emerging markets;

(3) lack of access to electricity services disproportionately affects women and girls, who often shoulder the burden of seeking sources of heat and light such as dung, wood or charcoal and are often more exposed to the associated negative health impacts. Women and girls also face an increased risk of assault from walking long distances to gather fuel sources;

(4) access to electricity creates opportunities, including entrepreneurship, for people to work their way out of poverty;

(5) a lack of electricity contributes to the high use of inefficient and often highly polluting fuel sources for indoor cooking, heating, and lighting that produce toxic fumes resulting in more than 3,000,000 annual premature deaths from respiratory disease, more annual deaths than from HIV/AIDS and malaria in sub-Saharan Africa;

(6) electricity access is crucial for the cold storage of vaccines and anti-retroviral and other lifesaving medical drugs, as well as the operation of modern lifesaving medical equipment;

(7) electricity access can be used to improve food security by enabling post-harvest processing, pumping, irrigation, dry grain storage, milling, refrigeration, and other uses;

(8) reliable electricity access can provide improved lighting options and information and communication technologies, including Internet access and mobile phone charging, that can greatly improve health, social, and education outcomes, as well as economic and commercial possibilities;

(9) sub-Saharan Africa’s consumer base of nearly one billion people is rapidly growing and will create increasing demand for United States goods, services, and technologies, but the current electricity deficit in sub-Saharan Africa limits this demand by restricting economic growth on the continent;

(10) approximately 30 African countries face endemic power shortages, and nearly 70 percent of surveyed African businesses cite unreliable power as a major constraint to growth;

(11) the Millennium Challenge Corporation’s work in the energy sector shows high projected economic rates of return that translate to sustainable economic growth and that the highest returns are projected when infrastructure improvements are cou-

pled with significant legislative, regulatory, institutional, and policy reforms;

(12) in many countries, weak governance capacity, regulatory bottlenecks, legal constraints, and lack of transparency and accountability can stifle the ability of private investment to assist in the generation and distribution of electricity; and

(13) without new policies and more effective investments in electricity sector capacity to increase and expand electricity access in sub-Saharan Africa, over 70 percent of the rural population, and 48 percent of the total population, will potentially remain without access to electricity by 2030.

SEC. 4. STATEMENT OF POLICY.

Congress declares that it is the policy of the United States—

(1) in consultation with sub-Saharan African governments, to encourage the private sector, international community, African Regional Economic Communities, philanthropies, civil society, and other governments to promote—

(A) the installation of at least an additional 20,000 megawatts of electrical power in sub-Saharan Africa by 2020 to support poverty reduction, promote development outcomes, and drive economic growth;

(B) first-time direct access to electricity for at least 50,000,000 people in sub-Saharan Africa by 2020 in both urban and rural areas;

(C) efficient institutional platforms with accountable governance to provide electrical service to rural and underserved areas; and

(D) the necessary in-country legislative, regulatory and policy reforms to make such expansion of electricity access possible; and

(2) to encourage private sector and international support for construction of hydroelectric dams in sub-Saharan Africa that—

(A) offer low-cost clean energy consistent with—

(i) the national security interests of the United States; and

(ii) best international practices regarding social and environmental safeguards, including—

(I) engagement of local communities regarding the design, implementation, monitoring, and evaluation of such projects;

(II) the consideration of energy alternatives, including distributed renewable energy; and

(III) the development of appropriate mitigation measures; and

(B) support partner country efforts.

SEC. 5. DEVELOPMENT OF A COMPREHENSIVE, MULTIYEAR STRATEGY.

(a) STRATEGY.—The President shall establish a comprehensive, integrated, multiyear policy, partnership, and funding strategy to encourage countries in sub-Saharan Africa to develop an appropriate mix of power solutions, including renewable energy, to provide sufficient electricity access to people living in rural and urban areas in order to alleviate poverty and drive economic growth. Such strategy shall maintain sufficient flexibility and remain responsive to technological innovation in the power sector.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report setting forth the strategy described in subsection (a).

(2) REPORT CONTENTS.—The report required by paragraph (1) shall include a discussion of the elements described in paragraph (3), and should include a discussion of any additional elements relevant to the strategy described in subsection (a).

(3) REPORT ELEMENTS.—The elements referred to in paragraph (2) are the following:

(A) The general and specific objectives of the strategy described in subsection (a), the

criteria for determining success of the strategy, a description of the manner in which the strategy will support partner country efforts to increase production and improve access to electricity, and criteria and indicators used to select partner countries for focused engagement on the power sector.

(B) Development, by partner country governments, of plans and regulations at the national, regional, and local level to increase power production, strengthen existing electrical transmission and distribution infrastructure, bolster accountable governance and oversight, and improve access to electricity.

(C) Administration plans to support partner country efforts to increase new access to electricity, including a description of how the strategy will address commercial and residential needs, as well as urban and rural access.

(D) Administration strategy to support partner country efforts to reduce government waste, fraud, and corruption, and improve existing power generation through improvement of existing transmission and distribution systems, as well as the use of a broad power mix, including renewable energy, and the use of a distributed generation model.

(E) Administration policy to support partner country efforts to attract private sector investment and public sector resources.

(F) A description of the Administration’s strategy for the transfer of relevant technology, skills, and information to increase local participation in the long-term maintenance and management of the power sector to ensure investments are sustainable and transparent, including details of the programs to be undertaken to maximize United States contributions in the areas of technical assistance and training.

(G) An identification of the relevant executive branch agencies that will be involved in carrying out the strategy, the level and distribution of resources that will be dedicated on an annual basis among such agencies, timely and comprehensive publication of aid information and available transmission of resource data consistent with Administration commitments to implement the transparency measures specified in the International Aid Transparency Initiative by December 2015, the assignment of priorities to such agencies, a description of the role of each such agency, and the types of programs that each such agency will undertake.

(H) A description of the mechanisms that will be utilized by the Administration, including the International Aid Transparency Initiative, to coordinate the efforts of the relevant executive branch agencies in carrying out the strategy to avoid duplication of efforts, enhance coordination, and ensure that each agency undertakes programs primarily in those areas where each such agency has the greatest expertise, technical capabilities, and potential for success.

(I) A description of the mechanisms that will be established by the Administration for monitoring and evaluating the strategy and its implementation, including procedures for learning and sharing best practices among relevant executive branch agencies, as well as among participating countries, and for terminating unsuccessful programs.

(J) A description of the Administration’s engagement plan, consistent with international best practices, to ensure local and affected communities are informed, consulted, and benefit from projects encouraged by the United States, as well as the environmental and social impacts of the projects.

(K) A description of the mechanisms that will be utilized to ensure greater coordination between the United States and foreign governments, international organizations,

African regional economic communities, international fora, the private sector, and civil society organizations.

(L) A description of how United States leadership will be used to enhance the overall international response to prioritizing electricity access for sub-Saharan Africa and to strengthen coordination among relevant international forums such as the Post-2015 Development Agenda and the G8 and G20, as well as the status of efforts to support reforms that are being undertaken by partner country governments.

(M) An outline of how the Administration intends to partner with foreign governments, the international community, and other public sector entities, civil society groups, and the private sector to assist sub-Saharan African countries to conduct comprehensive project feasibility studies and facilitate project development.

(N) A description of how the Administration intends to help facilitate transnational and regional power and electrification projects where appropriate.

SEC. 6. USAID.

(a) **LOAN GUARANTEES.**—It is the sense of Congress that in pursuing the policy goals described in section 4, the Administrator of USAID should identify and prioritize—

(1) loan guarantees to local sub-Saharan African financial institutions that would facilitate the involvement of such financial institutions in power projects in sub-Saharan Africa; and

(2) partnerships and grants for research, development, and deployment of technology that would increase access to electricity in sub-Saharan Africa.

(b) **GRANTS.**—It is the sense of Congress that the Administrator of USAID should consider providing grants to—

(1) support the development and implementation of national, regional, and local energy and electricity policy plans;

(2) expand distribution of electricity access to the poorest; and

(3) build a country's capacity to plan, monitor and regulate the energy and electricity sector.

(c) **USAID DEFINED.**—In this section, the term “USAID” means the United States Agency for International Development.

SEC. 7. LEVERAGING INTERNATIONAL SUPPORT.

In pursuing the policy goals described in section 4, the President should direct the United States' representatives to appropriate international bodies to use the influence of the United States, consistent with the broad development goals of the United States, to advocate that each such body—

(1) commit to significantly increase efforts to promote investment in well-designed power sector and electrification projects in sub-Saharan Africa that increase energy access, in partnership with the private sector and consistent with the host countries' absorptive capacity;

(2) address energy needs of individuals and communities where access to an electricity grid is impractical or cost-prohibitive;

(3) enhance coordination with the private sector in sub-Saharan Africa to increase access to electricity;

(4) provide technical assistance to the regulatory authorities of sub-Saharan African governments to remove unnecessary barriers to investment in otherwise commercially viable projects; and

(5) utilize clear, accountable, and metric-based targets to measure the effectiveness of such projects.

SEC. 8. OVERSEAS PRIVATE INVESTMENT CORPORATION.

(a) **IN GENERAL.**—The Overseas Private Investment Corporation should—

(1) in carrying out its programs and pursuing the policy goals described in section 4,

place a priority on supporting investment in the electricity sector of sub-Saharan Africa, including renewable energy, and implement procedures for expedited review of and, where appropriate, approval of, applications by eligible investors for loans, loan guarantees, and insurance for such investments;

(2) support investments in projects and partner country strategies to the extent permitted by its authorities, policies, and programs, that will—

(A) maximize the number of people with new access to electricity to support economic development;

(B) improve the generation, transmission, and distribution of electricity;

(C) provide reliable and low-cost electricity, including renewable energy and on-grid, off-grid, and multi-grid solutions, to people living in rural and urban communities;

(D) consider energy needs of individuals where access to an electricity grid is impractical or cost-prohibitive;

(E) reduce transmission and distribution losses and improve end-use efficiency; and

(F) reduce energy-related impediments to business and investment opportunity and success;

(3) encourage locally-owned, micro, small- and medium-sized enterprises and cooperative service providers to participate in investment activities in sub-Saharan Africa; and

(4) publish in an accessible digital format measurable development impacts of its investments, including appropriate quantifiable metrics to measure energy access at the individual household, enterprise, and community level; and

(5) publish in an accessible digital format the amount, type, location, duration, and measurable results, with links to relevant reports and displays on an interactive map, where appropriate, of all OPIC investments and financings.

(b) **AMENDMENTS.**—Title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 is amended—

(1) in section 233 (22 U.S.C. 2193)—

(A) in subsection (b), by inserting after the sixth sentence the following new sentence: “Of the eight such Directors, not more than five should be of the same political party.”; and

(B) by adding at the end the following new subsection:

“(e) **INVESTMENT ADVISORY COUNCIL.**—The Board shall take prompt measures to increase the loan, guarantee, and insurance programs, and financial commitments, of the Corporation in sub-Saharan Africa, including through the use of an investment advisory council to assist the Board in developing and implementing policies, programs, and financial instruments with respect to sub-Saharan Africa. In addition, the investment advisory council shall make recommendations to the Board on how the Corporation can facilitate greater support by the United States for trade and investment with and in sub-Saharan Africa. The investment advisory council shall terminate on December 31, 2017.”;

(2) in section 234(c) (22 U.S.C. 2194(c)), by inserting “eligible investors or” after “involve”;

(3) in section 235(a)(2) (22 U.S.C. 2195), by striking “2007” and inserting “2017”;

(4) in section 237(d) (22 U.S.C. 2197(d))—

(A) in paragraph (2), by inserting “, systems infrastructure costs,” after “outside the Corporation”; and

(B) in paragraph (3), by inserting “, systems infrastructure costs,” after “project-specific transaction costs”; and

(5) by amending section 239(e) (22 U.S.C. 2199(e)) to read as follows:

“(e) **INSPECTOR GENERAL.**—The Board shall appoint and maintain an Inspector General in the Corporation, in accordance with the Inspector General Act of 1978 (5 U.S.C. App.).”.

(c) **ANNUAL CONSUMER SATISFACTION SURVEY AND REPORT.**—

(1) **SURVEY.**—

(A) **IN GENERAL.**—For each of calendar years 2014 through 2016, the Overseas Private Investment Corporation shall conduct a survey of private entities that sponsor or are involved in projects that are insured, reinsured, guaranteed, or financed by the Corporation regarding the level of satisfaction of such entities with the operations and procedures of the Corporation with respect to such projects.

(B) **PRIORITY.**—The survey shall be primarily focused on United States small businesses and businesses that sponsor or are involved in projects with a cost of less than \$20,000,000 (as adjusted for inflation).

(2) **REPORT.**—

(A) **IN GENERAL.**—Not later than each of July 1, 2015, July 1, 2016, and July 1, 2017, the Corporation should submit to the congressional committees specified in subparagraph (C) a report on the results of the survey required under paragraph (1).

(B) **MATTERS TO BE INCLUDED.**—The report should include the Corporation's plans to revise its operations and procedures based on concerns raised in the results of the survey, if appropriate.

(C) **FORM.**—The report shall be submitted in unclassified form and shall not disclose any confidential business information.

(D) **CONGRESSIONAL COMMITTEES SPECIFIED.**—The congressional committees specified in this subparagraph are—

(i) the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives; and

(ii) the Committee on Appropriations and the Committee on Foreign Relations of the Senate.

SEC. 9. TRADE AND DEVELOPMENT AGENCY.

(a) **IN GENERAL.**—The Director of the Trade and Development Agency should—

(1) promote United States private sector participation in energy sector development projects in sub-Saharan Africa through project preparation activities, including feasibility studies at the project, sector, and national level, technical assistance, pilot projects, reverse trade missions, conferences and workshops; and

(2) seek opportunities to fund project preparation activities that involve increased access to electricity, including power generation and trade capacity building.

(b) **FOCUS.**—In pursuing the policy goals described in section 4, project preparation activities described in subsection (a) should focus on power generation, including renewable energy, improving the efficiency of transmission and distribution grids, including on-grid, off-grid and mini-grid solutions, and promoting energy efficiency and demand-side management.

SEC. 10. PROGRESS REPORT.

