

IRS COMMISSIONER JOHN KOSKINEN

HEARING BEFORE THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED THIRTEENTH CONGRESS SECOND SESSION

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CONTENTS

	Page
Advisory of June 20, 2014 announcing the hearing	2
WITNESSES	
The Honorable John Koskinen, Commissioner, Internal Revenue Service	8
SUBMISSIONS FOR THE RECORD	
The Honorable Dave Camp, letter 1	25
The Honorable Dave Camp, letter 2	76
The Honorable Devin Nunes, letter	79
The Honorable Kenny Marchant, letter	80
The Honorable Ron Kind, articles	82
Paul Redgate, statement	85

IRS COMMISSIONER JOHN KOSKINEN

FRIDAY, JUNE 20, 2014

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The committee met, pursuant to call, at 9:04 a.m., in Room 100, Longworth House Office Building, the Honorable Dave Camp [chairman of the committee] presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
June 17, 2014

CONTACT: (202) 225-3625

Camp Announces Hearing with IRS Commissioner John Koskinen

Congressman Dave Camp (R-MI), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing with Internal Revenue Service (IRS) Commissioner John Koskinen to discuss recent developments in the Committee's investigation of the use of inappropriate criteria to process applications of tax-exempt organizations. **The hearing will take place on Friday, June 20, 2014, in Room 1100 of the Longworth House Office Building, beginning at 9:00 A.M.**

In view of the limited time available to hear from witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. Commissioner Koskinen will be the sole witness at the hearing.

BACKGROUND:

On May 8, 2014, Chairman Camp announced that nearly one year into the Committee's investigation of the IRS's use of inappropriate criteria to process applications of tax-exempt organizations, the IRS had agreed to turn over all emails from Lois Lerner, the former director of the IRS's Exempt Organizations Division and key figure in the investigation. In a June 13, 2014 letter to Congress, the IRS stated that it had made available to Congress 67,000 emails in which Ms. Lerner was an author or a recipient. In addition, the letter also stated that a computer failure may have resulted in the loss of some of Ms. Lerner's emails sent and received between January 1, 2009 and April 2011. The IRS told the Committee that it became aware of the gap in Ms. Lerner's emails in February 2014.

In announcing the hearing, Chairman Camp stated, "The IRS and the Administration has constantly sought to delay, misguide and obstruct this investigation, starting with blaming 'low-level' workers in Cincinnati. When Commissioner Koskinen took over in December, he pledged greater cooperation and I had high hopes he would do so. It is outrageous to now learn that the IRS has known for months about losing critical documents. It is even more troubling that we did not get the full story about how many employees' emails were lost when the IRS finally revealed this fact late on Friday. This

is a chance for the IRS to finally come clean and start being honest with the American people.”

FOCUS OF THE HEARING:

The hearing will focus on the IRS’s recent statement about the production of Ms. Lerner’s emails.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Hearings.” Select the hearing for which you would like to submit, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on July 8, 2014**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-3625 or (202) 225-5522.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and **MUST NOT** exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each

submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://www.waysandmeans.house.gov/>.



Chairman CAMP. Good morning, the committee will come to order. Over 3 years ago this committee started asking the IRS, was it targeting conservatives for their beliefs? Was it asking groups inappropriate questions? Was it harassing conservative donors? The IRS assured the committee and even testified before Congress time and time again that no targeting was occurring. Then as we all recall, 1 year ago in a signature IRS Friday news dump, then head of Exempt Organizations at the IRS, Lois Lerner admitted to the American people that the IRS targeted conservative organizations.

The IRS lied to Congress and the American people. In fact, this committee has found that there is ample evidence to suggest the IRS violated the constitutional rights of taxpayers. As of today, the investigation into the IRS's intentional-organized targeting of Americans for their beliefs has been ongoing for over a year. What we have found so far is outrageous. The IRS spent over 3 years responding to top Democrat complaints and calls to action to stop all activities of conservative groups. The IRS in Washington, D.C. took their marching orders and subjected Americans to harassment going so far as to question the content of their prayers, and their political beliefs, while subjecting them to audits and leaking their personal taxpayer information.

When the scandal first broke out the President vowed that his administration would work "hand in hand with Congress to get this thing fixed." And this spring, Commissioner Koskinen, you said your goal was to "find problems quickly, fix them promptly, make sure they stayed fixed, and be transparent about the entire process."

Well, since my time in Congress, I have never seen an IRS so broken. Last—late last Friday, the IRS admitted to Congress that the agency had lost over 2 year's worth of Lois Lerner emails and blamed the loss on a computer crash. My committee staff later learned in an interview that it wasn't only Ms. Lerner's emails, but the emails of six other individuals relevant to this investigation including the former Acting Commissioner's chief of staff.

And just 2 days ago, we found out the IRS and White House have known for months and kept it secret from Congress. This is not the most open and transparent administration the President promised. This is about as far as you can get from getting this thing fixed. Now what does this really mean? It means that if the IRS's claim that Ms. Lerner's hard drive is really unrecoverable, the public will never know the full extent of the abuse of Americans who are exercising their First Amendment rights.

Let me give you an example. Ms. Lerner told TIGTA investigators that she first learned about the Tea Party targeting in July of 2011. That wasn't true. In February of 2011, Ms. Lerner told subordinates by email "Tea Party matter dangerous" and discussed ways to deny the applications. We only have this email because it came from another employee's inbox. Had Ms. Lerner emailed this to the Treasury Department, or Justice, for example, it would be gone forever according to the IRS.

We are missing a huge piece of the puzzle. The years between 2009 and 2011 are the very peak of when the IRS organized and implemented its targeting scheme. How convenient for the IRS and the administration.

I find it hard to believe and I don't believe the IRS went through every possible exercise to recover these documents. We are missing the emails of seven IRS officials during periods critical to this investigation. How is this possible? Making matters worse, the IRS kept all of this a secret from the public for months while quickly informing political staff in the administration. After all of the obstruction, I fear this Congress and the American people cannot take the IRS at its word.

One thing is for certain. You can blame it on a technical glitch. It is not a technical glitch to mislead the American people. You say that you have lost the emails, but what you have lost is all credibility. The IRS is in charge of hundreds of millions of taxpayers' information, and you are now saying your technology system was so poor that year's worth of emails are forever unrecoverable. How does that put anyone at ease?

How far would the excuse of "I lost it" get with the IRS for an average American trying to file the yearly taxes who may have lost a few receipts? Oddly enough, this seems a satisfactory answer for the Attorney General. As far as I can tell, this administration has done nothing to investigate what truly happened, notwithstanding this committee sending the Department of Justice a detailed referral letter of nearly 100 pages. They have repeatedly tried to sweep this under a rug and claimed no wrongdoing without ever looking for the facts.

The American people have no reason to trust the IRS or, frankly, the administration on this issue. To wait years to reveal the fact the IRS was targeting the American people and then wait months to reveal your conveniently missing years of documents, well, it's no wonder I have heard the word "cover-up" thrown about a lot this week. The time for denials, delays, obstructions, and attempts to blow this off as a phony scandal are over. This committee is fed up and we expect some answers not only—from not only the IRS, but the whole administration. It is time we restore the American people's trust in their government, but I fear with recent events that may not be possible.

And now Mr. Levin, I will recognize you for an opening statement.

Mr. LEVIN. Thank you. On September 11, 2013, the Internal Revenue Service provided this committee with one of the 770,000 pages of documents it has turned over since Ways and Means undertook its investigation into the IRS in May 2013. In total, more than 250 IRS employees have spent over 120,000 hours working to produce documents at a cost of at least \$16 million to taxpayers. That document received last September, last September, included an email from Lois Lerner, to other IRS personnel dated June 14, 2011. It began: "My computer crashed yesterday." We now know the full extent of that equipment failure. Despite an exhaustive effort by forensic IT professionals at the IRS, they were unable to save her hard drive and her emails between January 1, 2009 and April 2011.

