

THE IRS: TARGETING AMERICANS FOR THEIR POLITICAL BELIEFS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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THE IRS: TARGETING AMERICANS FOR THEIR POLITICAL BELIEFS

Wednesday, March 5, 2014

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

The committee met, pursuant to call, at 9:33 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, McHenry, Jordan, Walberg, Amash, Meehan, DesJarlais, Gowdy, Farenthold, Hastings, Lummis, Massie, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Lynch, Connolly, Cartwright, Duckworth, Horsford, and Lujan Grisham.

Staff Present: Molly Boyd, Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Staff Director; David Brewer, Senior Counsel; Sharon Casey, Senior Assistant Clerk; Steve Castor, General Counsel; Drew Colliatie, Professional Staff Member; John Cuaderes, Deputy Staff Director; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Frederick Hill, Deputy Staff Director for Communications and Strategy; Christopher Hixon, Chief Counsel for Oversight; Mark D. Marin, Deputy Staff Director for Oversight; Ashok M. Pinto, Chief Counsel, Investigations; Katy Rother, Counsel; Laura L. Rush, Deputy Chief Clerk; Jessica Seale, Digital Director; Jonathan J. Skladany, Deputy General Counsel; Rebecca Watkins, Communications Director; Meghan Berroya, Minority Counsel; Aryele Bradford, Minority Press Secretary; Susanne Sachsman Grooms, Minority Deputy Staff Director/Chief Counsel; Jennifer Hoffman, Minority Communications Director; Adam Koshkin, Minority Research Assistant; Elisa LaNier, Minority Director of Operations; Juan McCullum, Minority Clerk; Suzanne Owen, Minority Senior Policy Advisor; Brian Quinn, Minority Counsel; Dave Rapallo, Minority Staff Director; Donald Sherman, Minority Counsel; and Mark Stephenson, Minority Director of Legislation.

Chairman ISSA. The committee will come to order.

We are here today to continue a hearing that began on May 22nd, 2013, called "The IRS Targeting Americans for Their Political Beliefs." The purpose of the hearing is to gather facts about how and why the IRS improperly scrutinized certain organizations that applied for tax-exempt status.

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."

Ms. Lerner then stated her intention to invoke the Fifth Amendment, and then, in response to a request by Ranking Member Cummings, she confirmed orally the authenticity of a document that was entered into the record. She subsequently re-invoked her Fifth Amendment rights in response to several questions. She then refused to provide any substantive response to those questions.

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.

Meanwhile, the committee's investigation proceeded without Ms. Lerner's testimony. To date, we have conducted 33 bipartisan transcribed interviews of witnesses from the IRS. We have heard witnesses' testimony during five committee and subcommittee hearings.

Because the IRS has not fully cooperated with the committee's investigation, I have issued three subpoenas for documents. The IRS continues to withhold some of Ms. Lerner's emails from the committee. Documents and testimony show that Ms. Lerner is uniquely positioned to provide testimony that will help the committee better understand how and why the IRS targeted conservative groups.

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 22nd, 2013.

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 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.

Since it has been 9 and a half months since we started the hearing, I am going to ask Ms. Lerner to please rise and take a re-affirming oath pursuant to the committee rules.

Raise your right hand, please.

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

Please be seated. Let the record indicate that the witness did answer in the affirmative.

Ms. Lerner—put up slide 1, please.

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?

Ms. LERNER. My counsel has advised me that I have not—

Chairman ISSA. Would you please turn the mic on?

Ms. LERNER. 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.

Chairman ISSA. So, you are not going to tell us who wanted to fix the problem caused by Citizens United?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Chairman ISSA. 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”?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer the question.

Chairman ISSA. Ms. Lerner, why would you say Tea Party cases were very dangerous?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Chairman ISSA. 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?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Chairman ISSA. 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?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Chairman ISSA. 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?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Chairman ISSA. 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?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Chairman ISSA. 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?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

Chairman ISSA. 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?

Ms. LERNER. On the advice of my counsel, I respectfully exercise my Fifth Amendment right and decline to answer that question.

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.

[Whereupon, at 9:45 a.m., the committee was adjourned.]