Not later than three years after the date of the enactment of this Act, the President shall transmit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and post through appropriate digital means, a report on progress made toward achieving the policy goals described in section 4, including the following:

(1) The number, type, and status of policy, regulatory, and legislative changes implemented in partner countries to support increased electricity generation and access, and strengthen effective, accountable governance of the electricity sector since United States engagement.

(2) A list of power sector and electrification projects United States Government instruments are supporting to achieve the policy goals described in section 4, and for each such project—

(A) a description of how each such project fits into the national power plans of the partner country;

(B) the total cost of each such project and predicted United States Government contributions, and actual grants and other financing provided to such projects, broken down by United States Government funding source, including from the Overseas Private Investment Corporation, the United States Agency for International Development, the Department of the Treasury, and other appropriate United States Government departments and agencies;

(C) the predicted electrical power capacity of each project upon completion, with metrics appropriate to the scale of electricity access being supplied, as well as total megawatts installed;

(D) compliance with international best practices and expected environmental and social impacts from each project;

(E) the estimated number of women, men, poor communities, businesses, schools, and health facilities that have gained electricity connections as a result of each project at the time of such report; and

(F) the current operating electrical power capacity in wattage of each project.

The SPEAKER pro tempore (Mr. COLLINS of Georgia). Pursuant to the rule, the gentleman from California (Mr. ROYCE) and the gentleman from New York (Mr. ENGEL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. ROYCE. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and to include any extraneous materials they may want to in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ROYCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Electrify Africa Act is a direct response to the problem that nearly 600 million people living in sub-Saharan Africa do not have access to reliable electricity.

The Electrify Africa Act offers a market-based response to that problem, and it does this through U.S. private sector investment to develop affordable, reliable energy in Africa. Most importantly, I think it does so at no additional cost to the taxpayer.

Why do we want to help increase energy access to the African continent? To create jobs, to improve lives. It will improve lives in Africa. It will create jobs there and here in the United States. It is no secret that Africa has great potential as a trading partner and could help create jobs here in the U.S.

As the Foreign Affairs Committee investigated how to make better use of the African Growth and Opportunity Act, landmark legislation that we passed over a decade ago to expand

trade with Africa, we learned that the lack of affordable, reliable energy made the production of goods for trade and export nearly impossible.

How impossible? I will just give you an example. We were in Liberia looking at the interrupted power that is always a problem there. Even at our own Embassy, the cost of ruining that diesel generator is \$10,000 a day sometimes when they have to get that thing up and running in order to keep power generated. You can imagine the problem when you are talking about a country with as much power generation and as much electricity as the size of the electricity that lights up the Dallas Cowboys stadium. That is the problem that one country has. You can imagine what it would mean if we could bring online electricity in order to electrify the subcontinent.

I would also remind the Members that the United States is not alone in its interests in enhancing trade with Africa through investment and energy. The example I would give you is China, because China has stepped in to direct \$2 billion towards energy projects on the continent. As I speak, the Chinese Premier is in Africa signing deals that favor Chinese companies over American businesses. If the United States wishes to tap into the potential consumer base there in sub-Saharan Africa, we must act now.

This bill will also have a tangible impact on people's lives, as I said. As former chairman of the Subcommittee on Africa, I have seen firsthand how our considerable investments in improving access to health care, improving access to education in Africa are undermined by the lack of reliable energy. In many places, schoolchildren are forced to study by inefficient, dangerous kerosene lamps. Cold storage of lifesaving vaccines is almost impossible without the existence of reliable electricity. Too many families resort to using charcoal and other inefficient and highly toxic sources of fuel whose fumes in Africa today cause more deaths than HIV/AIDS and malaria, combined.

Many of us on the committee have worked to transform our foreign assistance programs that offer extensive Band-Aids to policies that support economic growth. The Electrify Africa Act is part, frankly, of a very important transition here. This bill mandates a clear and comprehensive U.S. policy, providing the private sector with the certainty that it needs to invest in African electricity at no cost to the U.S. taxpayer. In fact, the bill is predicted to generate savings by requiring the Overseas Private Investment Corporation to focus on these energy priorities and undertake much-needed permanent reforms.

I reserve the balance of my time, Mr. Speaker.

Mr. ENGEL. Mr. Speaker, I rise in strong support of H.R. 2548, the Electrify Africa Act, and I yield myself such time as I may consume.

Mr. Speaker, I would first like to begin by thanking our chairman of the Committee on Foreign Affairs, Mr. ROYCE, for working with us in a bipartisan manner on this important legislation and for his longstanding commitment to improving U.S.-Africa relations and lifting Africans out of poverty.

Mr. ROYCE has long, for many years on the Committee on Foreign Affairs, worked with and been very concerned about Africa. This bill is, in part, a culmination of his hard work and his longstanding dedication.

In the United States, we take reliable electricity for granted. When we flip the switch, we expect the lights to come on. This winter many of us were frustrated when storms knocked out our power. Life was harder as we impatiently waited for the electricity to be restored. Imagine if the power never came back and that was your life every day, year in and year out. That is the stark reality facing many families in Africa.

Indeed sub-Saharan Africa is one of the most energy-deficient regions of the world, with nearly 70 percent of the population, more than half a billion people, lacking access to electricity. In some countries the figure is even higher: in the Democratic Republic of the Congo, 85 percent of the population has no power; in Kenya, 82 percent of the population has no power; and in Uganda, 92 percent. These are truly staggering statistics.

The lack of reliable electricity has a major impact on day-to-day life and many negative consequences. In desperation, people burn anything they can find for heat and cooking: wood, plastic, trash, and other toxic materials. These dirtier fuels cause greater harm to people's health and also to the environment.

Many businesses have had a hard time succeeding because they are forced to pour expensive diesel fuel into generators day and night or deal with constant power outages from unreliable electrical grids. Hospitals cannot provide adequate services because they are unable to provide consistent cold storage, light, or power for lifesaving devices. The list goes on and on.

This legislation directs the executive branch to develop a strategy to increase electrification in Africa and to employ U.S. assistance programs to help accomplish that goal. This long-term strategy will focus not only on providing incentives for the private sector to build more power plants, but also on increasing African government accountability and transparency, improving regulatory environments, and increasing access to electricity in rural and poor communities through small, renewable energy projects.

Only by addressing all of these challenges in a comprehensive way will millions of people in Africa finally have access to electricity that will allow them to grow their economies and ultimately reduce their reliance on foreign aid.

I urge my colleagues to join me in supporting this amendment. It is a very important piece of legislation.

I reserve the balance of my time.

Mr. ROYCE. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. McCLINTOCK).

Mr. McCLINTOCK. Mr. Speaker, I thank my friend for yielding to a dissenting opinion.

Mr. Speaker, one of the biggest complaints I hear is the practice of forcing taxpayers to underwrite the losses and risks of politically well-connected companies. Companies reap the profits; taxpayers pay for the losses.

Today the House considers a bill that perpetuates this policy with the objective of creating jobs not in America, but overseas. Quietly tucked into this bill is a provision to reauthorize the Overseas Private Investment Corporation, or OPIC, for another 3 years.

OPIC provides political risk insurance, loan guarantees, and direct loans to U.S. companies for their overseas investments, making U.S. taxpayers responsible for their losses. Recent beneficiaries include the Ritz-Carlton in Istanbul; Citibank branches in Pakistan, Jordan, and Egypt; and a SunEdison solar farm in South Africa.

According to the Congressional Research Service, this does nothing to help our economy. We are told it doesn't cost taxpayers because recent losses have been minimal and covered by fees. I remember similar assurances about Fannie Mae and Freddie Mac. Such assurances are good only until they are not good, and taxpayer exposure is monumental and growing.

This measure directs OPIC "to prioritize investment in the sub-Saharan electricity sector." Yet one company doing so, Symbion, recently warned the Senate that it was owed \$70 million at the end of February by utilities in just one African country.

□ 1930

Reviewing OPIC's \$10 billion portfolio in Africa, the Center for Global Development reported that if the money had been used for natural gas plants rather than renewables, an additional 60 million people would have had electricity. But that is not politically correct.

OPIC pays for the bad business decisions of large corporations and underwrites job creation abroad, all ultimately underwritten by hardworking American taxpayers. What is not to like about that?

Mr. ROYCE. Mr. Speaker, I yield myself such time as I may consume.

I share the gentleman's concern about corporate welfare. I have spent years pressing OPIC for greater transparency. Finally, in this measure we have a whole host of reforms.

But I will remind this body that years back we exposed and helped kill OPIC's investment funds that were helping political cronies.

I would also remind this body that we are only willing to give OPIC a short-term extension by redirecting it

to focus on an area that lacks investment and will have a major impact on the long-term growth of a country, and that is electricity.

I can assure the gentleman from California that this committee will continue its OPIC oversight, but I should note that OPIC is not a free service. OPIC charges fees that generate a financial return for the U.S. Treasury. To ensure that OPIC is not crowding out the private sector, they must demonstrate that no commercial bank is willing to provide the financing package requested directly from OPIC, and this is the case in doing business in Africa.

The temporary authorization for OPIC, by the way, was included in the introduced version of the Electrify Africa Act and has remained in every following version.

I would also point out that this bill includes the significant reforms, additional reforms, that I and others have been trying to get into OPIC. For example, OPIC's operations will finally be transparent to the public, as the agency will be required to post specific information about all of its projects online, including each project's financing, the location, the partners. The bill also creates an OPIC inspector general. It forces OPIC's board to become for the first time in history bipartisan. This ensures that organizations interested in working with OPIC will be able to get a balanced perspective when reaching out to the agency.

I will also close in response by noting that OPIC's last multiyear authorization expired in 2007. The agency has been extended 28 times on appropriations bills and continuing resolutions with zero reforms. We come to the floor here in an open process to try to reform OPIC and to give it this mission. I think this legislation accomplishes a great deal on both fronts.

I continue to reserve the balance of my time.

Mr. ENGEL. Mr. Speaker, when this bill was submitted it had, and continues to have, strong bipartisan support.

I yield as much time as she may consume to the gentlewoman from California (Ms. BASS), one of the original cosponsors on the bill, our ranking member on the Africa Subcommittee.

Ms. BASS. Mr. Speaker, I rise in strong support of H.R. 2548, the Electrify Africa Act of 2014, a bill that directs the President to expand electrification in Sub-Saharan Africa.

I would like to thank my good friends and colleagues, Chairman ED ROYCE and Ranking Member ELIOT ENGEL, and the committee staff, for all of the work that they have done on this important bill.

H.R. 2548 directs the President to establish a multiyear strategy to assist countries in Sub-Saharan Africa to develop an appropriate mix of power solutions to provide sufficient electricity access to people living in rural and urban areas in order to alleviate poverty and drive economic growth.

With greater access to electricity, Africa has the capacity to grow its economies, facilitating greater volumes of interregional, transcontinental, and international trade. Greater access to electricity also enables countries to expand human capacity and address the critical challenges of underemployment. Access to additional power will also help both individual countries and geographic regions address infrastructure challenges related to things such as roads, rail, and ports, all of which contributes to increasing the capacity of African nations and the continent as a whole.

Greater access to electricity improves the quality of life for not only urban, but rural communities. Even though we are well into the 21st century, it is difficult to imagine two-thirds of the population of Sub-Saharan Africa lives without electricity, including more than 85 percent of Africans living in rural areas. Not having electricity means children study by candlelight and doctors and midwives delivering babies who must rely on flashlights. A life without electricity means education, health care, and the basic needs of millions of Africans suffer.

In summary, I believe we are taking a giant step in the right direction by helping to address the issues of access to electrical power in Africa. This bill provides an opportunity to work with the governments and private sectors of African countries anxious to increase their individual and combined regional access to electricity. We all know that seven of the 10 fastest-growing economies are on the African continent. This is a great step forward toward addressing poverty and changing the paradigm in U.S.-Africa relations.

I agree with the chair of the committee who talked about the reforms to OPIC. I would differ with my colleague from California though, because I do believe that as the economies of Africa strengthen, that increases the ability for those countries and businesses on the continent to do business with U.S. companies, which, in my opinion, also increases jobs in the United States.

I urge my colleagues to join me in supporting H.R. 2548, the Electrify Africa Act of 2014.

Mr. ROYCE. Mr. Speaker, I continue to reserve the balance of my time.

Mr. ENGEL. Mr. Speaker, I yield myself such time as I may consume.

In closing, I would like to once again point out that this is a bipartisan bill. The four original cosponsors are Chairman ROYCE and Chairman SMITH on the Republican side, myself as the ranking member, and Ms. BASS as the ranking member on the Africa Subcommittee on the Democratic side. So this is truly a bipartisan collaboration that is very important, well thought out, and I agree with everything the chairman said. This bill will reform OPIC and will reform how this kind of aid is done.

I would like to again thank Chairman ROYCE for being an outstanding

partner in drafting this legislation and for his leadership in passing the bill out of our committee unanimously. That is another thing that I think is so important to what we do on the committee. We try to pass things in consensus and try to let everybody put his or her thoughts into the bill. This passed unanimously out of the committee, and that doesn't happen lightly or easily. It is done because lots of concerns were taken into consideration, things were ameliorated, things were changed, and what we have is a very, very good product.

As has been said, this legislation has the potential to impact millions of people in Sub-Saharan Africa. A doctor in Kenya will be able to treat a patient without worrying about her equipment shutting off, a child in Congo can continue studying long after the sun sets. The bottom line is that reliable access to electricity will help build African economies and reduce their reliance on foreign aid, saving the United States money.

I hope the Senate will also take action on this bill, again, which has broad bipartisan support in the Senate. I urge my colleagues to support this positive piece of legislation for Africa.

I yield back the balance of my time.

Mr. ROYCE. Mr. Speaker, I yield myself such time as I may consume.

I do want to thank Ranking Member ELIOT ENGEL of New York, as well as Chairman CHRIS SMITH and Ranking Member KAREN BASS of the Africa Subcommittee, for working closely with me to craft the Electrify Africa Act.

I will remind the Members that where the United States has left a void for economic investment in the world—and Africa is one of them—China has stepped in. In this case, we are speaking at a time when the Premier of China is on the ground right now in Sub-Saharan Africa. China has stepped in to direct \$2 billion to African energy projects. This bill will counter China's growing commercial and strategic influence.

But what else will the bill do? Unlocking the constraint on African economic growth means a continent less reliant on aid. The bill promotes an all-of-the-above approach to electricity that includes natural gas and clean coal and hydro.