Although her emails from June 1, 2009, through April 2011 are unrecoverable from her hard drive, the IRS will produce 67,000 emails related to Lois Lerner. The IRS has or will be producing 24,000 emails that have been recovered from the period before her

computer crashed. They recovered these emails from other IRS employees. That is on top of more than 43,000 emails involving Ms. Lerner after April 2011 that have already been produced.

There is absolutely no evidence, absolutely no evidence to show that Ms. Lerner's computer crash was anything more than equipment failure. At the time of the incident in June 2011, IRS computer experts reviewed the issue and informed Lois Lerner that "Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecoverable."

Was her computer crash a conspiracy? No. Was the Internal Revenue Service's system for backing up its email system entirely underfunded and wholly deficient? Clearly, yes. In fact, Congress has cut the IRS budget for operations which includes what it spends on computers and other information technology every year for the last 5 years. House Republicans are proposing to slash it once again next year.

Commissioner Koskinen, who we welcome here today, has informed this committee that the IRS has \$1 billion worth of computer equipment and that the agency should be spending \$150 million to \$200 million on maintenance for that equipment. Instead, the agency spends virtually nothing because it cannot afford to properly maintain what it has.

It is important to remember the emails were routinely lost during the Bush administration. In one instance in 2007, according to a report by Democrats in the Oversight and Government Reform Committee, the Bush White House acknowledged having lost nearly 5 million emails between March 2003 and October 2005 related to allegations of the politically motivated dismissal of U.S. attorneys.

Lost data under the Bush administration, coupled with the number of computer crashes at the IRS, clearly demonstrate the need for government agencies to have adequate budgets to invest, upgrade, and maintain information technology. My colleagues on the other side of the aisle have taken this opportunity to rehash well-worn allegations of White House involvement; allegations that Republicans have made from the very moment the Inspector General released his report more than a year ago.

On the day the report was released, before congressional investigation into the issue had even begun, Chairman Issa accused the White House of "Targeting its political enemies." Three days later, our chairman, Mr. Camp in your opening statement during the first hearing on this matter, you accused the White House of a culture of cover-up. Congressional Republicans are so determined to find a needle in a haystack that they seek desperately to add to the haystack even though no needle has been discovered. It was in that vein that Chairman Camp this week said that this entire case started with the White House, and sent a letter to the President requesting all correspondence between Lois Lerner and the executive office of the President between January 2009 and May 2011, the period before Ms. Lerner's hard drive crashed.

The White House has conducted that search, and what have they found? There was not a single email correspondence sent to or from Ms. Lerner and the White House.

This committee has been involved in this investigation for over a year. Here is what we have learned: The 501(c)(4) applications of both conservative and progressive groups were inappropriately screened. There were long delays in processing applications. There were serious mismanagement, and I was among the very first to call for Ms. Lerner and then Commissioner Miller to be relieved of their duties.

In all of the 770,000 pages of documents that the IRS has supplied congressional committees, including ours, there has not been any evidence of political motivation or of White House involvement. Now there have been computer failures at the IRS, and Republican conspiracy theories have started anew. The evidence to date reinforces this long-evident truth: The prevailing conspiracy in this matter is that of the Republicans' desire to stir their base, tie the problem to the White House, and keep up this drum beat until the November election.

I am glad that you, Commissioner Koskinen, is here with us today to set the record straight. We are glad you are here. You started at the IRS last December after a distinguished career in the public and private sectors; at OMB, at Freddie Mac, as the chair of President Clinton's Y2K computer council. So again, we welcome your testimony. We are glad you are here. We look forward to your testimony to set the record straight.

Chairman CAMP. All right, thank you. Before I recognize Commissioner Koskinen for his opening statement I ask that he stand to be sworn in.

[Witness sworn.]

Chairman CAMP. Let the record reflect the witness answered in the affirmative. Thank you. Commissioner Koskinen, thank you for being with us today. You will have 5 minutes to present your testimony with your full written statement submitted for the record. You are now recognized for 5 minutes.

STATEMENT OF COMMISSIONER JOHN KOSKINEN, INTERNAL REVENUE SERVICE

Mr. KOSKINEN. Chairman Camp, Ranking Member Levin, and Members of the Committee, thank you for the opportunity to appear before you today to provide you with an update on recent IRS document productions to Congress. The IRS has, over the past year, made a massive document production in response to inquiries from Congress. In March, the IRS advised this committee and the Senate Finance Committee that we had completed the production of documents identified as relating to their investigation of the processing and review of applications for tax-exempt status as described in the May 2013 report from the Treasury Inspector General for Tax Administration known as TIGTA.

Those production efforts included 11,000 emails from Lois Lerner, former director of the IRS Exempt Organizations Division. This committee and the Senate Finance Committee has noted have now received more than 770,000 pages of unredacted materials. We are sending another production to you later today of additional Lerner emails. You already have more than 25,000 emails from Ms. Lerner's computer account, and more than 5,000 emails from other

custodians' accounts for which Mrs. Lerner was an author or recipient.

The IRS expects, as noted earlier in my conversation with you, to complete its production of the remaining Lerner emails to this committee by the end of the month. At that time, you will have all of the emails, 43,000 of them that we have from Ms. Lerner's computer and email account for the period January 2009 through May 2013. In addition, as noted you will have 24,000 Lerner emails from other custodian accounts during the period that her hard drive was crashed for a total of 67,000 Lerner emails.

In the course of responding to congressional requests, the IRS in February reviewed the email available from Ms. Lerner's custodial computer accounts which had been date limited and limited by search terms we had worked out with investigators and identified the possibility of an issue because the date distribution of the email was uneven. It was not clear then whether Lerner emails were overlooked, missing, or had other technical issues involved. IRS information technology professionals identified documents that indicated Ms. Lerner had experienced a computer failure in 2011. As Congressman Levin noted, some of those emails had earlier been provided last fall to this committee.

In mid-March 2014, the IRS focused on redacting materials for the non-tax writing committees and processing the rest of Ms. Lerner's email for production. As we reviewed additional Lerner emails not limited by search terms, relevance, or subject matter, in other words, all of her emails, the IRS review team learned additional facts regarding Ms. Lerner's computer crash in mid-2011 which occurred before these investigations opened or the IG's report began.

We learned that in 2011 the IRS Information Technology Division had tried using multiple processes at Ms. Lerner's request to recover the information stored on her computer's hard drive. A series of emails available after all of Ms. Lerner's email was loaded, recounts the sequence of events in 2011. A frontline manager in IT reported to Ms. Lerner in an email on July 20th, 2011, "I checked with the technician and he still has your drive. He wanted to exhaust all avenues to recover the data before sending it to the hard-drive cemetery. Unfortunately, after receiving assistance from several highly-skilled technicians including HP experts, he still cannot recover the data."

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

In an email on August 5, 2011, after 3 weeks of attempts to retrieve her emails at Lois Lerner's request, Ms. Lerner was advised "Unfortunately, the news is not good. The sectors on the hard drive were bad which made your data unrecoverable. I am very sorry. Everyone involved tried their best."

The committee has been provided earlier these emails earlier this spring. In light of the hard-drive issue, the IRS took multiple steps over the past months to assess the situation and produce as much email as possible for which Ms. Lerner was an author or recipient. We retraced the collection process for her emails. We located, processed, and included email from an unrelated 2011 data

collection for Ms. Lerner. We confirmed the backup tapes from 2011 no longer existed because they had been recycled pursuant to the IRS normal policy. We searched email from other custodians for material on which Ms. Lerner appears as author or recipient. From mid-March to late April, the IRS review team concentrated on loading for review all of the remaining email from Ms. Lerner's account, and then repeating the entire process for quality control and to ensure that no new emails from Ms. Lerner were missing. During this time into May we also were identifying and reviewing Lerner emails to and from 82 other custodians. By mid-May as a result of these efforts, the IRS had identified the 24,000 Lerner emails between January 1 and April of 2011.