The CBO estimates that this bill will save the U.S. Treasury \$86 million. Electrify Africa imposes permanent reform, as I mentioned, on the Overseas Private Investment Corporation. The bill focuses OPIC on promoting electricity in Africa. It forces oversight. It demands transparency on the institution, lays that out, and makes the OPIC board bipartisan.

There is every reason to support efforts that encourage economic independence, that strengthen trading partners and that compete with Chinese influence in a vital region, as someone once said.

I also want to recognize the wide range of enthusiasm for this bill. We

have received letters of support from 35 African ambassadors, the Chamber of Commerce, the Corporate Council on Africa, the National Rural Electric Cooperative Association, the American Academy of Pediatrics—and we know from KAREN BASS' testimony why they are in support—and from the One Campaign. Many of these supporters have joined us today in the House gallery to watch this landmark vote.

The United States has economic and national security interests in the continued development of the African continent. This bill sets out a comprehensive, sustainable, market-based plan to bring close to 600 million Africans out of the dark and into the global economy, benefiting American businesses and workers at the same time.

Mr. Speaker, I urge Members to support H.R. 2548, the Electrify Africa Act.

I yield back the balance of my time.

Mrs. LUMMIS. Mr. Speaker, today the U.S. House of Representatives considered legislation important to improving the quality-of-life and opportunities for the millions of people living in sub-Saharan Africa. H.R. 2548, the Electrify Africa Act, would require the United States to develop a comprehensive strategy to improve access to electricity for the nearly 600 million people currently living without it in those countries.

Almost 70 percent of the population in sub-Saharan Africa lives in energy poverty, without access to even basic electricity services. The connection between energy poverty and economic poverty cannot be ignored. For those of us in the United States with access to reliable electricity, it is difficult to truly comprehend what life would be like without the services electricity provides: the ability to simply flip a light switch to have light at any hour of the day, or charge your cell phone; refrigeration of foods, medicines, and life-saving vaccines; indoor cooking; use of the Internet; advanced health care technology; clean water and sanitation services. The list goes on and on.

But consider how different our lives would be if we did not have access to affordable and reliable electricity—what it would be like if we had to travel miles each day to gather fuel sources to cook our food; had to rely only on daylight to accomplish tasks; had no access to clean water and other sanitation services; and no access to life-saving medical technology readily available in other parts of the world but that require electricity to work. That is the reality for the hundreds of millions of people in sub-Saharan Africa. They struggle each day to provide for their basic needs. Affordable and reliable access to electricity would transform these regions, providing opportunities for economic growth and a better quality-of-life.

What I consider especially important about H.R. 2548 is that this bill recognizes that a “one-size-fits-all” energy strategy will not benefit these countries and their populations. This legislation calls for an appropriate mix of energy options, non-renewable and renewable, to address the energy poverty endemic to these regions. In its report, the House Foreign Affairs Committee notes that coal, natural gas, and oil are all available potential energy sources to generate electricity in sub-Saharan Africa, as well as solar, hydropower, and geothermal.

An all-inclusive energy mix is vital to addressing energy accessibility and reliability in

impoverished parts of the world. Regions and countries should responsibly generate power using the energy resources that are most readily available to them and that provide the most affordable and reliable option. If the energy source to generate the electricity is available but so expensive that people cannot afford to use it, then what good does it do? Similarly, an electricity supply too dependent on intermittent sources does not benefit a health care provider trying to perform a procedure using medical equipment reliant on a consistent source of electricity or administer vaccines that must be kept refrigerated.

The current Administration has unfortunately sought to dictate what sources of energy can be used in developing nations, promoting some and discriminating against others, namely cheap and abundant coal-fired power. This only does a disservice to the people who need the services and opportunities that electricity provides. H.R. 2548 reminds us of the consequences of not having access to affordable and reliable electricity, something I think many of us take for granted. It further reminds us about the importance of an all-of-the-above energy mix to our country's access to cheap and reliable electricity, economic stability, and quality-of-life. I am pleased that the Electrify Africa Act recognizes these realities, establishing a framework for countries in Sub-Saharan Africa to pursue the energy development that makes the most sense for them.

Mr. SMITH of New Jersey. Mr. Speaker, Chairman ROYCE and Ranking Member ENGLE, thank you for introducing this important legislation H.R. 2548, the Electrify Africa Act, which my subcommittee Ranking Member KAREN BASS and I have joined you in sponsoring. We acknowledge the importance of this legislation, and we hope our colleagues share our enthusiasm for what this bill can accomplish.

Congress' interest in Africa is not only longstanding, but also varied. Some of focus on development, and some are more interested in trade. Others are keen to meet the humanitarian needs of the continent, while still others believe education is the key to Africa's future success. All of those elements are important, but none of them can be accomplished fully without electricity, which is in far too short a supply throughout Africa.

In Africa's largest cities, there are plenty of lights, and in Lagos, Accra, Nairobi, Dakar, Johannesburg, Addis Ababa or Lusaka the modern way of life is thriving—day or night. Unfortunately, in many other cities, electricity is fleeting, and in too many rural areas it is simply scarce. Generators provide the power by which many companies are forced to do business, and in many homes, generators are needed to ensure that modern activities can continue when the government-provided power flickers out. This is so expensive that many Africans are forced to rely on more basic means of providing light once night approaches, but in the 21st century, the people of Africa must not be dependent on the sun or candles and lanterns to deliver their light. Certainly, these means cannot power their cell phones, televisions or other technology on which today's societies thrive.

We all want Africa to join in the development the rest of the world enjoys, yet that is not possible without a steady source of energy. Manufacturing is only a notion without the power to move assembly lines and

produce goods. Vaccines and other medicines will last only so long without refrigeration, and that requires steady electrical power. A student studying by candlelight or by the light of a lantern is a quaint notion that can no longer be the reality of young Africans striving to build a better life.

H.R. 2548 will improve access to affordable, reliable electricity in sub-Saharan Africa, where more than two-thirds of Africans lack access to electricity. This bill does not provide electricity as a gift; it facilitates cooperation between our government and African governments in finding the most efficient and effective means of establishing electric power for their citizens. By requiring our Administration to create a comprehensive multiyear strategy, H.R. 2548 ensures that there is a mutually agreeable plan that can be implemented by future Administrations and Congresses in collaboration with willing African partners. This bill also calls on U.S. representatives to international institutions to leverage other international support for providing electricity to Africa.

I call on my colleagues to join with us in voting for H.R. 2548. In doing so, we will not only provide power for Africa, but we also will energize our dreams for Africa's current and future development.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. ROYCE) that the House suspend the rules and pass the bill, H.R. 2548, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. McCLINTOCK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

URGING BURMA TO END PERSECUTION OF ROHINGYA PEOPLE

Mr. ROYCE. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 418) urging the Government of Burma to end the persecution of the Rohingya people and respect internationally recognized human rights for all ethnic and religious minority groups within Burma, as amended.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 418

Whereas over 800,000 Rohingya ethnic minority live in Burma, mostly in the western Rakhine state;

Whereas currently, approximately 140,000 Rohingya are internally displaced in central Rakhine state and hundreds of thousands have fled to neighboring countries, including at least 231,000 in Bangladesh, at least 15,000 in Malaysia, and many more in Thailand and Indonesia;

Whereas the current Government of Burma, like its predecessors, continues to use the Burma Citizenship Law of 1982 to exclude from approved ethnic groups the

Rohingya people, despite many having lived in northern Rakhine state for generations, and has thereby rendered Rohingyas stateless and vulnerable to exploitation and abuse;

Whereas the Rohingyas have historically experienced other particularized and severe legal, economic, and social discrimination, including restrictions on travel outside their village of residence, limitations on their access to higher education, and a prohibition from working as civil servants, including as doctors, nurses, or teachers;

Whereas authorities have also required Rohingyas to obtain official permission for marriages and have singled out Rohingyas in northern Rakhine state for forced labor and arbitrary arrests;

Whereas the Government of Burma has forcefully relocated Rohingyas into relief camps, where they lack decent shelter, access to clean water, food, sanitation, health care, the ability to support themselves, or basic education for their children;

Whereas a two-child policy sanctioned solely upon the Rohingya population in the districts of Maungdaw and Buthidaung in northern Rakhine state restricts the rights of women and children, prevents children from obtaining Burmese citizenship, denies Rohingyas access to basic government services, and fosters discrimination against Muslim women by Buddhist nurses and midwives;

Whereas the United States Department of State has regularly expressed since 1999 its particular concern for severe legal, economic, and social discrimination against Burma's Rohingya population in its Country Report for Human Rights Practices;

Whereas the level of persecution, including widespread arbitrary arrest, detention, and extortion of Rohingyas and other Muslim communities, has dramatically increased over the past year and a half;

Whereas communal violence has affected both Muslims and Burma's majority Buddhist population, but has overwhelmingly targeted Burma's ethnic Muslim minorities, which altogether comprise less than 5 percent of Burma's population;

Whereas violence targeting Rohingyas in Maungdaw and Sittwe in June and July of 2012 resulted in the deaths of at least 57 Muslims and the destruction of 1,336 Rohingyas homes;

Whereas on October 23, 2012, at least 70 Rohingyas were killed, and the Yan Thei village of the Mrauk-U Township was destroyed;

Whereas the United Nations High Commissioner for Human Rights reported possessing credible evidence of the deaths of at least 48 Rohingyas in Du Chee Yar Tan village in Maungdaw Township, Rakhine state in January 2014, and human rights groups reported mass arrests and arbitrary detention of Rohingyas in the aftermath of this violence;

Whereas Burmese officials have denied the killings of Rohingyas in Du Chee Yar Tan village in January 2014 and responded to international media coverage of the violence with threats against media outlets, including the Associated Press;

Whereas violence has also targeted Muslims not of Rohingya ethnicity, including riots in March 2013 in the town of Meiktila that resulted in the death of at least 43 Burmese Muslims, including 20 students and several teachers massacred at an Islamic school, the burning of at least 800 homes and 5 mosques, and the displacement of 12,000 people;

Whereas on October 1, 2013, riots involving more than 700 Buddhists in Thandwe township resulted in the death of 4 Kaman Muslim men and the stabbing death of a 94-year-old Muslim woman;

Whereas over 4,000 religious, public, and private Rohingya structures have been destroyed;

Whereas Rohingyas have experienced and continue to experience further restrictions on their practice of Islam, culture, and language;

Whereas the violence against ethnic Muslim populations, including the Rohingya and other Muslim groups, is part of a larger troubling pattern of violence against other ethnic and religious minorities in Burma;

Whereas the Government of Burma expelled Medecins Sans Frontieres from Rakhine state, leaving Rohingyas communities and others without access to health care and life-saving treatment for malaria, tuberculosis, and HIV; and

Whereas the Rakhine state threatens to ban all unregistered nongovernmental organizations from operating in Rakhine state, severely limiting the provision of necessary services to Rohingyas and others in need: Now, therefore, be it

Resolved, That the House of Representatives—

(1) recognizes the initial steps Burma has taken in transitioning from a military dictatorship to a quasi-civilian government, including the conditional release of some political prisoners, and calls for more progress to be made in critical areas of democracy, constitutional reform, and national reconciliation in order for Burma to achieve its own goal of political liberalization;

(2) calls on the Government of Burma to end all forms of persecution and discrimination of the Rohingya people and ensure respect for internationally recognized human rights for all ethnic and religious minority groups within Burma;

(3) calls on the Government of Burma to recognize the Rohingya as an ethnic group indigenous to Burma, and to work with the Rohingya to resolve their citizenship status;

(4) calls on the United States Government and the international community to put consistent pressure on the Government of Burma to take all necessary measures to end the persecution and discrimination of the Rohingya population and to protect the fundamental rights of all ethnic and religious minority groups in Burma; and

(5) calls on the United States Government to prioritize the removal of state-sanctioned discriminatory policies in its engagement with the Government of Burma.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. ROYCE) and the gentleman from New York (Mr. ENGEL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. ROYCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include any extraneous materials in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ROYCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 418. This is a bipartisan resolution offered by the gentleman from Massachusetts (Mr. MCGOVERN) calling on the government of Burma to end its persecution of the Rohingya Muslims and respect the human rights of all ethnic and religious minority groups within Burma.

The Rohingya Muslims are one of the most persecuted minority groups in the world. According to Burma's 1982 citizenship law, the Rohingya are prohibited from holding Burmese citizenship, even though they have lived in Burma for generations after generations. For over three decades, the government of Burma has systematically denied the Rohingya even the most basic of human rights, while subjecting them to unspeakable abuses.

Since 2012, 140,000 Rohingya and other Muslims in Burma have been displaced by violence, with hundreds killed. On January 13, unknown assailants entered a village in Rakhine State and killed 48 people while they slept.

□ 1945

This is what happens when a government refuses to recognize its own people.

In fact, a nongovernmental organization based in Southeast Asia recently disclosed credible documents detailing the full extent of state involvement in persecuting Rohingyas.

Not long ago, the Government of Burma expelled Doctors Without Borders from the country, denying, once again, the most basic of human rights. The Government of Burma cannot claim progress toward meeting its goals for reform if it does not improve the treatment of Rohingya Muslims and other minority groups.

The United States must prioritize the protection of human rights in its engagement with Burma. I urge the State Department to take off its rose-colored glasses and recognize that progress on human rights in Burma is, indeed, limited. Now is the time for the State Department to bring additional leverage to bear, and this resolution will help us do that.

I reserve the balance of my time.

Mr. ENGEL. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of H. Res. 418, a resolution urging the Government of Burma to end its persecution of the Rohingya people.

I would like to thank my good friend and cochairman of the Tom Lantos Human Rights Commission, the gentleman from Massachusetts (Mr. MCGOVERN), for authoring this important resolution.

H. Res. 418 calls on the Government of Burma to end its persecution of the Rohingya people and to respect the human rights of all ethnic and religious minority groups. The plight of the Rohingya gets very little public attention, and I am pleased that this House is addressing the abuses they and other minorities have suffered.

The State Department's 2013 Country Reports on Human Rights Practices acknowledges "credible reports of extrajudicial killings, rape and sexual violence, arbitrary detentions and torture and mistreatment in detention, deaths in custody, and systematic denial of due process and fair trial rights overwhelmingly perpetrated against the Rohingya."

Last month, the U.N. Special Rapporteur on Human Rights in Burma stated that the recent developments in Burma reflect a "long history of discrimination and persecution against the Rohingya Muslim community, which could amount to crimes against humanity."

The U.N. has also described the Rohingya community as virtually friendless because they are denied citizenship and face severe restrictions on marriage, employment, health care, education, and daily movement.

In February, the Burmese Government expelled Doctors Without Borders; and since then, deaths due to preventable complications during pregnancy have occurred on an almost daily basis in Rohingya camps, where pregnant women make up a quarter of the group's emergency referrals.

Mr. Speaker, as the Government of Burma transitions from decades-long military rule to a civilian government, it is important to hold it accountable for persistent human rights abuses.

The killings, arbitrary detentions, and the destruction of homes have caused 140,000 people to be internally displaced; and hundreds of thousands have been forced to flee to neighboring countries, including to Thailand, Bangladesh, and Malaysia.

If Burma truly seeks to rejoin the international community, the manner in which it treats its own people will be a key marker of the government's sincerity. Burma must abide by human rights principles of equality and human dignity, and this resolution calls upon the Burmese Government to do just that.

I urge my colleagues to join me in supporting H. Res. 418, and I reserve the balance of my time.

Mr. ROYCE. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. CHABOT). He is the chairman of the Foreign Affairs Subcommittee on Asia and the Pacific.

Mr. CHABOT. I thank the gentleman for yielding.

Mr. Speaker, I rise today as a strong supporter and cosponsor of H. Res. 418, urging the Government of Burma to end the persecution of the Rohingya people and to respect internationally recognized human rights for all ethnic and religious minority groups within Burma.

I want to commend the gentleman from Massachusetts (Mr. MCGOVERN), my friend and colleague, for offering this legislation, which is certainly timely, and we appreciate his leadership on this.

As chairman of the Subcommittee on Asia and the Pacific, I believe it is imperative that the U.S. and the international community raise awareness of this ongoing crisis in Burma and of the need for its government to respect the human rights of all of its ethnic and religious minority groups, which it is clearly not doing at this time.

Last year, we held two hearings in my subcommittee to examine the dete-

riorating human rights situation and ethnic unrest in Burma. It has become abundantly clear that the political and social situation there is extremely fragile and that the continuing persecution of the minority Rohingya population is just, as was said, a profound crisis.

Some 140,000 displaced Rohingya have been forced to live in camps described as open-air prisons. Doctors Without Borders was forced out by the Burmese Government, and since then, nearly 150 Rohingya have died of medically-related causes.

This particular photo illustrates that the Doctors Without Borders' clinic is shuttered. They are gone. The people are not getting the medical care that they are entitled to, and people are literally dying as a result of this.

Further, mob violence has made a number of other international NGOs evacuate Burma for fear and for being, essentially, excluded by the government. They were doing good work for people who really needed it, who were in dire straits.

The Burmese Government has taken few, if any, steps to forge a peaceful, harmonious, and prosperous future for the Rakhine State. It is complicit in extrajudicial killings, rape, arbitrary detention, torture, deaths in detention, and for the denial of due process and fair trial rights for the Rohingya.

As these horribly repressed people who are afforded no identity by the Burmese Government have been forced into camps, the Burmese Government has confiscated their land, their homes, and property for redistribution to the Buddhist Rakhine majority.

A recent report by the group United to End Genocide found that nowhere else in the world are there more precursors to genocide—signs that genocide may well happen—than in Burma right now.

This is why I recently introduced H.R. 4377, the Burma Human Rights and Democracy Act of 2014, with my colleague from New York (Mr. CROWLEY), a Democrat. This legislation would place conditions on providing International Military and Educational Training or for Foreign Military Financing assistance to the Burmese Government.

In light of the Burmese Government's and military's complicity in these ongoing human rights abuses against the Rohingya and other ethnic groups, it is much too soon for us to be engaging at a level that provides U.S. foreign assistance to Burma's corrupt and abusive military.

It concerns me that the administration still refuses to cooperate or to detail what its strategy really is for the future of military engagement with Burma.

Mr. Speaker, H. Res. 418 highlights its need for the U.S. and international community to continue pressuring Burma to end its blatant persecution and discrimination of the Rohingya population.

I want to, again, thank Mr. McGovern, Mr. FRANKS, Mr. PITTS, and Mr. SMITH for cosponsoring this resolution. I believe the passage of the resolution will send a strong message to the Burmese Government, and I would urge my colleagues to support this measure.

Mr. ENGEL. Mr. Speaker, I now yield such time as he may consume to the gentleman from Massachusetts (Mr. MCGOVERN), the author of the resolution.

Mr. MCGOVERN. I want to thank my colleague, Mr. ENGEL, for yielding me the time and for his leadership on this and on so many other issues of human rights. I also want to thank Chairman ROYCE for his support and Chairman CHABOT. I appreciate all that you do for human rights.

I admire all of these gentlemen who are here on the floor. They have been outspoken for human rights, not only in Burma, but all around the world.

Mr. Speaker, I am very proud to rise in support of this resolution urging the Government of Burma to end the persecution of the Rohingya people and to respect internationally recognized human rights for all ethnic and religious minority groups within Burma.

I especially want to thank my good friend and colleague, the gentleman from Pennsylvania, Congressman JOE PITTS, for his leadership on this issue and for joining me in introducing this bipartisan resolution.

Over 800,000 people of the Rohingya ethnicity live in Burma, mostly in the Rakhine State. Even though many Rohingyas have lived in the Rakhine State for generations, the Burma citizenship law of 1982 has excluded them from approved ethnic groups, thereby rendering them stateless and vulnerable to exploitation, violence, and abuse.

While the Rohingya and other minorities in Burma have historically experienced severe discrimination, there has been a dramatic increase in discrimination and violence against them in the past 2 years.

Attacks in June and July of 2012 resulted in the deaths of at least 57 Muslims and in the destruction of 1,336 Rohingya homes. On October 23, 2012, at least 70 Rohingyas were killed, and their township was destroyed.

Further, the United Nations' High Commissioner for Human Rights reported possessing credible evidence of the deaths of at least 48 Rohingyas in January of this year, and human rights groups reported mass arrests and arbitrary detentions of Rohingya in the aftermath of this violence.

In addition, other Muslim minorities have also suffered from violent attacks, and many have lost their lives and property in the last year and a half. Such violence against ethnic Muslim populations, including the Rohingya, is part of a larger, troubling pattern of violence against ethnic and religious minorities in Burma.

The Government of Burma remains apathetic to the plight of the Rohingya population, and it has failed to prop-

erly investigate the major events of anti-Rohingya violence. Instead, both the Rakhine State and central government continue to impose explicitly racist policies that seek to control the everyday lives of the Rohingya.

Authorities require Rohingya to obtain official permission for marriages and have often singled out Rohingya for forced labor and arbitrary arrests. The Government of Burma has forcefully relocated Rohingya into relief camps, where they lack decent shelter, access to clean water, food, sanitation, health care, and the ability to support themselves, or basic education for their children.

The Rohingya are the sole targets of the two-child policy and are the subjects to severe restrictions of movement. Further, as evidenced by the latest census in Burma, the Burmese Government continues to deny the Rohingyas their right for self-identification, sending a clear message that the Rohingya are outsiders who have no place in Burma.

Today, approximately 140,000 Rohingya are internally displaced, and hundreds of thousands have fled to neighboring countries by boats; many have died at sea. Those who remain in the country live in dire poverty and deprivation.

Some relief used to come from humanitarian organizations like Doctors Without Borders, but even that aid is no longer available. The Government of Burma expelled Doctors Without Borders in March, allegedly after the group cared for the victims of a violent assault on a Rohingya village, an assault which the government denies ever happened.

Increasingly, severe restrictions and violent attacks on other humanitarian aid groups have forced the majority of them to flee the Rakhine State, and the Rohingya now remain with no one and with nowhere to turn for help and health care. Every day, more and more people die of causes that could be preventable or treatable if humanitarian groups had the chance to help.

According to a March 14 article in The New York Times, which I will submit for the RECORD, nearly 750,000 people, the majority of them Rohingya, have been deprived of medical services since the Burmese Government banned the operations of Doctors Without Borders.

According to the article, during the first 2 weeks of March alone, about 150 of those most vulnerable and in need of care died, including 20 pregnant women who were facing life-threatening deliveries.

[From the New York Times, Mar. 14, 2014]

BAN ON DOCTORS' GROUP IMPERILS MUSLIM MINORITY IN MYANMAR

(By Jane Perlez)

BANGKOK.—Nearly 750,000 people, most of them members of a Muslim minority in one of the poorest parts of Myanmar, have been deprived of most medical services since the government banned the operations of Doctors Without Borders, the international

health care organization and the main provider of medical care in the region.

The government ordered a halt to the work of Doctors Without Borders two weeks ago after some officials accused the group of favoring the Muslims, members of the Rohingya ethnic group, over a rival group, Rakhine Buddhists.

Already, anecdotal evidence and medical estimates show that about 150 of the most vulnerable have died since Feb. 28, more than 20 of them pregnant women facing life-threatening deliveries, medical professionals said. Doctors Without Borders had been the only way for pregnant women facing difficult deliveries to get a referral to a government hospital, they said.

At the time of the order, the government said it was suspending the group's operations in Rakhine State in the far north, but it has offered no time frame for when services might be resumed. The deputy director general of the Ministry of Health, Dr. Soe Lwin Nyein, said in a statement that his department would manage the health needs of the "whole community." A spokesman for President Thein Sein, Ye Htut, said the government dispatched an emergency response team with eight ambulances after the Doctors Without Borders clinics were closed.

Myanmar's health services are among the most rudimentary in Asia, and with severe government restrictions on movement that prevent Muslims from seeking medical help outside their villages in Rakhine State, the impact of the shutdown will be severe, medical professionals said.

Doctors Without Borders was by far the biggest health provider in the northern part of Rakhine around the townships of Maungdaw and Buthidaung, serving about 500,000 people, most of them Rohingya, they said. An additional 200,000 people, many of them Rohingya in displaced camps around the state capital, Sittwe, had access to the group's services.

In Aung Myingla, a Muslim neighborhood in Sittwe, patients with tuberculosis, a common disease in the area, said they were down to their last supplies of medicine. The Rohingya who live in Aung Myingla are prevented from leaving the district by barbed-wire security posts and police officers.

"Since Doctors Without Borders is not in Rakhine, I don't know who will provide medicine when my supply runs out in three months," said one patient, Muklan, 30, who like many people in Myanmar goes by a single name. "I hope Doctors can come back as soon as possible."

Another Rohingya man, Shafiu, who worked for Doctors Without Borders in Aung Myingla, said he was concerned for his patients with tuberculosis, malaria and H.I.V. "These patients have been getting help from Doctors Without Borders for years," he said.

In northern Rakhine State, where Doctors Without Borders had run five permanent clinics and 30 mobile ones, about 20 percent of children are acutely malnourished, medical professionals said. An intensive feeding center for those patients was shuttered as part of the government's directive.

For the most part, Western donors and the United Nations say they are reluctant to antagonize the government of Myanmar, which has started along the path of economic and political reform. The donors have chosen quiet diplomacy over outspoken criticism of the government's policies toward the Rohingya.

But the action against Doctors Without Borders raised some public alarm.

"We are extremely concerned about the situation," said Mark Cutts, the head of the United Nations Office for the Coordination of Humanitarian Affairs in Myanmar. "We are in intense discussion with the government in

a way that will allow operations to resume as soon as possible.”

The deputy health director, Dr. Soe Lwin Nyein, said the government would accept supplies of medicine for tuberculosis and H.I.V. from Doctors Without Borders. But how these supplies will be distributed remains unclear. Negotiations are underway with the government over the distribution, Western officials said.

Other international organizations, including the International Committee of the Red Cross, which supports government health centers around the towns of Sittwe and Mrauk U, have been allowed to continue operations in Rakhine. But Doctors Without Borders was by far the largest health provider.

The government targeted the group after its rural clinics provided treatment to 22 Muslims in the aftermath of a rampage by Rakhine security officers and civilians in the village of Du Chee Yar Tan in January. The United Nations says 40 people were killed in the violence that night.

The government has denied that the deaths occurred, and on Tuesday, a presidential commission sent to the village to conduct an inquiry reported that it could find no evidence of the killings. The commission was the third investigative group sent by the government, and its findings matched those of the previous inquiries.

After the killings in January, the government criticized Doctors Without Borders for hiring Rohingya and said the group was giving disproportionate attention to Rohingya patients. Under state regulations in Rakhine, Rohingya are prevented from visiting many of the state-run clinics.

Doctors Without Borders says it has treated patients in Rakhine since 1994 regardless of ethnicity, and foreign aid workers point out that the Rakhine Buddhist ethnic group has access to government health facilities that are generally denied to the Rohingya.

A radical Buddhist leader in Myanmar, Ashin Wirathu, who has compared Muslims to dogs, arrived in Sittwe on Wednesday for a five-day visit that was likely to stir anti-Muslim sentiments further. In a sermon at the main Buddhist temple Wednesday night, he said that if Western democracies were allowed to have influence in Myanmar, the Rakhine people would be overwhelmed by increasing numbers of Muslims, and would eventually disappear.

The monk's visit appeared to be timed ahead of a national census—the first in Myanmar in more than 30 years—that is due to take place March 30 to April 10 across Myanmar. Tensions during the census, funded in part by the United Nations and the British government, are expected to be high in Rakhine.

Rakhine politicians have said they oppose allowing the Rohingya to identify themselves as Rohingya when they fill out the census forms. If they did, the census would probably show that their numbers are greater than the current estimate of 1.3 million. The overall population is estimated at 60 million.

By shutting down Doctors Without Borders, the government is ensuring that there will be fewer foreigners to witness any outbreaks of violence during the census process, aid workers said.

Mr. MCGOVERN. Mr. Speaker, when Doctors Without Borders was able to work in Rakhine, they sent approximately 400 emergency cases every month to local hospitals, but according to the World Health Organization, fewer than 20 people received referrals by the government for emergency care

in March. Such a difference suggests that the Rohingya who are in desperate need of emergency care are left to suffer or to die.

In light of these disturbing events, it is important that the House speaks with one voice today and calls on the Government of Burma to end all forms of persecution and discrimination of the Rohingya people and to ensure respect for internationally recognized human rights for all ethnic and religious minority groups within Burma.