As the search for and production of Lerner emails was concluding, I asked those working on this matter to determine whether computer systems of the other 82 custodians had experienced any similar difficulties, especially in light of the aged equipment the IRS has been increasingly using as a result of its budget pressures.

After the IRS report on Ms. Lerner's email production was delivered last Friday to Congress, it was determined earlier this week, actually on Monday, that seven additional custodians had experienced hard drive failures during the search period. A hard-drive failure does not automatically mean that any or all emails have been lost or cannot be reconstructed. Given the extremely broad scope of our production effort, it is not surprising that we would discover that some employees had encountered some technical issues, especially in light of the agency's aging information technology infrastructure.

As you know, the IRS described in great detail in its public report last week its efforts to produce Lerner emails. We are still assessing what effect, if any, hard drive crashes had on the emails of any other custodian. At this time, it is too earlier to know if any emails have been lost on any of those hard drives. We are committed to continually to working cooperatively and transparently with you, this committee, and we will continue to provide you with updates. This concludes my testimony. I would be happy to take your questions.

[The prepared statement of Mr. Koskinen follows:]

**WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE WAYS AND MEANS COMMITTEE
JUNE 20, 2014**

Chairman Camp, Ranking Member Levin and Members of the Committee, thank you for the opportunity to appear before you today to provide you with an update on recent IRS document productions to Congress.

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

By any measure, this effort has been substantial. More than 250 IRS employees have spent over 120,000 hours working on compliance with several investigations stemming from last May's TIGTA report. We have responded to hundreds of Congressional requests for information. In so doing, the IRS has incurred a direct cost of nearly \$10 million. We have spent an additional \$6-8 million to optimize existing information technology systems and ensure a stable infrastructure for the production and required redactions to protect taxpayer information.

This Committee and the Senate Finance Committee now have received more than 770,000 pages of unredacted materials. We are sending another production to you later today of additional Lerner emails. You already have more than 25,000 emails from Ms. Lerner's computer account and more than 5,000 emails from other custodians' accounts for which Ms. Lerner was an author or recipient. The IRS expects to complete its production of the remaining Lerner emails to this Committee by the end of the month. At that time, you will have all of the emails – 43,000 of them – that we have from Ms. Lerner's computer and email account for the period January 2009 through May 2013. In addition, you will have 24,000 Lerner emails from other custodians' accounts, for a total of 67,000 Lerner emails.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The IRS:

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

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

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

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

According to estimates made two years ago, it would cost more than \$10 million to upgrade the IRS's information technology infrastructure in order to begin saving and storing all email sent or received by the approximately 90,000 current IRS employees. In light of declining budget resources available to the IRS, the decision was made at that time not to proceed with this expenditure. These continuing financial constraints have meant that this fiscal year, the IRS is spending minimal amounts supporting its \$1 billion IT infrastructure. For example, the IRS has yet to complete moving all employee computers from Windows XP, which is no longer generally supported by Microsoft, to Windows 7.

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

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

When a user needs to create space in his or her email box, the user has the option of either deleting emails (if they do not qualify as official records) or moving emails out of the active email box (inbox, sent items, deleted items) to an

archive. In addition, if an email qualifies as an official record, per IRS policy, the email must be printed and placed in the appropriate file by the employee. Archived email is moved off the IRS email server and onto the employee's hard drive on the employee's individual computer. As a result, these IRS employees' emails no longer exist in the active email box of the employee and are not backed up as part of the daily backup of the email servers. Email moved to a personal archive of an employee exists only on the individual employee's hard drive. An electronic version of the archived email would not be retained if an employee's hard drive is recycled or if the hard drive crashes and cannot be recovered.

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

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

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

In conclusion, the IRS has been expending an enormous amount of resources to produce documents related to the investigation related to the May 2013 TIGTA report, including the production of all available Lerner emails. Given the

extremely broad scope of this effort, it is not surprising that we would discover that some employees had encountered some technical issues, especially in light of the agency's aging information technology infrastructure. In particular the IRS has described in great detail, in a public report last week, its efforts to produce Lerner emails. We are still assessing what effect, if any, hard drive crashes had on the emails of any other custodian. We are committed to working cooperatively and transparently with you, and we will continue to provide you with updates.

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

Chairman CAMP. Well, thank you. What I didn't hear in that was an apology to this committee.

Mr. KOSKINEN. I don't think an apology is owed. There is—not a single email has been lost since the start of this investigation. Every email has been preserved that we have. We have produced or will produce by the end of this—

Chairman CAMP. You don't think the time period between January 2009 and April 2011, is relevant to this investigation?

Mr. KOSKINEN. It is a very relevant time frame.

Chairman CAMP. Let me ask you this: The letter that we received from the IRS on Friday the 13th, admitted the Lerner emails were lost for this 2.5-year period.

Mr. KOSKINEN. They were lost off—they were lost off her hard drive. We also advised you—

Chairman CAMP. Let me finish. I am not finished with my question.

Mr. KOSKINEN. I'm sorry.

Chairman CAMP. And I will give you an opportunity to answer.

Mr. KOSKINEN. That's fine.

Chairman CAMP. But you failed to explain the timeline of events that led to that admission. And my question to you is, from the interviews that we have had with the deputy chief of information—the Deputy Chief Information Officer for the IRS, I am told that the IRS knew as early as February that her computer crash supposedly caused the loss of her emails during the time period of January 2009 to 2011. Has the IRS known since February?

Mr. KOSKINEN. The IRS knew in February there was an issue. As noted, we all had emails from Ms. Lerner last fall in which she recited that she had had a hard drive cash.

Chairman CAMP. So in February you knew the emails were missing?

Mr. KOSKINEN. No. In February what we knew was there was a problem because we were looking at it from the standpoint of where, what the time frame was in which her emails appeared, and it appeared that that there were not enough emails in that time frame.

Chairman CAMP. So why didn't you—why didn't the IRS notify Congress at that time there was a problem with the potential loss of the emails we were investigating?

Mr. KOSKINEN. Because I thought it was important. It was my decision that we complete the investigation so we could fully advise you as what the situation was.

Chairman CAMP. Now, I got a letter from the White House 2 days ago that says that Treasury contacted the White House in April—in April of this year to tell them about the lost emails. Who told the Treasury Department?

Mr. KOSKINEN. Pardon?

Chairman CAMP. Who told the Treasury Department? The letter I received from the White House says that Treasury told them in April of 2014. So my question is, who told the Treasury Department?

Mr. KOSKINEN. My understanding, only from that letter which I have seen which does not say that emails have been lost. My understanding of the letter says that someone in the general counsel's

office at the IRS informed the general counsel's office at Treasury that there was an issue and the IRS was investigating.

Chairman CAMP. No. The letter says that Treasury was told—that Treasury told the White House—we also have a letter from Treasury that says that they learned in April of 2014. Who told Treasury? And do you know who in Treasury told the White House?

Mr. KOSKINEN. I have no idea. I have no communications with the White House.

Chairman CAMP. Well, you are the head of the IRS. You don't know of something this important, the contacts between your agency and the executive branch? You are unaware of them?

Mr. KOSKINEN. We are part of the executive branch. We have regular communications with Treasury. We issue regulations, we review them. We are in the process of reviewing, for instance, the regulations on the 501(c) issue. We have regular communication, particularly between our counsel's office and the Treasury counsel.

Chairman CAMP. Well, if the IRS knew in February or maybe even March and Treasury and White House knew at least in April, but Congress and the American people didn't find out until June, were you purposely not telling us?

Mr. KOSKINEN. No.

Chairman CAMP. Were you purposely not revealing this to the American people?

Mr. KOSKINEN. No, as I told you, my proposal was, and in fact, our original thought was to complete the Lois Lerner email production, complete the review of what other custodians had a problem, and produce a report to you laying it all out.

Chairman CAMP. So why did you tell—why did the IRS inform the executive branch agencies, the White House, the administration, but kept it secret from the Congress who was conducting an investigation?

Mr. KOSKINEN. We were not keeping it a secret. It was our public report to you that has, in fact, provided you this information. There has been no attempt to keep it a secret. My position has been that when we provide information, we should provide it completely. If we provide you incomplete information, people sometimes are tempted to leap to the wrong conclusion, not based on any fact, so we thought it would be important to give you the full description of what—

Chairman CAMP. It is okay for them to leap to a conclusion.

Mr. KOSKINEN. Pardon?

Chairman CAMP. It is okay for the White House and Treasury to leap to a conclusion 6 weeks before the Congress, but my question also is, have there been discussions within the IRS about when to reveal this information to Congress?

Mr. KOSKINEN. Certainly.

Chairman CAMP. And obviously, these discussions included Treasury?

Mr. KOSKINEN. No.

Chairman CAMP. Well, then how did Treasury find out about it?

Mr. KOSKINEN. Treasury in a conversation I am not aware of apparently the first time I knew about that was that White House—

Chairman CAMP. I will have a lot of questions to write to you, to have follow-up with you. This is completely unacceptable.

Mr. KOSKINEN. Can I answer the question to make the record straight?

Chairman CAMP. Well, I don't think you are giving me an answer and I want to move on to another topic.

Mr. KOSKINEN. All right.

Chairman CAMP. Your letter describes the Lois Lerner emails as being unrecoverable.

Mr. KOSKINEN. Correct.

Chairman CAMP. But failed to mention where the damaged hard drive is today. Do you know where the actual hard drive is that crashed in 2011?

Mr. KOSKINEN. I am advised the actual hard drive, after it was determined that it was dysfunctional and that with experts no emails could be retrieved, was recycled and destroyed in the normal process.

Chairman CAMP. So was it physically destroyed?

Mr. KOSKINEN. That's my understanding.

Chairman CAMP. So was it melted down, do you know?

Mr. KOSKINEN. I have no idea what the recycler does with it. This was 3 years ago.

Chairman CAMP. Does the IRS have a system for tracking items?

Mr. KOSKINEN. Tracking what?

Chairman CAMP. Items? Does the IRS have a system for tracking items?

Mr. KOSKINEN. We track items. We don't track every item that everybody has everywhere, but I am sure we track some items. We track—

Chairman CAMP. Does someone there have a serial number for that hard drive?

Mr. KOSKINEN. I do not know whether they do or not. I am just advised that in normal case, when a hard drive fails, the email cannot be reconstructed. The hard drive is turned over to recyclers.

Chairman CAMP. Well, it seems to me that if it was recycled, the government property would have been tracked.

Mr. KOSKINEN. Pardon?

Chairman CAMP. It seems to me that if it was recycled, government property would have been tracked or people could simply walk away with property from the IRS. So I assume there is a tracking system for the disposal of government property.

Mr. KOSKINEN. There is tracking system for computers. My understanding is that Lois Lerner's computer continued to be functioning with a new hard drive. The hard drive fits with inside. I am not aware whether a hard drives have computer—have identifiers.

Chairman CAMP. Can we get the serial number of this hard drive and all of the other employees whose hard drives have been—whose emails have been lost?

Mr. KOSKINEN. If they have serial numbers, you are welcome to them.

Chairman CAMP. All right. Because I want that hard drive and I want the hard drive of every computer that crashed during that

time frame. So you know, what I have learned in the last week, I think calls into question every document and response the IRS has given, or for that matter, has failed to give to this committee. And the only way I can see any hope of restoring any confidence is to establish a special prosecutor with the authorities, the powers, and the resources needed to uncover the truth. So for the sake of the agency and to restore the trust of the American people, will you support the appointment of a special prosecutor?

Mr. KOSKINEN. There are six investigations going on of this event now.

Chairman CAMP. Yes, sir, I know.

Mr. KOSKINEN. The IG is already investigating this.

Chairman CAMP. Can you give a definitive answer to this committee? Yes or no, do you support the appointment of a special prosecutor? I am controlling the time. I am asking a question that can have a simple yes or no answer—

VOICE. You are trying to control the answer.

Chairman CAMP. Regular order.

Mr. KOSKINEN. I think the appointment of a special prosecutor after the six investigations ongoing, and the IG investigation into this matter ongoing, would be a monumental waste of taxpayer funds.

Mr. BREWER. So is that a yes or a no?

Mr. KOSKINEN. That's a no.

Chairman CAMP. Thank you. Mr. Levin is recognized. You have 5 minutes.

Mr. LEVIN. You know, I think the witness deserve some respect. I think it is in the tradition of this committee to give witnesses respect. This is not the committee of decades ago led by people who disrespected witnesses.

Mr. Koskinen, you had a long career. What have you done in the years of your career briefly?

Mr. KOSKINEN. I am sorry. What have I done what?

Mr. LEVIN. What has your career been like?

Mr. KOSKINEN. My career has been 20 years in the private sector turning around large troubled organizations. I started my career as the chief of staff for Senator Ribicoff for 4 years in the United States Senate. I served on a Presidential Commission as a staff member during the Kerner Commission in late 1960s. I represented New York City here for a year and a half. I was the Deputy Director for Management at OMB for 3 years. I was the chair of the President's Council on the Year 2000, for 2 years guiding the country through the year 2000 transition. I was asked by the Bush administration to take over Freddie Mac as the chairman of the board when the government took over those enterprises, and I was asked to come to the IRS, which I did in last December when I was confirmed to steer the agency through these difficult times.

Mr. LEVIN. The letter that went from the counsel of the President to Mr. Camp and Mr. Wyden, spelled this out and indicated when the Treasury was notified, or when the Treasury counsel informed the White House counsel about this problem with the computer. It also has indicated, contrary to this effort by the committee on the Republican side to connect the problems, and there were se-

rious problems with the White House, that there is no such connection.

They are desperate to find a connection. They have never found it. They will keep looking because I think it makes sense for them politically. I don't think whatever our political affiliations are, we should be disrespectful.

So will you repeat again what happened these last months after you found out about the computer crash, and why you decided to conduct yourself the way you did?

Mr. KOSKINEN. We learned in February that—I learned in February that there was a potential issue with her hard drive. That was investigated through March, by the end of March into early April the IT people had uncovered the emails train, you can see, that talked about the effort to restore her computer. Those emails have been provided some time ago to this committee, so they were not hidden or covered up. Thereafter, I told people that we needed—we decided we would look at all of the other custodians to produce as many emails as we could that were, in fact, within our system which is the 24,000. I also asked that we actually review all of the 82 custodians to see what if any failures that happened then.

Our plan was when we produced—completed the production of all of the Lois Lerner emails at the end of this month, we would provide a full report, and by that time we would know what the situation was with the custodians. There has been a question of why I didn't advise Congress earlier, and my experience has been, we do better to have a rational discussion when you know all of the facts. It is shown by the fact that on Monday—we were advised Monday morning that there were preliminary indications that there were difficulties with a handful of custodians. That information was passed on to the staff of this committee on Monday afternoon.

Immediately thereafter, rather than asking us for additional information, a press release went out from this committee identifying Nikole Flax as a particularly interesting person to this committee, and stating that Nikole Flax emails had been lost.