The Burmese Government needs to recognize the Rohingya as an ethnic group indigenous to Burma and work with the Rohingya to resolve their citizenship status.

Finally, the U.S. Government needs to make the removal of state-sanctioned discriminatory policies a priority in their engagement with the Government of Burma.

□ 2000

Let me be clear: the situation is dire and rapidly deteriorating. Multiple recognized independent human rights NGOs, as well as the U.N. Special Rapporteur on human rights in Burma, have stated that the series of actions directed at the Rohingyas in Burma could amount to crimes against humanity.

Further, a recent report by the U.S. NGO, United to End Genocide, states that nowhere in the world are there more precursors to genocide than in Burma right now.

In the past few weeks, we have all taken time to remember and commemorate the victims of the Armenian genocide, the Holocaust, and the genocide in Rwanda. We saw the same disturbing signs in other moments of history, and we know what the consequences are of not paying attention. Showing support for this bill is one step that we can take today to fulfilling the solemn pledge of “never again.”

I urge my colleagues to vote in support of this bill.

Mr. ROYCE. Mr. Speaker, I continue to reserve the balance of my time.

Mr. ENGEL. Mr. Speaker, I yield myself such time as I may consume.

In closing, I would like to thank Congressman MCGOVERN, the gentleman from Massachusetts, for drafting this important legislation. Once again, I thank Chairman ROYCE for his continued bipartisan leadership.

As has been said, this resolution calls upon the Burmese government to end the persecution of the Rohingya people and to respect the human rights of all ethnic and religious minority groups.

Until now, the treatment of the Rohingya has been largely ignored by the international community. That is the purpose of this resolution—so they cannot be ignored any longer.

It is time for the United States to send a clear and strong message to the government of Burma that we will not tolerate the persecution of religious and ethnic minorities, and that it must

abide by human rights principles of equality and dignity if it is to rejoin the international community.

So I urge my colleagues to support this resolution, and I yield back the balance of my time.

Mr. ROYCE. Mr. Speaker, I yield myself such time as I may consume.

Again, I want to thank the gentleman from Massachusetts (Mr. MCGOVERN), for his support of the Rohingya people, but also for his dedication to human rights. I have had an opportunity to work with Mr. MCGOVERN on a number of different human rights bills. I think he eloquently explained tonight the challenge that we face here. I was proud to join him as a cosponsor of this measure and work with him.

I also, of course, want to thank the gentleman from New York, ELIOT ENGEL, for his continued focus on human rights around the world.

On this issue, it is true that the Burmese government has recently taken steps to open its closed society, but the reality is that the recent events here are deeply, deeply troubling to anyone who is watching. As I indicated, 48 Rohingya were murdered, aid workers trying to care for thousands of displaced have been attacked in the country, and Doctors Without Borders was kicked out of Burma.

This resolution calls on the government of Burma to immediately recognize the Rohingya as an ethnic minority and to grant them citizenship, a step that is long overdue, as Mr. MCGOVERN pointed out.

I urge my colleagues to support this bipartisan resolution. Let's all send a message that the current state of human rights in Burma is unacceptable.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. ROYCE) that the House suspend the rules and agree to the resolution, H. Res. 418, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 8 o'clock and 4 minutes p.m.), the House stood in recess.

□ 2155

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. WOODALL) at 9 o'clock and 55 minutes p.m.

REPORT ON H. RES. 567, PROVIDING FOR THE ESTABLISHMENT OF THE SELECT COMMITTEE ON THE EVENTS SURROUNDING THE 2012 TERRORIST ATTACK IN BENGHAZI

Ms. FOXX, from the Committee on Rules, submitted a privileged report (Rept. No. 113-442) on the resolution (H. Res. 567) providing for the Establishment of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H. RES. 567, ESTABLISHING SELECT COMMITTEE ON BENGHAZI

Ms. FOXX, from the Committee on Rules, submitted a privileged report (Rept. No. 113-443) on the resolution (H. Res. 575) providing for consideration of the resolution (H. Res. 567) providing for the Establishment of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 10, SUCCESS AND OPPORTUNITY THROUGH QUALITY CHARTER SCHOOLS ACT; RELATING TO CONSIDERATION OF H.R. 4438, AMERICAN RESEARCH AND COMPETITIVENESS ACT OF 2014; AND FOR OTHER PURPOSES

Ms. FOXX, from the Committee on Rules, submitted a privileged report (Rept. No. 113-444) on the resolution (H. Res. 576) providing for consideration of the bill (H.R. 10) to amend the Charter School Program under the Elementary and Secondary Education Act of 1965; relating to consideration of the bill (H.R. 4438) to amend the Internal Revenue Code of 1986 to simplify and make permanent the research credit; and for other purposes, which was referred to the House Calendar and ordered to be printed.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. RUSH (at the request of Ms. PELOSI) for today.

ENROLLED BILL SIGNED

Karen L. Haas, Clerk of the House, reported and found truly enrolled a bill of the House of the following title, which was thereupon signed by the speaker:

H.R. 4192. An act to amend the Act entitled "An Act to regulate the height of buildings in the District of Columbia" to clarify the rules of the District of Columbia regarding human occupancy of penthouses above the top story of the building upon which the penthouse is placed.

ADJOURNMENT

Ms. FOXX. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 56 minutes p.m.), under its previous order, the House adjourned until tomorrow, Thursday, May 8, 2014, at 10 a.m. for morning-hour debate.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports concerning the foreign currencies and U.S. dollars utilized for Official Foreign Travel during the first quarter of 2014 pursuant to Public Law 95-384 are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Ander Crenshaw	1/17	1/18	Germany		356.79						
	1/18	1/19	Turkey		100.00						
	1/19	1/19	Georgia								
	1/19	1/20	Jordan		355.41						
	1/20	1/21	United Arab Emirates		526.00						
	1/21	1/21	Afghanistan		0.00						
	1/21	1/23	Ethiopia		800.00						
	1/23	1/23	Uganda		0.00						
	1/23	1/25	Rwanda		676.00						
	1/25	1/26	Cape Verde		332.20						
Hon. Ken Calvert	2/13	2/15	Pakistan		210.00						
	2/15	2/17	Afghanistan		56.00						
	2/17	2/19	Qatar		860.00						
	2/19	2/19	Qatar		860.00						
	2/19	2/23	Jordan		1,424.00						
Commercial airfare							10,113.15				
Hon. Rodney Frelinghuysen	2/13	2/15	Pakistan		210.00						
	2/15	2/17	Afghanistan		56.00						
	2/17	2/19	Qatar		860.00						
	2/19	2/23	Jordan		1,424.00						
	Commercial airfare							10,147.65			
Hon. Peter Visclosky	2/13	2/15	Pakistan		210.00						
	2/15	2/17	Afghanistan		56.00						
	2/17	2/19	Qatar		860.00						
	2/19	2/23	Jordan		1,424.00						
	Commercial airfare							10,147.65			
Hon. James Moran	2/13	2/15	Pakistan		210.00						
	2/15	2/17	Afghanistan		56.00						
	2/17	2/19	Qatar		860.00						
	2/19	2/23	Jordan		1,424.00						
	Commercial airfare							10,148.15			
Paula Juola	2/13	2/15	Pakistan		150.00						
	2/15	2/17	Afghanistan		56.00						
	2/17	2/19	Qatar		860.00						
	2/19	2/23	Jordan		1,424.00						
	Commercial airfare							10,147.65			
Brooke Boyer	2/13	2/15	Pakistan		150.00						
	2/15	2/17	Afghanistan		56.00						
	2/17	2/19	Qatar		860.00						
	2/19	2/23	Jordan		1,424.00						
	Commercial airfare							11,203.85			
B.G. Wright	2/13	2/15	Pakistan		150.00						
	2/15	2/17	Afghanistan		56.00						
	2/17	2/19	Qatar		860.00						
	2/19	2/23	Jordan		1,424.00						
	Commercial airfare							16,228.65			
Jim Kulikowski	2/19	2/21	Italy		1,242.84						
			Commercial airfare				2,454.00				
Anne Marie Chotwacs	2/19	2/21	Italy		1,242.84						
			Commercial airfare				2,454.00				
Jennifer Miller	2/16	2/19	Qatar		1,290.00						

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014—

Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Commercial airfare	2/19	2/23	Jordan		1,424.00						
Taxi							11,995.30				
Megan Rosenbusch		2/17	Travel Day		99.00		175.00				
	2/18	2/20	Germany		503.71						
	2/20	2/21	Italy		439.92						
		2/22	Travel Day		60.75						
Commercial airfare							2,708.10				
Taxi							140.00				
Paul Terry		2/17	Travel Day		99.00						
	2/18	2/20	Germany		503.71						
	2/20	2/21	Italy		439.92						
		2/22	Travel Day		60.75						
Commercial airfare							2,708.10				
Parking							102.00				
Hon. Mario Diaz-Balart	3/28	3/29	Haiti		266.00						
Commercial airfare							467.70				
Vehicle fuel							94.60				
Misc. delegation costs								355.00			
Hon. Adam Schiff	3/27	3/29	Lithuania		302.49						
Commercial airfare							3,430.00				
Extra transportation							11.76				
Misc. delegation costs								601.00			
Committee total					28,791.31		104,877.31		956.00		134,624.64

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HON. HAROLD ROGERS, Chairman, Apr. 30, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON THE BUDGET, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Bill Flores	1/17	1/22	Guam								
	1/22	1/24	Hong Kong								
	1/24	1/26	Japan								
					625.93		8,935.80				9,561.73
Committee total					625.93		8,935.80				9,561.73

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HON. PAUL RYAN, Chairman, May 2, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON EDUCATION AND THE WORKFORCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. George Miller	3/15	3/19	Chile		1,759.00						1,759.00
	3/19	3/22	Bolivia		421.00						421.00
Hon. Rush Holt	3/15	3/19	Chile		1,759.00						1,759.00
	3/19	3/22	Bolivia		421.00						421.00
Leticia Mederos	3/15	3/19	Chile		1,082.00						1,082.00
	3/19	3/22	Bolivia		421.00						421.00
Hon. Frederica Wilson	3/28	3/29	Haiti		179.20		502.70				681.90
Committee total					6,042.20		502.70				6,544.90

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HON. JOHN KLINE, Chairman, Apr. 30, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. David McKinley	3/14	3/19	Afghanistan		425.82		9,913.20				10,339.02
Committee total					425.82		9,913.20				10,339.02

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

³ Military air transportation.

HON. FRED UPTON, Chairman, Apr. 25, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON FINANCIAL SERVICES, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Stevan Pearce	1/17	1/18	Germany		338.14		(3)				338.14
	1/18	1/19	Turkey		216.75		(3)				216.75
	1/19	1/20	Jordan		355.41		(3)				355.41
	1/20	1/21	United Arab Emirates		526.00		(3)				526.00
	1/21	1/23	Ethiopia		800.00		(3)				800.00
	1/23	1/25	Rwanda		776.00		(3)				776.00
	1/25	1/26	Cape Verde		374.25		(3)				374.25
Committee total					3,386.55						3,386.55

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HON. JEB HENSARLING, Chairman, Apr. 30, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON FOREIGN AFFAIRS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Greg Simpkins	3/16	3/22	Ethiopia		1,309.85		10,640.42		697.83		12,648.10
Piero Tozzi	3/15	3/22	Ethiopia		1,514.00		6,053.42				7,567.42
Ari Fridman	3/16	3/18	Egypt		580.25		2,837.00				3,417.25
	3/18	3/20	Yemen		815.00						815.00
Andrew Veprek	3/16	3/18	Egypt		580.25		2,837.00				3,417.25
	3/18	3/20	Yemen		815.00						815.00
Brent Woolfork	3/16	3/18	Egypt		583.00		2,872.00				3,455.00
	3/18	3/20	Yemen		815.00						815.00
Hon. Ileana Ros-Lehtinen	3/28	3/29	Haiti		186.00		502.70	(4)	2,248.00		2,936.70
Eddy Acevedo	3/28	3/29	Haiti		201.00		1,111.20				1,312.20
Eric Jacobstein	3/28	3/29	Haiti		205.00		1,096.70				1,301.70
Hon. Edward R. Royce	2/16	2/17	Japan		381.00		(3)	(4)	10,528.43		10,909.43
	2/17	2/18	South Korea		248.00						248.00
	2/18	2/20	Taiwan		491.00						491.00
	2/20	2/21	Philippines		240.00			(4)	3,045.18		3,285.18
	2/21	2/23	China		962.00						962.00
Hon. Steve Chabot	2/16	2/17	Japan		292.00						292.00
	2/17	2/18	South Korea		282.00						282.00
	2/18	2/20	Taiwan		461.00						461.00
	2/20	2/21	Philippines		190.00						190.00
	2/21	2/23	China		880.00						880.00
Hon. Brad Sherman	2/16	2/17	Japan		398.50						398.50
	2/17	2/18	South Korea		327.00						327.00
	2/18	2/20	Taiwan		505.00						505.00
	2/20	2/21	Philippines		209.00						209.00
	2/21	2/23	China		847.00						847.00
Hon. Joseph Kennedy	2/16	2/17	Japan		187.00						187.00
	2/17	2/18	South Korea		354.52						354.52
	2/18	2/20	Taiwan		568.02						568.02
	2/20	2/21	Philippines		237.56						237.56
	2/21	2/23	China		930.23						930.23
Hon. Randy Weber	2/16	2/17	Japan		421.00						421.00
	2/17	2/18	South Korea		347.00						347.00
	2/18	2/20	Taiwan		561.00						561.00
	2/20	2/21	Philippines		230.00						230.00
	2/21	2/23	China		919.85						919.85
Hon. Luke Messer	2/16	2/17	Japan		391.00						391.00
	2/17	2/18	South Korea		327.00						327.00
	2/18	2/20	Taiwan		511.00						511.00
	2/20	2/21	Philippines		230.00						230.00
	2/21	2/23	China		870.00						870.00
Nien Su	2/16	2/17	Japan		291.00						291.00
	2/17	2/18	South Korea		237.00						237.00
	2/18	2/20	Taiwan		471.00						471.00
	2/20	2/21	Philippines		200.00						200.00
	2/21	2/23	China		830.00						830.00
Elizabeth Heng	2/16	2/17	Japan		420.47						420.47
	2/17	2/18	South Korea		328.67						328.67
	2/18	2/20	Taiwan		523.28						523.28
	2/20	2/21	Philippines		232.78						232.78
	2/21	2/23	China		920.49						920.49
J.J. Ong	2/16	2/17	Japan		410.00						410.00
	2/17	2/18	South Korea		337.00						337.00
	2/18	2/20	Taiwan		561.00						561.00
	2/20	2/21	Philippines		214.00						214.00
	2/21	2/23	China		905.00						905.00
Shane Wolfe	2/16	2/17	Japan		334.00						334.00
	2/17	2/18	South Korea		260.00						260.00
	2/18	2/20	Taiwan		380.00						380.00
	2/20	2/21	Philippines		204.00						204.00
	2/21	2/23	China		751.00						751.00
Hon. Ted Poe	1/16	1/18	Guatemala		307.97		1,517.28				1,825.25
	1/18	1/20	Honduras		402.28						402.28
Luke Murry	1/16	1/18	Guatemala		438.77		1,173.00				1,611.77
	1/18	1/20	Honduras		459.00						459.00
Tom Alexander	1/21	1/15	Spain		1,266.00		1,499.50				2,765.50
Ari Fridman	1/21	1/23	Spain		593.00		1,499.50				2,092.50
Andrew Veprek	1/21	1/25	Spain		1,266.00		1,499.50				2,765.50
Daniel Silverberg	1/21	1/23	Spain		593.00		1,499.50				2,092.50
Matt Zweig	2/16	2/20	Israel		1,889.00		1,232.00				3,121.00
Mira Resnick	2/16	2/20	Israel		1,930.54		1,232.12				3,162.66
Hon. William Keating	1/19	1/22	Russia		921.85		17,304.54				18,226.39
Naz Durakoglu	1/19	1/23	Russia		2,005.66		12,931.50				14,937.16
Hon. Adam Kinzinger	1/31	2/2	Germany		995.41		(3)				995.41
Hon. Eliot Engel	1/31	2/2	Germany		995.41		(3)				995.41
Hon. Ted Deutch	1/31	2/2	Germany		995.41		553.16				1,578.57
Hon. William Keating	1/31	2/2	Germany		995.41						995.41
Worlu Gachou	1/19	1/26	Thailand		920.52		5,417.40		312.93		6,650.85
	1/22	1/25	Laos		585.99						585.99
Brent Woolfork	1/19	1/26	Thailand		915.52		5,617.40				6,532.92
	1/22	1/25	Laos		556.00						556.00
Hon. Dana Rohrabacher	1/17	1/18	Austria		624.00		11,902.98		3,315.25		15,842.23
	1/18	1/20	Egypt		535.38						535.38

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON FOREIGN AFFAIRS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014—Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Steve Stockman	1/20	1/23	Israel		1,454.24						1,454.24
	1/23	1/25	Russia		976.65						976.65
	1/25	1/26	England		845.52			(4)	3,735.39		4,580.91
	1/18	1/20	Egypt		535.38		14,733.22				15,268.60
Hon. Paul Cook	1/20	1/23	Israel		1,454.24						1,454.24
	1/23	1/25	Russia		976.65						976.65
	1/25	1/26	England		1,029.52						1,029.52
	1/17	1/18	Austria		624.00		11,902.98				12,526.98
Paul Berkowitz	1/18	1/20	Egypt		535.38						535.38
	1/20	1/23	Israel		1,454.24						1,454.24
	1/23	1/25	Russia		976.65						976.65
	1/25	1/26	England		1,029.52						1,029.52
Paul Berkowitz	1/17	1/18	Austria		624.00		11,590.98				12,214.98
	1/18	1/20	Egypt		535.38						535.38
	1/20	1/23	Israel		1,454.24						1,454.24
	1/23	1/25	Russia		976.65						976.65
Paul Berkowitz	1/25	1/27	England		1,029.52						1,029.52
	2/16	2/18	Bolivia		348.00		3,036.00				3,384.00
	2/18	2/20	Ecuador		530.00						530.00
	2/20	2/22	Uruguay		412.00						412.00
Committee total				68,208.12		134,123.00		23,833.01		226,214.13	

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

³ Military air transportation.

⁴ Delegation costs.

HON. EDWARD R. ROYCE, Chairman, Apr. 30, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. F. James Sensenbrenner	1/31	2/3	Germany		1812.36		423.73		1303.04		3539.13
Committee total					1812.36		423.73				3539.13

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HON. BOB GOODLATTE, Chairman, Apr. 30, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON NATURAL RESOURCES, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Jared Huffman	3/16	3/18	Chile		1,653.00		³ 4,788.00				6,441.00
Committee total					1653.00		4788.00				6441.00

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

³ Military air transportation.

HON. DOC HASTINGS, Chairman, Apr. 30, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Brien Beattie	1/25	1/26	Germany		362.00		1656.00				2018.00
Hon. Cynthia Lummis	1/17	1/18	Austria		417.00						417.00
	1/18	1/20	Egypt		534.00						534.00
Hon. Jason Chaffetz	1/20	1/23	Israel		1,828.00						1,828.00
	1/23	1/25	Russia		1,130.00						1,130.00
	1/25	1/27	United Kingdom		1,016.00						1,016.00
	2/12	2/14	United Arab Emirates		793.00						793.00
James Lewis	2/15	2/16	Papua New Guinea		314.00		19,393.00				19,707.00
	2/12	2/14	United Arab Emirates		923.00						923.00
Hon. Stephen Lynch	2/15	2/16	Papua New Guinea		354.00		19,393.00				19,747.00
	3/19	3/21	Israel		982.00						982.00
	3/21	3/23	Afghanistan		56.00						56.00
Hon. Michael Turner	3/23	3/24	Ukraine		374.00						374.00
	3/20	3/23	Belgium		750.00		1,871.00				2,621.00
Committee total				9,833.00		42,313.00				52,146.00	

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HON. DARRELL E. ISSA, Chairman, Apr. 30, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Angela Ellard	2/20	2/26	Singapore		1,925.00		13,717.20		291.11		15,933.31
Stephen Clayes	2/20	2/26	Singapore		1,862.77		13,717.20				15,579.97
Jason Kearns	2/21	2/26	Singapore		1,622.29		7,232.20				8,854.49
Hon. Erik Paulsen	1/22	1/23	Ethiopia		715.00		7,553.94				8,268.94
	1/23	1/25	Rwanda		272.00						272.00
	1/25	1/25	Cape Verde		332.00						332.00
Hon. Sander Levin	2/15	2/18	Colombia		315.00		510.90		7,299.00		8,124.90
Committee total					7,044.66		42,731.44		7,590.11		57,365.61

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HON. DAVE CAMP, Chairman, Apr. 30, 2014.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, PERMANENT SELECT COMMITTEE ON INTELLIGENCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Frank A. LoBiondo	1/17	1/18	Africa		508.00						
	1/18	1/20	Africa		552.00						
	1/20	1/21	Middle East		855.41						
	1/21	1/24	Africa		615.00						
Commercial airfare							18,036.40				20,066.91
Frank Garcia	1/17	1/18	Africa		508.00						
	1/18	1/20	Africa		552.00						
	1/20	1/21	Middle East		355.41						
	1/21	1/24	Africa		558.94						
Commercial airfare							16,816.10				18,790.45
Michael Bahar	1/18	1/20	Africa		552.00						
	1/20	1/20	Middle East								
Commercial airfare							9,560.10				10,112.10
Chelsey Campbell	1/19	1/20	Middle East		355.41						
Commercial airfare							8,368.00				8,723.41
Hon. Michele Bachmann	1/19	1/23	Southeast Asia		1,141.00						
	1/23	1/25	Southeast Asia		679.32						
Commercial airfare							22,705.20				24,526.34
Hon. James R. Langevin	1/19	1/23	Southeast Asia		1,001.25						
	1/23	1/25	Southeast Asia		679.32						
Commercial airfare							19,534.00				21,214.57
Brooke Eisele	1/19	1/23	Southeast Asia		1,339.18						
	1/23	1/25	Southeast Asia		679.32						
Commercial airfare							22,390.32				24,408.82
Carly Scott	1/19	1/23	Southeast Asia		1,257.82						
	1/23	1/25	Southeast Asia		679.32						
Commercial airfare							22,864.50				24,801.64
Hon. Mike Rogers	1/31	2/2	Europe		1,314.65						
							(⁹)				1,314.65
Hon. Mike Pompeo	1/31	2/2	Europe		995.41						
							(⁹)				995.41
Hon. Mike Rogers	2/7	2/10	Europe		552.00						
Commercial airfare							1,696.60				2,248.60
Darren Dick	2/7	2/10	Europe		552.00						
Commercial airfare							1,064.50				1,616.50
Katie Wheelbarger	2/18	2/21	Middle East								
Commercial airfare							13,366.40				13,366.40
Chelsey Campbell	2/18	2/21	Middle East								
							13,366.70				13,366.70
Hon. Mike Pompeo	2/17	2/19	Africa		536.00						
	2/19	2/20	Africa		348.00						
	2/20	2/21	Africa		268.48						
Commercial airfare							12,057.10				13,209.58
Hon. Mike Rogers	2/17	2/19	Africa		536.00						
	2/19	2/20	Africa		348.00						
	2/20	2/21	Africa		268.48						
Commercial airfare							15,001.10				16,153.58
Hon. James A. Himes	2/17	2/19	Africa		536.00						
	2/19	2/20	Africa		348.00						
	2/20	2/21	Africa		268.48						
Commercial airfare							13,427.10				14,579.58
Darren Dick	2/17	2/19	Africa		536.00						
	2/19	2/20	Africa		348.00						
	2/20	2/21	Africa		268.48						
Commercial airfare							12,057.10				13,209.58
Geof Kahn	2/17	2/19	Africa		536.00						
	2/19	2/20	Africa		348.00						
	2/20	2/21	Africa		268.48						
Commercial airfare							12,058.20				13,210.68
Amanda Rogers Thorpe	2/17	2/19	Africa		536.00						
	2/19	2/20	Africa		348.00						
	2/20	2/21	Africa		268.48						
Commercial airfare							12,057.10				13,209.58
Shannon Stuart	3/16	3/18	Southeast Asia		474.00						
	3/18	3/22	Southeast Asia		942.24						
Commercial airfare							15,049.70				16,465.94
Robert Minehart	3/16	3/18	Southeast Asia		474.00						
	3/18	3/22	Southeast Asia		942.24						
Commercial airfare							15,049.70				16,465.94
Hon. Mike Rogers	3/18	3/20	Eastern Europe		732.81						
	3/20	3/23	Eastern Europe		911.33						
Commercial airfare							13,203.70				14,847.84
Sarah Geffroy	3/18	3/20	Eastern Europe		732.81						
	3/20	3/23	Eastern Europe		911.33						
Commercial airfare							12,008.50				13,652.64
Andy Keiser	3/18	3/20	Eastern Europe		732.81						
	3/20	3/23	Eastern Europe		911.33						
Commercial airfare							12,008.50				13,652.64
Hon. Mike Pompeo	3/28	3/29	Eastern Europe		260.43						
	3/29	4/1	Eastern Europe		1,086.40						
Commercial airfare							9,699.00				11,045.83

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, PERMANENT SELECT COMMITTEE ON INTELLIGENCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JAN. 1 AND MAR. 31, 2014—Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Adam B. Schiff	3/29	4/1	Eastern Europe		1,086.40						
Commercial airfare							6,352.40				7,438.80
Katie Wheelbarger	3/28	3/29	Eastern Europe		260.43						
Commercial airfare	3/29	4/1	Eastern Europe		1,086.40						
Linda Cohen	3/29	4/1	Eastern Europe		1,086.40						
Commercial airfare							9,699.60				11,046.43
Commercial airfare							11,487.60				12,574.00
Committee totals											386,315.14

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
³ Military air transportation.

HON. MIKE ROGERS, Chairman, Apr. 30, 2014.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV, executive communications were taken from the Speaker's table and referred as follows:

5564. A letter from the Assistant Secretary, Special Operations and Low-Intensity Conflict, Department of Defense, transmitting the Department's Annual Report for FY 2013 regarding the training, and its associated expenses, of U.S. Special Operations Forces (SOF) with friendly foreign forces for the period ending September 30, 2013; to the Committee on Armed Services.

5565. A letter from the Under Secretary, Department of Defense, transmitting the annual report on operations of the National Defense Stockpile (NDS) in accordance with section 11(b) of the Strategic and Critical Materials Stock Piling Act as amended (50 U.S.C. 98 et seq.) detailing NDS operations during FY 2015 and for the succeeding 4 years (FY 2016-2019); to the Committee on Armed Services.

5566. A letter from the Administrator, Energy Information Administration, Department of Energy, transmitting a report on The Availability and Price of Petroleum and Petroleum Products Produced in Countries Other Than Iran; to the Committee on Energy and Commerce.

5567. A letter from the Secretary, Department of Health and Human Services, transmitting the FY 2013 financial report for the Biosimilar User Fee Act; to the Committee on Energy and Commerce.