Had the committee waited to issue that release until we knew further information which we are continuing to derive, they would have discovered that Nikole Flax had two computers; her office computer which she used during the day, and she had a travel computer, a portable. It was the portable computer that crashed. It ran on the same email system as her office system. So it turns out there is no indication that a single Nikole Flax email has been lost, notwithstanding the press release and statements out of this committee.

So those press releases with regard to Nikole Flax were inaccurate and misleading, and it demonstrates why we will provide this committee a full report about the custodian review when it is completed. We are not going to dribble out the information and have it played out in the press.

Chairman CAMP. The time is expired. Mr. Johnson is recognized.

Mr. JOHNSON. Thank you, Mr. Chairman. Thank you for holding this hearing. You know, learning about the loss of Lois Lerner's

emails and other IRS officials is troubling, and we received that information with great skepticism. Americans have been waiting for the whole truth and we hope to get it today. It doesn't sound like we are getting it. It is past time to hold all of those responsible accountable for targeting Americans for their beliefs.

Mr. Commissioner, welcome. I have some questions for you. You have argued that the IRS's practice of destroying employee emails after 6 months was a cost-cutting measure. In fiscal year 2011, the IRS-enacted budget was \$12 billion, a high watermark of spending. Can you tell me whether in 2011 the IRS was engaged in a policy of destroying and reusing its backup tapes?

Mr. KOSKINEN. Actually what happened with the IRS, in 2008 when our new IT director came, the retention policy then was only for less than 3 months. In 2008, he increased the retention backup policy to 6 months. It is a disaster recovery system. So if the entire system goes down, you can reconstitute the emails. Those systems actually are usable and then if there is no disaster you continue to produce and backup the emails so they are available. I would note as I did in my testimony, since the start of this investigation, every email has been preserved. Nothing has been lost, nothing has been destroyed.

Mr. JOHNSON. Yeah, which tells me that you have got plenty of computer space. You know, I wondered at the time how could you keep track of everybody's IRS requirements when you lose your own.

Let me just ask you: Didn't the IRS estimate that keeping and storing those tapes would only cost \$200,000 annually?

Mr. KOSKINEN. It costs \$200,000 annually every year, but it grows. We collect—we have trillions now of terabytes as it is called, where you have hundreds of millions of emails stored over 6 months and the disaster recovery program was that—it is not—the email system, as I said in my testimony, is not a system of record. A system of record is in fact, or the Records Act to produce hard copies, and file those in the records. So that the IRS has historically only preserved backup tapes for 6 months.

We are reviewing all of this. I have told people some months ago, when we get through with this, we need to take a look at what we can do to actually create a more searchable email process. The problem right now is any time anybody wants a piece of information, we have 90,000 employees, whatever employees want, we have to pull their email accounts. We have to pull their hard drives, and then we have to take them and load them into a search machine to be able to discover what's in them.

That is an antiquated system. I fondly referred to our IT system at a Model T with a very nice GPS system, and a sound system, and a redone engine, but it is still a Model T.

Mr. JOHNSON. You know, my constituents and I refuse to accept that in years of record-high IRS budgets, you know, you wouldn't let us refuse to give you information on our tax returns, the IRS destroyed employee emails every 6 months just to save \$200,000 annually. I am far too familiar with the rampant wasteful spending at the IRS during that time.

To date, the committee has uncovered wasteful spending from the Star Trek videos, to the spending on lavish conferences, to an

IRS estimated \$23.5 million in spending on salary and benefits due to union time, and to bonuses going to workers who owe back taxes.

Mr. Commissioner, you and I both know the IRS failure to back up employee emails began long before any budget cuts happened to that agency. There's simply no excuse for what happened. I yield back.

Chairman CAMP. All right, Mr. McDermott is recognized for minutes.

Mr. MCDERMOTT. Thank you, Mr. Chairman. Today we are here listening to a myth that there was a conspiracy by Ms. Lerner, and whoever else, to get rid of some data. And before I came to Congress, I was a physician. And one of the things you always did with a patient was take a history. And I would like to review the history again with you, Mr. Koskinen. On June 13th, 2011, Lois Lerner's hard drive failed, meaning all of her emails were lost at that point, is that true?

Mr. KOSKINEN. That's correct.

Mr. MCDERMOTT. Sixteen days later, she was briefed that inappropriate criteria had been used in mismanagement in Cincinnati according to the IG's report. Is that true?

Mr. KOSKINEN. That's what the report reports.

Mr. MCDERMOTT. Well, the question then is, did Lois Lerner preemptively crash her hard drive?

Mr. KOSKINEN. All of the evidence is to the contrary. The email string I told you shows that at her request, extraordinary efforts were made to retrieve the emails from her crashed hard drive.

Mr. MCDERMOTT. Did you think, did she foresee something happening in the future and make the decision to destroy her own hard drive?

Mr. KOSKINEN. The record shows quite the contrary. Also, after the crash on April 11, she continued to send and archive emails on her computer. We have produced—will produce 43,000 of those. So if she was going to, in fact, try to hide emails, there is no indication in the record that her performance demonstrated that.

Mr. MCDERMOTT. In all of the emails that have been collected, is there any evidence to suggest that she called the White House or the White House called her and said, get those right-wing organizations?

Mr. KOSKINEN. There is none that we have been able to produce and I understand, although I have not seen the production from the White House, that the White House did not find any email to or from Lois Lerner.

Mr. MCDERMOTT. And the Inspector General didn't find them in his—

Mr. KOSKINEN. No, my understanding, the Inspector General's report stated there was no evidence of political involvement.

Mr. MCDERMOTT. In fact, as you quote, as you talked about, on July 19th, 2011, Lerner wrote to Lillie Wilburn, who is the field director of customer service support for informational technology saying, whatever you can do is helpful, would be greatly appreciated.

Now, in mid-July 2011, she learned about Cincinnati. And for a couple of weeks the IT division tried to repair her hard drive,

bringing in experts inside IT, and also the forensic division of the IRS, is that correct?

Mr. KOSKINEN. That's correct.

Mr. MCDERMOTT. And they failed?

Mr. KOSKINEN. They failed after 3 weeks of efforts. The email trail is clear. I would note as I did in my full testimony, the Criminal Investigation Division is expert at in seizures from—in civil and criminal cases seizing hard drives and restoring emails. So we had at the time apparently great confidence if you could find those emails, they would find them, and they were unsuccessful.

Mr. MCDERMOTT. Finally, she wrote: "Thanks for your efforts" to them, "I really do appreciate the efforts, sometimes stuff happens."

Now is this a woman rejoicing over losing her hard drive and saying, thank God that thing is gone? They are never going to get me? No. It is a woman who is resigned, really, to the fact that the thing is lost.

In my office, we just upgraded. We upgraded to Windows 2010, and my staff director in Washington State lost her hard drive. They fried it. I don't know how it happened. Nobody knows how it happened. She lost all of her records. She did not rejoice over that experience, I can tell you that. But then we come fast forward to February 2014, and Chairman Camp asked for all, and I emphasize, all of Lois' emails. Is there anything you can see in the time that you have been there, that they didn't, that the IRS did not do to try and get all?

Mr. KOSKINEN. There's no indication. As I said, we have gone to great lengths. We retraced the process for producing her email twice just to make sure that no email was missing. We understand the importance of this investigation. We have gone to great lengths, spent a significant amount of money trying to make sure that there is no email that is required that has not been produced.

Mr. MCDERMOTT. I understand you sort of backtracked and went out to 83 people in the agency that she had contact with and retrieved their emails to try and get the emails for the committee?

Mr. KOSKINEN. That's correct, and that's why rather than having lost Lois Lerner emails as if there are none of them, we have been able to produce over time and will by the end of this month, 24,000 Lois Lerner emails from the time frame in question.