5568. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; The Boeing Company Airplanes [Docket No.: FAA-2014-0169; Directorate Identifier 2014-NM-020-AD; Amendment 39-17808; AD 2014-06-04] (RIN: 2120-AA64) received April 16, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5569. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; M7 Aerospace LLC Airplanes [Docket No.: FAA-2013-1057; Directorate Identifier 2013-CE-041-AD; Amendment 39-17805; AD 2014-06-01] (RIN: 2120-AA64) received April 16, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5570. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; The Boeing Company Airplanes [Docket No.: FAA-2013-0326; Directorate Identifier 2012-NM-089-AD; Amendment 39-17786; AD 2014-05-13] (RIN: 2120-AA64) received April 16, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5571. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier, Inc. Airplanes [Docket No.: FAA-2013-0798; Directorate Identifier 2013-NM-087-AD; Amendment 39-17796; AD 2014-05-23] (RIN: 2120-AA64) received April 16, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5572. A letter from the Paralegal Specialist, Department of Transportation, transmitting the Department's final rule — Amendment to Class B Airspace Area; Detroit, MI [Docket No.: FAA-2013-0079; Airspace Docket No. 09-AWA-4] (RIN: 2120-AA66) received April 16, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5573. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Amendments to Delegation of Authority Provisions in the Prevention of Significant Deterioration Program [EPA-HQ-OAR-2010-0943; FRL-9909-19-OAR] (RIN: 2060-AQ55) received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5574. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revisions to Fossil Fuel Utilization Facilities and Source Registration Regulations and Industrial Performance Standards for Boilers [EPA-R01-OAR-2012-0951; FRL-9800-2] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5575. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; New York State; Redesignation of Areas for 1997 Annual and 2006 24-Hour Fine Particulate Matter and Approval of the Associated Maintenance Plan [EPA-R02-OAR-2013-0592; FRL-9909-65-Region 2] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5576. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions [EPA-R08-OAR-2014-0049; FRL-9909-08-Region 8] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5577. A letter from the Director, Regulatory Management Division, Environmental

Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision for GP Big Island, LLC [EPA-R03-OAR-2013-0191; FRL-9909-60-Region 3] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5578. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Redesignation of the Milwaukee-Racine 2006 24-Hour Fine Particle Nonattainment Area to Attainment [EPA-R05-OAR-2012-0464; FRL-9909-50-Region 5] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5579. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; Commonwealth of the Northern Mariana Islands; Prevention of Significant Deterioration; Special Exemptions from Requirements of the Clean Air Act [EPA-R09-OAR-2013-0697; FRL-9909-18-Region 9] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5580. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; States of Arkansas and Louisiana; Clean Air Interstate Rule State Implementation Plan Revisions [EPA-R06-OAR-2009-0594; FRL-9909-56-Region 6] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5581. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Linuron; Pesticide Tolerances; Technical Correction [EPA-HQ-OPP-2012-0791-9908-83] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5582. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, El Dorado County Air Quality Management District [EPA-R09-OAR-2013-0683; FRL-9909-66-Region 9] received April 17, 2014, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

5583. A letter from the Assistant Secretary, Department of Defense, transmitting a report on Utilization of Contributions to the Cooperative Threat Reduction Program; to the Committee on Foreign Affairs.

5584. A letter from the Secretary, Department of Health and Human Services, transmitting annual financial report as required by the Generic Drug User Fee Act for FY 2013; to the Committee on Energy and Commerce.

5585. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting a report concerning methods employed by the Government of Cuba to comply with the United States-Cuba September 1994 "Joint Communiqué" and the treatment by the Government of Cuba of persons returned to Cuba in accordance with the United States-Cuba May 1995 "Joint Statement"; together known as the Migration Accords; to the Committee on Foreign Affairs.

5586. A letter from the Director, Office of Civil Rights, Department of Commerce, transmitting the Department's annual report for FY 2013 prepared in accordance with Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174; to the Committee on Oversight and Government Reform.

5587. A letter from the Inspector General, Department of Health and Human Services, transmitting a report entitled, "U.S. Department of Health and Human Services Met Many Requirements of the Improper Payments Information Act of 2002 but Did Not Fully Comply for Fiscal Year 2013"; to the Committee on Oversight and Government Reform.

5588. A letter from the Chairman, Merit Systems Protection Board, transmitting the Board's annual report for FY 2013 prepared in accordance with the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002; to the Committee on Oversight and Government Reform.

5589. A letter from the Principal Deputy Assistant Attorney General, Department of Justice, transmitting the administration of the Foreign Agents Registration Act of 1938, as amended for the six month period ending June 30, 2013, pursuant to 22 U.S.C. 621; to the Committee on the Judiciary.

5590. A letter from the Auditor, Congressional Medal of Honor Society of the United States of America, transmitting the annual financial report of the Society for the years ended December 31, 2013 and 2012, pursuant to 36 U.S.C. 1101(19) and 1103; to the Committee on the Judiciary.

5591. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Memorandum of Understanding Between the United States and the Government of the Republic of Bulgaria Concerning the Imposition of Import Restrictions on Archaeological Materials Representing the Cultural Heritage of Bulgaria, pursuant to 19 U.S.C. 2602(g)(1); to the Committee on Ways and Means.

5592. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting report to Congress on The Proliferation Security Initiative (PSI) Budget Plan and Review P.L. 110-53, Section 1821(b)(2); jointly to the Committees on Foreign Affairs and Armed Services.

5593. A letter from the Secretary, Department of Health and Human Services, transmitting a report entitled, "Finalizing Medicare Regulations under Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) for Calendar Year 2013"; jointly to the Committees on Ways and Means and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk

for printing and reference to the proper calendar, as follows:

Mr. CAMP: Committee on Ways and Means. H.R. 4058. A bill to prevent and address sex trafficking of youth in foster care; with an amendment (Rept. 113-441). Referred to the Committee of the Whole House on the state of the Union.

Mr. SESSIONS: Committee on Rules. House Resolution 567. Resolution providing for the Establishment of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi (Rept. 113-442). Referred to the House Calendar.

Mr. SESSIONS: Committee on Rules. House Resolution 575. Resolution providing for consideration of the resolution (H. Res. 567) providing for the Establishment of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi (Rept. 113-443). Referred to the House Calendar.

Ms. FOX: Committee on Rules. House Resolution 576. Resolution providing for consideration of the bill (H.R. 10) to amend the charter school program under the Elementary and Secondary Education Act of 1965; relating to consideration of the bill (H.R. 4438) to amend the Internal Revenue Code of 1986 to simplify and make permanent the research credit; and for other purposes (Rept. 113-444). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. ROYCE:

H.R. 4586. A bill to ensure that the provision of foreign assistance does not contribute to human trafficking and to combat human trafficking by requiring greater transparency in the recruitment of foreign workers outside of the United States, and for other purposes; to the Committee on Education and the Workforce, and in addition to the Committees on Foreign Affairs, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. ROS-LEHTINEN (for herself, Mr. DIAZ-BALART, Mr. SALMON, Mr. SIRE, Mr. DEUTCH, Mr. MURPHY of Florida, Mr. STOCKMAN, Mr. GARCIA, and Ms. BROWN of Florida):

H.R. 4587. A bill to impose targeted sanctions on individuals responsible for carrying out or ordering human rights abuses against the citizens of Venezuela, and for other purposes; to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. BLACKBURN (for herself and Ms. ESHOO):

H.R. 4588. A bill to amend the Communications Act of 1934 to deny the right to grant retransmission consent to a television broadcast station if an AM or FM radio broadcast station licensed to the same licensee transmits a sound recording without providing compensation for programming; to the Committee on Energy and Commerce.

By Mr. REICHERT (for himself and Mr. McDERMOTT):

H.R. 4589. A bill to amend the Internal Revenue Code of 1986 to exclude dividends from controlled foreign corporations from the definition of personal holding company income

for purposes of the personal holding company rules; to the Committee on Ways and Means.

By Mr. LABRADOR (for himself and Mr. SOUTHERLAND):

H.R. 4590. A bill to exempt certain 16 and 17 year-old children employed in logging or mechanized operations from child labor laws; to the Committee on Education and the Workforce.

By Mr. BARROW of Georgia:

H.R. 4591. A bill to establish a national strategy for identifying job training needs to increase opportunities for technical school training and promote hiring; to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GERLACH (for himself and Mr. HIMES):

H.R. 4592. A bill to amend the Public Health Service Act to improve the diagnosis and treatment of hereditary hemorrhagic telangiectasia, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. NEUGEBAUER (for himself, Mr. CULBERSON, Mr. GINGREY of Georgia, Mr. CARTER, and Mr. STOCKMAN):

H.R. 4593. A bill to prohibit the Department of the Treasury from assigning tax statuses to organizations based on their political beliefs and activities; to the Committee on Ways and Means.

By Mr. BLUMENAUER (for himself, Mr. KINZINGER of Illinois, Ms. GABBARD, Mr. HASTINGS of Florida, Mr. POE of Texas, Mr. STIVERS, Mr. SMITH of Washington, Mr. HUNTER, Mr. ENGEL, and Mr. REICHERT):

H.R. 4594. A bill to provide for a 1-year extension of the Afghan Special Immigrant Visa Program, and for other purposes; to the Committee on the Judiciary.

By Mr. BRALEY of Iowa:

H.R. 4595. A bill to encourage school bus safety; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. COHEN (for himself and Mr. McDERMOTT):

H.R. 4596. A bill to limit investor and homeowner losses in foreclosures, and for other purposes; to the Committee on the Judiciary.

By Mr. CULBERSON (for himself, Mr. CARTER, Mr. STOCKMAN, Mr. NEUGEBAUER, Mr. GINGREY of Georgia, and Mr. CHABOT):

H.R. 4597. A bill to amend title 18, United States Code, to prohibit the intentional discrimination of a person or organization by an employee of the Internal Revenue Service; to the Committee on the Judiciary.

By Mr. GARCIA:

H.R. 4598. A bill to provide the heads of agencies with direct-hire authority to appoint qualified candidates to positions relating to information technology, and for other purposes; to the Committee on Oversight and Government Reform.

By Mr. HUNTER (for himself, Mr. FRANKS of Arizona, Mrs. ELLMERS, Mr. GRIFFIN of Arkansas, Mr. POE of Texas, Mr. BRADY of Texas, Mr. SHUSTER, Mr. POMPEO, Mr. MILLER of Florida, Mr. BUCSHON, Mr. NUNES, Mr. BRIDENSTINE, Mr. GOHMERT, Mr.

STIVERS, Mr. BISHOP of Utah, Mr. GIBBS, Mr. BROOKS of Alabama, Mr. GRAVES of Missouri, Mr. PALAZZO, Mr. HARPER, Mr. COOK, Mr. WITTMAN, Mr. HALL, and Mr. KINZINGER of Illinois):

H.R. 4599. A bill to authorize the use of force against those nations, organizations, or persons responsible for the attack against United States personnel in Benghazi, Libya; to the Committee on Foreign Affairs.

By Mr. KING of Iowa (for himself, Mrs. BACHMANN, Mr. CHABOT, Mr. BROUN of Georgia, Mrs. BLACKBURN, Mr. BROOKS of Alabama, Mr. BURGESS, Mr. FRANKS of Arizona, Mr. GINGREY of Georgia, Mr. HUELSKAMP, Mr. HUDSON, Mr. KINGSTON, Mr. ISSA, Mr. MCHENRY, Mr. WEBBER of Texas, Mr. WILSON of South Carolina, Mr. COTTON, Mr. YOHO, Mr. FORTENBERRY, Mr. HARRIS, Mr. FLEMING, and Mr. DUNCAN of South Carolina):

H.R. 4600. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums for insurance which constitutes medical care; to the Committee on Ways and Means.

By Ms. KUSTER:

H.R. 4601. A bill to provide additional funding for the Highway Trust Fund, and for other purposes; to the Committee on Oversight and Government Reform, and in addition to the Committees on Ways and Means, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STOCKMAN:

H.R. 4602. A bill to change the tax status of virtual currencies from property to foreign currency; to the Committee on Ways and Means.

By Mr. TURNER:

H.R. 4603. A bill to reauthorize chapter 40 of title 28, United States Code; to the Committee on the Judiciary.

By Mr. WESTMORELAND (for himself, Mr. DUFFY, Mrs. BACHMANN, Mr. LONG, Mr. POSEY, Mr. BENTIVOLIO, and Mr. LUETKEMEYER):

H.R. 4604. A bill to amend the Consumer Financial Protection Act of 2010 to create a consumer opt-out list for data collected by the Bureau, to put time limits on data held by the Bureau, and for other purposes; to the Committee on Financial Services.

By Mr. ISSA:

H. Res. 574. A resolution recommending that the House of Representatives find Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform; considered and agreed to.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the following statements are submitted regarding the specific powers granted to Congress in the Constitution to enact the accompanying bill or joint resolution.

By Mr. ROYCE:

H.R. 4586.

Congress has the power to enact this legislation pursuant to the following:

Article I Section 8 of the Constitution.

By Ms. ROS-LEHTINEN:

H.R. 4587.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8 of the Constitution

By Mrs. BLACKBURN:

H.R. 4588.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8, Clause 3 of the U.S. Constitution.

By Mr. REICHERT:

H.R. 4589.

Congress has the power to enact this legislation pursuant to the following:

Pursuant to Clause 1 of Section 8 of Article I of the United States Constitution and Amendment XVI of the United States Constitution

By Mr. LABRADOR:

H.R. 4590.

Congress has the power to enact this legislation pursuant to the following:

This legislation has been written pursuant to Article I, Section 8, Clause 3, which gives Congress the authority "To Regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

By Mr. BARROW of Georgia:

H.R. 4591.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8

By Mr. GERLACH

H.R. 4592.

Congress has the power to enact this legislation pursuant to the following:

The Congress enacts this bill pursuant to Clause 18 of Section 8 of Article I of the United States Constitution.

By Mr. NEUGEBAUER:

H.R. 4593.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 18:

The Congress shall have Power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.

By Mr. BLUMENAUER:

H.R. 4594.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8 of the U.S. Constitution

By Mr. BRALEY of Iowa:

H.R. 4595.

Congress has the power to enact this legislation pursuant to the following:

This bill is enacted pursuant to the power granted to Congress under Article I, Section 8, Clause 18 of the United States Constitution.

By Mr. COHEN:

H.R. 4596.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, clause 4 of the United States Constitution, giving Congress the authority to establish uniform bankruptcy laws.

By Mr. CULBERSON:

H.R. 4597.

Congress has the power to enact this legislation pursuant to the following:

The 14th Amendment, section 5; Article 1, sections 3 and 18.

By Mr. GARCIA:

H.R. 4598.

Congress has the power to enact this legislation pursuant to the following:

This bill is enacted pursuant to clause 18 of section 8 of article I of the U.S. Constitution.

By Mr. HUNTER:

H.R. 4599.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8 of the United States Constitution, which grants Congress the

power provide for the common defense of the United States.

By Mr. KING of Iowa:

H.R. 4600.

Congress has the power to enact this legislation pursuant to the following:

The bill is enacted pursuant to Congress' powers to lay and collect Taxes, Duties, Imposts, and Excises under Article I, Section 8, of the United States Constitution.

By Ms. KUSTER:

H.R. 4601.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 1 (relating to the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States), and Article I, Section 8, Clause 7 (relating to the establishment of Post Roads) of the United States Constitution.

By Mr. STOCKMAN:

H.R. 4602.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8.

"The Congress shall have Power To lay and collect Taxes"

By Mr. TURNER:

H.R. 4603.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 9 and Article III, Section 1 of the Constitution of the United States of America

By Mr. WESTMORELAND:

H.R. 4604.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, of the United States Constitution.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions, as follows:

H.R. 24: Mr. GARRETT, Mr. PETRI, Mr. WILLIAMS, Mr. BROOKS of Alabama, Mr. PITTS, Mr. CRENSHAW, Mr. SMITH of New Jersey, Mr. SHIMKUS, Ms. GRANGER, and Mrs. WALORSKI.

H.R. 29: Mr. McDERMOTT.

H.R. 36: Mr. WOODALL.

H.R. 460: Ms. GABBARD, Mr. BLUMENAUER, Ms. CLARK of Massachusetts, Mr. LANCE, Mr. HASTINGS of Florida, and Mr. HINOJOSA.

H.R. 498: Ms. DELBENE, Mr. SMITH of Texas, Mr. BUCHANAN, and Mr. KILMER.

H.R. 523: Ms. MENG.

H.R. 630: Ms. CLARK of Massachusetts.

H.R. 647: Ms. SLAUGHTER.

H.R. 713: Mr. SMITH of New Jersey.

H.R. 755: Mr. PRICE of Georgia.

H.R. 831: Mr. BUCSHON and Mr. COHEN.

H.R. 855: Mr. COLE.

H.R. 1009: Mr. GIBSON.

H.R. 1015: Mr. HUNTER, Mr. MASSIE, and Mr. PASTOR of Arizona.

H.R. 1070: Ms. LOFGREN and Mr. McDERMOTT.

H.R. 1074: Mr. CARTER, Mr. PASCRELL, Mr. KENNEDY, Mr. LEVIN, and Mr. LONG.

H.R. 1097: Mr. PALAZZO.

H.R. 1130: Ms. VELÁZQUEZ and Mr. BRADY of Pennsylvania.

H.R. 1141: Mr. BARR.

H.R. 1217: Ms. HERRERA BEUTLER and Mr. DOGGETT.

H.R. 1250: Ms. GABBARD and Mr. DIAZ-BALART.

H.R. 1309: Mr. GRIFFIN of Arkansas.

H.R. 1428: Mr. BUTTERFIELD.

H.R. 1449: Mr. BROUN of Georgia, Mr. FLORES, and Mr. LoBIONDO.

H.R. 1518: Mr. PERRY.

- H.R. 1527: Mr. WAXMAN and Mr. RAHALL.
H.R. 1616: Mr. FITZPATRICK.
H.R. 1717: Mrs. HARTZLER.
H.R. 1779: Mr. MCHENRY.
H.R. 1795: Mr. YOHO.
H.R. 1801: Mr. FITZPATRICK, Mr. BISHOP of Georgia, and Mr. VAN HOLLEN.
H.R. 1812: Mr. AUSTIN SCOTT of Georgia and Mr. STEWART.
H.R. 1830: Mr. CUMMINGS, Ms. WILSON of Florida, Ms. CHU, Mr. SCHRADER, RUPPERSBERGER, Mr. GUTIERREZ, Mr. CONNOLLY, Mr. FATTAH, Mrs. WAGNER, Mr. LONG, Mr. GARCIA, and Mr. BRADY of Pennsylvania.
H.R. 1852: Mr. VELA.
H.R. 1937: Mr. PETRI.
H.R. 1998: Mr. JOLLY.
H.R. 2001: Mr. FORTENBERRY and Mr. LEWIS.
H.R. 2012: Ms. DELAURO.
H.R. 2130: Ms. ESHOO.
H.R. 2144: Mrs. DAVIS of California and Mr. BARROW of Georgia.
H.R. 2203: Ms. CHU and Mr. KILMER.
H.R. 2283: Mr. PAULSEN, Mr. KLINE, Mr. ROKITA, Mr. ISRAEL, Mr. COLE, and Mr. LANDEVIN.
H.R. 2387: Mr. OWENS, Mr. JEFFRIES, and Mr. SHERMAN.
H.R. 2499: Ms. CLARK of Massachusetts.
H.R. 2652: Mr. SWALWELL of California.
H.R. 2673: Mr. GARY G. MILLER of California.
H.R. 2717: Mr. GENE GREEN of Texas.
H.R. 2841: Mr. SCHNEIDER, Mr. HONDA, Mr. DEFazio, and Mr. BUTTERFIELD.
H.R. 2901: Ms. MCCOLLUM, Mr. SMITH of Washington, Mr. SALMON, Mr. ROSKAM, Ms. ESTY, Mr. WOLF, Mrs. MCCARTHY of New York, Mr. PITTENGER, and Mr. FARR.
H.R. 2921: Mr. BENTIVOLIO.
H.R. 2939: Mr. ROYCE.
H.R. 3116: Mr. ISRAEL.
H.R. 3121: Mr. ROONEY.
H.R. 3150: Ms. ESHOO.
H.R. 3211: Mr. CRENSHAW.
H.R. 3330: Mr. CICILLINE.
H.R. 3335: Mr. BILIRAKIS.
H.R. 3361: Mr. LANCE, Mr. PETERS of Michigan, Mr. GOSAR, Ms. DEGETTE, Mr. SERRANO, and Ms. HERRERA BEUTLER.
H.R. 3407: Ms. CASTOR of Florida.
H.R. 3408: Mr. BARR.
H.R. 3413: Mr. MULVANEY.
H.R. 3494: Mr. HASTINGS of Florida, Mr. KILMER, and Ms. ESTY.
H.R. 3499: Mr. WALZ.
H.R. 3530: Mr. DIAZ-BALART and Mr. LANKFORD.
H.R. 3544: Mrs. BACHMANN.
H.R. 3610: Mr. DIAZ-BALART, Ms. TITUS, and Mr. LANKFORD.
H.R. 3747: Mr. RODNEY DAVIS of Illinois.
H.R. 3782: Ms. DELBENE.
H.R. 3836: Mr. CHABOT and Mr. LONG.
H.R. 3855: Mr. CARSON of Indiana.
H.R. 3862: Mr. PETERSON.
H.R. 3877: Ms. SCHAKOWSKY.
H.R. 3930: Mr. PETERS of Michigan, Mr. PRICE of Georgia, Mr. VALADAO, Ms. TITUS, Mr. BARLETTA, and Mr. POSEY.
H.R. 3991: Mr. FARENTHOLD, Mr. LAMALFA, Mr. RENACCI, Mr. HASTINGS of Washington, and Mr. DEFazio.
H.R. 3992: Ms. SHEA-PORTER.
H.R. 4031: Mr. TIPTON, Mr. THOMPSON of Pennsylvania, Mr. LONG, and Mr. CHABOT.
H.R. 4040: Mr. NEAL.
H.R. 4056: Mrs. BROOKS of Indiana.
H.R. 4058: Ms. ESTY, Mr. BARLETTA, and Mr. DIAZ-BALART.
H.R. 4079: Mr. COOPER.
H.R. 4091: Mr. RIBBLE.
H.R. 4092: Mr. QUIGLEY, Ms. LOFGREN, and Ms. ESHOO.
H.R. 4136: Ms. MCCOLLUM, Mr. DEFazio, and Mr. DELANEY.
H.R. 4156: Mr. HASTINGS of Florida.
H.R. 4158: Mr. BISHOP of Utah, Mrs. CAPITO, Mr. MARCHANT, Mr. SMITH of Texas, and Mr. TURNER.
H.R. 4162: Ms. ESHOO.
H.R. 4200: Mr. MURPHY of Florida.
H.R. 4208: Mr. HORSFORD.
H.R. 4213: Mr. COHEN and Mr. CALVERT.
H.R. 4219: Mr. WOMACK.
H.R. 4225: Mr. DIAZ-BALART.
H.R. 4236: Mr. JONES.
H.R. 4285: Mr. TAKANO.
H.R. 4305: Mr. LONG and Mr. WEBER of Texas.
H.R. 4318: Mr. TIBERI.
H.R. 4347: Ms. MENG and Mr. BILIRAKIS.
H.R. 4351: Mr. COSTA and Mr. BISHOP of Georgia.
H.R. 4365: Mr. COLE.
H.R. 4372: Ms. LEE of California and Mr. LOWENTHAL.
H.R. 4383: Mr. CRAMER.
H.R. 4387: Mr. ROSS.
H.R. 4395: Mr. RANGEL and Mr. HASTINGS of Florida.
H.R. 4398: Mr. MARCHANT.
H.R. 4421: Mr. LEVIN.
H.R. 4437: Mr. AUSTIN SCOTT of Georgia.
H.R. 4440: Ms. SCHWARTZ, Mr. POLIS, Mr. TIERNEY and Mr. FARR.
H.R. 4443: Mr. COLLINS of New York, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. CROWLEY, Ms. CLARKE of New York, Mr. HANNA, and Mr. MAFFEI.
H.R. 4450: Ms. EDDIE BERNICE JOHNSON of Texas.
H.R. 4465: Mr. SCALISE, Mr. AUSTIN SCOTT of Georgia, and Mr. BROOKS of Alabama.
H.R. 4491: Mr. TIPTON, Mr. ROSS, Mr. JOLLY, Mr. NUGENT, Mr. YOHO, Mr. WESTMORELAND, Mr. REICHERT, and Mr. LONG.
H.R. 4510: Mr. KING of New York, Mr. SCHNEIDER, Mr. GARRETT, Mr. PETERS of Michigan, Mr. SHERMAN, and Mr. PITTENGER.
H.R. 4521: Mr. MCHENRY.
H.R. 4531: Mr. BARTON, Mr. CARTER, Mr. CONAWAY, Mr. FLORES, Mr. GOHMERT, Ms. GRANGER, Mr. HALL, Mr. HENSARLING, Mr. NEUGEBAUER, Mr. POE of Texas, Mr. THORNBERRY, Mr. WILLIAMS, Mr. LANKFORD, Mr. COLE, Mr. SALMON, Mr. DUNCAN of South Carolina, Mr. PRICE of Georgia, Mr. FLEMING, Mr. JOYCE, Mr. POSEY, Mr. HUELSKAMP, Mrs. BLACKBURN, Mr. WEBER of Texas, and Mr. ROE of Tennessee.
H.R. 4568: Mr. MULVANEY.
H.R. 4578: Ms. MOORE, Ms. HAHN, Mr. RANGEL, Mr. MCDERMOTT, and Mr. MCGOVERN.
H.R. 4582: Ms. BROWNLEY of California, Ms. DELBENE, Mr. MCGOVERN, Mr. CUMMINGS, Ms. HAHN, Mr. NEAL, and Mr. KEATING.
H.J. Res. 34: Ms. SPEIER.
H.J. Res. 113: Mr. SCHRADER and Mrs. CHRISTENSEN.
H. Con. Res. 69: Mr. DOYLE.
H. Res. 356: Mr. WALZ.
H. Res. 445: Mr. CAMPBELL, Mr. REED, Mr. LANCE, Mr. WESTMORELAND, Mr. STIVERS, Mr. PEARCE, Mr. COTTON, Mr. WEBER of Texas, Mrs. BACHMANN, Mr. GERLACH, Mr. TIBERI, Mr. MCHENRY, Mr. KING of New York, Mr. LATTA, Mr. WALBERG, Mr. AUSTIN SCOTT of Georgia, Mr. TIPTON, Mr. BENTIVOLIO, Mr. RODNEY DAVIS of Illinois, Mrs. CAPITO, Mr. JOHNSON of Ohio, and Mr. BRADY of Texas.
H. Res. 489: Mr. SIRES.
H. Res. 508: Mr. FARR.
H. Res. 522: Mr. MORAN, Mr. CONNOLLY, Mr. BISHOP of Georgia, Mr. LATHAM, Mr. KENNEDY, Mr. FITZPATRICK, Mr. PETRI, Mr. JOYCE, and Mr. GENE GREEN of Texas.
H. Res. 525: Mr. YARMUTH and Ms. ESTY.
H. Res. 538: Mr. HANNA.
H. Res. 540: Mr. KING of New York.
H. Res. 561: Mr. MURPHY of Florida and Mr. CARNEY.
H. Res. 562: Mr. PERRY, Mr. WEBER of Texas, Mr. ADERHOLT, Mr. MEADOWS, Mr. POMPEO, Mr. SHIMKUS, Mr. KINZINGER of Illinois, Ms. ROS-LEHTINEN, Mr. WILSON of South Carolina, Mr. THOMPSON of Pennsylvania, Mr. CHABOT, Mr. SMITH of New Jersey, Mr. LAMBORN, Mr. WOLF, Mr. SALMON, and Mr. DUNCAN of South Carolina.
H. Res. 565: Mr. KELLY of Pennsylvania.
H. Res. 571: Mr. JOYCE, Mr. COOK, Mr. SIMPSON, Mr. POCAN, Mr. BARLETTA, and Mr. WALZ.
H. Res. 573: Mr. LEVIN, Ms. NORTON, Mr. DEUTCH, Mrs. NOEM, Mr. COHEN, Mrs. BEATTY, Mr. BISHOP of Georgia, Ms. BROWN of Florida, Ms. CLARKE of New York, Mr. CLEAVER, Mr. CLYBURN, Mr. AL GREEN of Texas, Mr. HASTINGS of Florida, Ms. JACKSON LEE, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KELLY of Illinois, Mr. LEWIS, Mr. PAYNE, Mr. RANGEL, Mr. RICHMOND, Mr. SCOTT of Virginia, Mr. THOMPSON of Mississippi, Ms. SPEIER, Mr. VAN HOLLEN, Mr. VARGAS, Mr. WEBER of Texas, Mr. TIERNEY, Mr. CLAY, Mr. CUMMINGS, Ms. EDWARDS, Mr. ELLISON, Mr. HORSFORD, Mr. JEFFRIES, Mr. JOHNSON of Georgia, Ms. MOORE, Mr. DAVID SCOTT of Georgia, Ms. WATERS, Ms. HAHN, Mr. GARCIA, Ms. DUCKWORTH, Mr. KINZINGER of Illinois, Mr. SERRANO, Mr. FITZPATRICK, and Mrs. CHRISTENSEN.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, OR LIMITED TARIFF BENEFITS

Under clause 9 of rule XXI, lists or statements on congressional earmarks, limited tax benefits, or limited tariff benefits were submitted as follows:

The amendment to be offered by Representative Kline, or a designee, to H.R. 10, Success and Opportunity through Quality Charter Schools Act, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.