Chairman CAMP. The time has expired. I would ask unanimous consent to put into the record a letter from this committee, from me as chairman to then-Commissioner Doug Shulman on June 3rd, 2011, asking for the names, titles, and divisions of any individuals who are involved in investigating taxpayer contributions to 501(c)(4)s, which was sent to the IRS 10 days before Lois Lerner's email crash. And with that, I would yield to Mr. Brady.

Mr. MCDERMOTT. Point of information, Mr. Chairman.

Chairman CAMP. Yes. So the letter without objection is put into the record.

[The letter follows:]

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

June 3, 2011

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20004

Dear Commissioner Shulman:

On May 13, 2011, the IRS confirmed that it began examinations of five taxpayers that donated money to IRC §501(c)(4) organizations to determine whether “the donations were taxable gifts and if a gift tax return should have been filed.” The applicability of the gift tax to §501(c)(4) donations is an unsettled area of tax law and it appears that it has been applied only a handful of times. Both taxpayers and tax practitioners were stunned at the IRS interest in this issue after decades of silence.

As Chairman of the Committee on Ways and Means, I find the lack of IRS transparency deeply troubling. Taxpayers already struggle to comply with a Tax Code that is too complex. Now, with no warning, the IRS appears to have selectively targeted certain taxpayers who are engaged in political speech. Not only does this threaten political speech, it casts doubt on the IRS’ credibility as an impartial enforcer of the nation’s tax law. The IRS’s ability to effectively enforce tax law and work with taxpayers to ensure compliance is not served by auditing unsuspecting taxpayers for violating tax laws the IRS has not acknowledged for decades.

There are approximately 120,000 §501(c)(4) organizations operating across the United States. For decades, donors to these organizations and the donee organizations have relied on the IRS for certainty in this area of tax law. Now, they can no longer do so. All IRC §501(c)(4) organizations must now advise donors that their contributions may result in a targeted audit, despite uncertainty in this area of tax law. Donors, in turn, must then determine whether a donation to a §501(c)(4) organization will trigger an IRS audit based on the political activities of the organization.

This sudden, unexplained enforcement of the gift tax in these circumstances raises a number of questions regarding IRS actions. The Committee has an obligation to conduct oversight of the IRS and its enforcement of our country’s tax laws. Because of the serious nature of the IRS’s audit activities in this area of gift tax, I request that the IRS answer

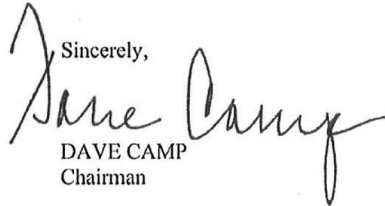
the following questions in an effort to promote transparency and reassure taxpayers that fair and consistent enforcement of the country's tax laws is the norm. Please respond no later than June 17, 2011.

1. The names, titles, and divisions and/or offices of any and all individuals who were involved or contributed to the decision to investigate whether taxpayer contributions to §501(c)(4) organizations should be subject to the gift tax rules.
2. All IRS rulings and internal memoranda relating to the applicability of the gift tax to §501(c)(4) organizations. Please provide copies of all records, internal working documents, and correspondence relating to the same.
3. Provide a detailed explanation and relevant documents related to the following issues:
 - a. How are the employees that work on estate and gift taxes organized within the Small Business/Self-Employed Division?
 - b. Where are employees that work on estate and gift tax issues physically located?
 - c. How many employees in the IRS work on estate and gift tax issues? Provide an organizational chart that identifies each employee within the organizational structure.
 - d. Does the estate and gift tax office prepare an annual work plan similar to the annual work plan released by the Tax Exempt/Government Entities Division? If so, provide a copy of the last five years' annual reports. If not, how does the IRS oversee the office's workload and allocate resources to this office?
 - e. How many estate and gift tax audits were conducted in 2006, 2008, and 2010, related to gifts made to 501(c)(4) organizations?
 - f. How do employees that work on estate and gift tax issues within the Small Business/Self-Employed Division gain access to the Form 990s for 501(c)(4) organizations?
 - g. How did employees in the Exempt Organizations Division assist in the sharing of the Form 990 information with other IRS employees? Is this a common practice? If so, how many examinations have originated from shared Form 990s to other IRS divisions?
 - h. Provide the name(s) of the individual(s) who decided, after 35 years, to treat contributions to a 501(c)(4) organization as subject to the gift tax?
 - i. Criteria that are used to select taxpayers for gift tax examination.

- j. Provide all information that analyzed the legal or political consequences of auditing gift tax returns for contributions to 501(c)(4) organizations
- 4. How are tax-exempt organizations generally selected for audit?
- 5. How many §501(c)(4) audits are usually conducted every tax year? Provide a breakdown of the total number of §501(c)(4) examinations conducted annually over the last five years and identify the tax issues involved.
- 6. What percentage of gift and estate tax office examinations typically originate from an internal referral? Please describe IRS protocol for making internal referrals and how referrals are processed.
- 7. Provide any correspondence and records shared with the Department of the Treasury regarding the application of gift tax to §501(c)(4) organizations. Detail all communications (written or verbal) between the IRS and the Department of the Treasury on this topic since 2004.

Please note that, for purposes of responding to this request, the terms "records," "communication," "relating," should be interpreted consistent with the attached *Definitions of Terms*.

Thank you for your prompt attention to this matter.

Sincerely,

 DAVE CAMP
 Chairman

Attachment

DEFINITIONS OF TERMS

1. The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
3. The term "relating" with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.

Mr. MCDERMOTT. Yes. Point of information. Was that letter circulated to Members of the Committee?

Chairman CAMP. The letter was signed by me and sent to the Commissioner of the IRS, on behalf of the committee.

Mr. MCDERMOTT. Oh, so none of us have seen it? Okay. Thank you.

Chairman CAMP. You may have seen it. It has certainly been—we can get one to you. We can get you a copy. But I think as long as you are bringing up a timeline, we ought to get a complete picture of the timeline which is the email crash occurred 10 days after the first letter went to the IRS.

Mr. MCDERMOTT. I appreciate that.

Chairman CAMP. Mr. Brady is recognized.

Mr. BRADY. When were you told about the problems with the Lerner emails?

Mr. KOSKINEN. Pardon?

Mr. BRADY. When were you told—

Mr. KOSKINEN. February is when I was told that they had discovered there was an issue with her email.

Mr. BRADY. In February?

Mr. KOSKINEN. In February.

Mr. BRADY. Why did you choose to withhold that information from this congressional investigation?

Mr. KOSKINEN. I had no intention of withholding that information. As I have stated, our plan was to investigate and find out what the details were. At that point we did not know whether there had been a crash that had affected her emails or not.

Mr. BRADY. You just testified that you gave your agency 3 weeks to determine if it could be retrievable or not. They weren't successful, so giving you the benefit of the doubt, in March, you knew those emails were not available. Why didn't you inform this congressional investigation then?

Mr. KOSKINEN. As I told you, my goal was to, in fact, determine all of the facts so we could give you a full report. As I noted earlier—earlier this week, we provided—

Mr. BRADY. Yes, you informed.

Mr. KOSKINEN. Do I get to answer the question?

Mr. LEVIN. Could the witness answer the question?

Chairman CAMP. You know, regular order, Mr. Levin. The gentleman from Texas has the time and he is questioning appropriately, so please no more interruptions.

Mr. LEVIN. Regular order allows a witness to answer a question.

Chairman CAMP. Regular order allows the witness to conduct his questioning as he sees fit. This committee has given broad latitude to Members of both parties to do that.

Chairman CAMP. The time is restored to Mr. Brady.

Mr. BECERRA. Mr. Chairman, parliamentary inquiry.

Chairman CAMP. Please continue.

Mr. BECERRA. Parliamentary inquiry, Mr. Chairman.

Chairman CAMP. The gentleman will state his parliamentary inquiry.

Mr. BECERRA. Under the rules of the House, every Member has 5 minutes to pose questions to the witness and the witness is given

an opportunity and right to respond. Is the chairman saying that the witness does not have a right to respond to the question?

Chairman CAMP. We are—the gentleman has had plenty of time to respond. That is not a parliamentary inquiry. Mr. Brady has the time.

Mr. BECERRA. Mr. Chairman, my question is, does the witness have a right to respond to the question?

Chairman CAMP. The gentleman has not stated a parliamentary inquiry. The gentleman from Texas.

Mr. KOSKINEN. Start again with the question.

Mr. BRADY. You knew in March that you withheld information from this congressional investigation. And in May you assured this committee that all of Ms. Lerner's emails would be provided to us, yet you knew that that was not possible.

Mr. KOSKINEN. No, in fact, I knew that, in fact, we would provide you all of the Lois Lerner emails that we had.

Mr. BRADY. You already knew in March they were not retrievable. A, you didn't inform the congressional investigation; B, 2 months later, you told us you would provide all of the emails without limitations. And you knew you didn't have them.

Mr. KOSKINEN. By March I did not know that they were not retrievable and in fact, we had received—we have retrieved——

Mr. BRADY. You just testified to Mr. McDermott——

Mr. KOSKINEN [continuing]. 24,000 of those emails.

Mr. BRADY [continuing]. That that was the case, you knew. And in April, your agency informed Treasury about the problem, and Treasury agreed with you that Congress should be told as soon as it was able to.

Mr. KOSKINEN. Our——

Mr. BRADY. Yet you didn't provide the information. And then you assured us you would provide all of the emails without limitation, with no mention that you then knew 2, 3 months into this, that they weren't retrievable.

Mr. KOSKINEN. As noted, and I think your record should make it clear, all of this issue is as a result of providing you a public and fulsome document about this matter. So we have not been hiding from you.

Mr. BRADY. Mr. Commissioner, sending a letter months after you knew the emails were supposedly lost, withholding the information from the investigation—you were aware there was a congressional investigation, right?

Mr. KOSKINEN. I was aware there was an investigation.

Mr. BRADY. So you withheld the information?

Mr. KOSKINEN. We did not withhold the information.

Mr. BRADY. You misled Congress in May when you said those emails would be provided.

Mr. KOSKINEN. We have provided you the information. And it turns out you had the information for some time.

Mr. BRADY. Mr. Commissioner, you did not tell me under oath that you told us in February, in March, in April, in May that the information was lost? That was just what you said. Tell us that again, that we knew.

Mr. KOSKINEN. In February and March and until April, I did not know if any information was lost.

Mr. BRADY. Yet, your agency had already, in April, communicated with Treasury Department about the problem. And the letter we have from Treasury says, we agreed with the IRS that it should inform Congress as soon as it is able. That is the letter today that exactly disputes what you just told us under oath. Exactly disputes it.

Mr. KOSKINEN. That letter from Treasury reveals and provides to you all of the Lois Lerner emails so that there is no issue that any Lois Lerner email provided to anyone outside——

Mr. BRADY. Mr. Fitzpayne, Assistant Secretary for Legislative Affairs “Treasury agreed with the IRS that it should inform Congress as soon as it was able.” Yet, you did not.

Mr. KOSKINEN. We actually have provided you the information. My goal was to——

Mr. BRADY. You have not provided us any information.

Mr. KOSKINEN. Well——

Mr. BRADY. In fact, we didn’t learn until last week and then this week that you had supposedly lost the emails not just from Ms. Lerner, but other persons of interest in the IRS.

Mr. KOSKINEN. There is no evidence that any of those emails have been lost either. And in fact, as I said earlier, my process has been to make sure that we had all of the facts when we provided them to you, so that in fact——

Mr. BRADY. Why at this point, why should anyone believe you? The IRS denied for 2 years targeting of Americans based on their political beliefs. That wasn’t the truth. They said it was a few rogue agents in Cincinnati. That wasn’t the truth. You said you were targeting liberal organizations. That wasn’t the truth. And then you assured us you would provide us all of the emails in May and that wasn’t the truth. And today you are telling us out of thousands of IRS computers, the one that lost the emails was a person of interest in an ongoing congressional investigation.

Mr. CROWLEY. The gentleman’s time is expired. Point of order.

Mr. BRADY. And that is not the truth, either. This is the most corrupt and deceitful IRS in the history.

Chairman CAMP. The gentleman’s time is expired. Mr. Lewis is recognized for 5 minutes.

Mr. LEWIS. Mr. Commissioner, first of all, I want to thank you for your service. Thank you for your patience, and I want to apologize to you for the way you have been treated this morning. I thought this was a hearing and not a trial. I want you to take the 5 minutes that I have and use it to say anything that you haven’t had an opportunity to say.

Mr. KOSKINEN. Thank you. I think that between my full testimony and my oral testimony and my response to the questions, that I hope is clear, that we have not, in this investigation, lost any email from the start of the investigation until now.

I hope it is clear that by the end of this month we will have provided all of the Lois Lerner emails that we have; that those will number 67,000.

It should be clear that in the period of Ms. Lerner’s hard-drive crash, we have located 24,000 emails that Lois Lerner sent or received.

It should be clear on the basis of the email track that Lois Lerner was not trying to destroy email; in fact, was working very hard and asked for extraordinary efforts to try to restore her emails at that time so that it doesn't appear to be any attempt on her part as noted to rejoice over the loss of those emails.

It should be clear that when we did provide this committee with on Monday preliminary information reporting, the net result of that was a press release erroneously leaping to conclusions that Nikole Flax' emails had been lost along with others. It turns out on further investigation and we are continuing that investigation, that none of Nikole Flax's emails appear to have been lost.

We will provide this committee a full report on the other custodians as we complete that work. Thus far it has been clearly demonstrated that piecemealing out information about there is a possible problem simply results in press releases, and angry letters to me.

So my position from the start and will continue to be, we will, as we have, continue to keep this committee fully informed of the facts as we find them. If there are situations, we will investigate those and give you all of the information about them.

I did not come out of retirement to run an agency that did not create transparency, responsiveness to congressional inquiries, congressional letters, or otherwise. This is an important agency. It provides critical work for the government collecting 93 percent of the money the government uses to run, but more importantly, it touches virtually every American. And I think it is important for every American taxpayer to feel comfortable and confident that when they treat—deal with the IRS, they are going to be treated fairly no matter who they are; whether they are rich or poor, whether they are Republicans or Democrats, whoever they voted for in the last election.

And to say that this is the most corrupt IRS in history ignores a lot of history, and seems to me, again, is a classic overreaction to a serious problem which we are dealing with seriously. And I would just like that to be our record. I am comfortable with it. I am confident about it, and I am willing to stand on that record in the 6 months that I have been the IRS Commissioner.

Chairman CAMP. All right. Thank you.

Mr. LEWIS. Thank you, Mr. Commissioner.

I yield back.

Chairman CAMP. I ask unanimous consent to place into the record a June 18th letter from Neal Eggleston, Counsel to the President, as well as a June 20th letter of this year from Alastair M. Fitzpayne, Assistant Secretary for Legislative Affairs at the Department of the Treasury.

Without objection, so ordered.

Mr. LEVIN. May I reserve my right to object?

Chairman CAMP. Yes, you may reserve your right to object.

Mr. LEVIN. And I will tell you why. I hope everybody will read the letter from Mr. Fitzpayne, which says—

Chairman CAMP. That is the purpose of placing it in the record.

Mr. LEVIN. I just want to—I know. And I want to continue with my reservation.

Chairman CAMP. The gentleman has reserved his objection—

Mr. LEVIN. I want to tell you why.

Chairman CAMP [continuing]. To letters from the administration.

Mr. LEVIN. It says, "In response to your questions, IRS informed Treasury in 2014 that Ms. Lerner's custodial email box appeared to contain very few emails prior to 2011. Treasury agreed with the IRS that it should inform Congress as soon as it was able to provide accurate and complete information, although Treasury ultimately deferred to the IRS on how to handle the matter." I withdraw my—

Mr. KIND. Mr. Chairman, are copies of those letters being distributed?

Chairman CAMP. We are making copies now. We just—the committee just received these pretty recently. So, yeah, copies will be made available to every member of the committee.

So, without objection, so ordered.

Mr. Ryan is recognized for 5 minutes.

Mr. RYAN. This is unbelievable. The apology that ought to be given is to the American taxpayer, not to a government agency that is abusing its power. I am sitting here listening to this testimony, I just—I don't believe it. That is your problem. Nobody believes you.

Mr. LEVIN. Come on now.

Mr. RYAN. The Internal Revenue Service comes to Congress a couple years ago and misleads us and says no targeting is occurring. Then it said it was a few rogue agents in Cincinnati. Then it also said it was also on progressives. All of those things have been proven untrue. This committee sent a criminal referral of possible criminal wrongdoing just a month ago to the Justice Department. We have heard nothing. You bury in a 27-page letter to the Senate asking for them to conclude the investigation that you have lost Lois Lerner's emails during the time in question because of a hard drive crash.

Monday, our investigators asked your agency whether any other hard drives crashed, and we learn that six other hard drives of the people we are investigating were involved. You didn't tell us that.

Mr. KOSKINEN. We told you on Monday.

Mr. RYAN. On Monday.

Mr. KOSKINEN. What did you do with the information?

Mr. RYAN. Because we asked you.

Mr. KOSKINEN. Right. And what did you do with that information?

Mr. RYAN. You told us on Monday because we asked you whether any other hard drives crashed. This is unbelievable. You told us in May you were going to give us all of Lois Lerner's emails, and you learned in February that this crashed.

Mr. KOSKINEN. I did not learn in February it was a crash. And we told you on Monday—

Mr. RYAN. I am not asking you a question. I am making a statement.

Mr. KOSKINEN. I am sorry about that. My apologies.

Mr. RYAN. You are the Internal Revenue Service. You can reach into the lives of hardworking taxpayers and with a phone call, an email, or a letter, you can turn their lives upside down. You ask

taxpayers to hang onto 7 years of their personal tax information in case they are ever audited, and you can't keep 6 months' worth of employee emails? And now that we are seeing this investigation, you don't have the emails. Hard drives crashed. You learned about this months ago, you just told us, and we had to ask you on Monday. This is not being forthcoming. This is being misleading again. This is a pattern of abuse, a pattern of behavior that is not giving us any confidence that this agency is being impartial. I don't believe you. This is incredible.

Mr. KOSKINEN. I have a long career. That is the first time anybody has ever said they do not believe me.

Mr. RYAN. I don't believe you.

Mr. KOSKINEN. That's fine. We can have a disagreement. I am willing to stand on my record. I am willing to remind you that it was not buried in 27 pages. Most of that 27 pages is exhibits. When asked about the custodians, we advised you what——

Mr. RYAN. Being forthcoming.

Mr. KOSKINEN [continuing]. Which we knew for 1 day.

Mr. RYAN. Being forthcoming is to say——

Mr. KOSKINEN. I am sorry——

Mr. RYAN [continuing]. You know, investigators, Congress who is investigating this——

Mr. LEVIN. Will you let him answer the question?

Mr. RYAN. I didn't ask him a question.

Mr. LEVIN. Yes, you did.

Chairman CAMP. The gentleman—the gentleman from Wisconsin controls the time.

Mr. RYAN. I control the time.

Chairman CAMP. I realize that disrupting a hearing——

Mr. LEVIN. Now come on.

Chairman CAMP [continuing]. Serves people. But the gentleman from Wisconsin——

Mr. RYAN. I am not yielding time. I control the time.

Chairman CAMP. He has the time.

Mr. RYAN. Here is what being forthcoming is.

Chairman CAMP. Regular order.

Mr. RYAN. If we are investigating criminal wrongdoing, targeting of people based on their political beliefs, and the emails in question are lost because of a hard drive crash that is apparently unrecoverable, which a lot of IT professionals will question, and you don't tell us about it until we ask you about it, that is not being forthcoming.

Mr. KOSKINEN. And that's not true.

Mr. RYAN. I yield back the balance of my time.

Mr. KOSKINEN. That is not true.

Mr. RYAN. I yield back the balance of my time.

Chairman CAMP. The gentleman has yielded back his time.

Mr. KOSKINEN. Good. Thank you.

Chairman CAMP. Mr. Neal is recognized.

Mr. NEAL. Well, I am going to let you answer Mr. Ryan's question. Go ahead.

Mr. KOSKINEN. Right. Mr. Ryan tried to leave the impression that only by being asked did we reveal the information about the hard drive crash.

First of all, I reiterate the information about the hard drive crash is in the emails that you and your staff have had for some time.

Secondly, we produced that public report telling you about the email loss on our own. It was not in response to a question.

Third, we learned on Monday morning about the custodians. We were asked, our staff was asked on Monday afternoon. We told them all we knew, which was there was an indication there had been a hard drive problem with six others. The next morning, this committee put out a release asserting, leaping to the conclusion that therefore emails had been lost, particularly Nikole Flax's emails. It turns out, as we have continued to work and we have more work to do, that there is no evidence that any Nikole Flax email was lost. We are responding. What we are trying to do, as the Treasury letter suggested, is as soon as we are able to give you a full picture of it, we are providing that.

It is not in response to a question. That was a public report we provided you. We will continue to provide you documents. You have 770,000 pages. You will have 67,000 Lois Lerner emails; 24,000 of Lois Lerner emails in the period when it crashed have not been lost, they will be produced to you.

Chairman CAMP. Mr. Neal, on this point, may I ask you a question? May I ask a question here on your time, and I will give you some more time? There is a distinction, yes. The committee did know about the hard drive. But we did not know about the server. There is a distinction. We did not know about the server. And the server came in the carbon copy of the letter you sent to the Senate. The server means they are lost forever. A hard drive crash doesn't necessarily mean that the emails are lost forever. So there is a significant distinction here that has not been made yet to date.

So Mr. Neal, I will make sure you have more time.

Mr. NEAL. Would you like to respond?

Mr. KOSKINEN. That is an important question, and one of the reasons that we did not immediately say we discovered a hard drive crash, because as you just noted, a hard drive crash does not mean that emails have been lost forever. And in fact, in the case of Lois Lerner, 24,000 of her emails were not lost. They have actually been found; they will be produced. You have 5,000 of them already, you will have 24,000 of them by the end of the month. So when a hard drive crashes, the emails do not necessarily disappear. Her email account, any emails in those accounts, which were the emails we could find in that period, were included and did not crash.

Mr. NEAL. Thank you.

Commissioner, I must tell you that based on what we have heard so far today, if you came in here and said you agreed with everything that the Republicans have suggested, then they would say, We don't believe you. They have come to a conclusion, not based upon the facts, but upon what they might promote as a conspiracy. The only thing that is missing is Oliver Stone. But there is time for that because there is an election 5 months from now. So there will be plenty of opportunity for them to do this.

Let me say something, having served on this committee for a long period of time. You have an individual here today who has a distinguished career, who has served in Republican and Democratic

administrations, coupled with the fact he took an oath today. Unless those here didn't hear him take the oath or witness him taking the oath, for him to take the oath and then to have people suggest to him, we don't believe you, that is not the way this committee has functioned in the past. And it ought not to be the way we function going forward.

Now, just a couple of quick questions, and then I want to offer something to you. The tax investigator general has said there wasn't a cover up. Is that correct?

Mr. KOSKINEN. That is correct.

Mr. NEAL. There was not a conspiracy based on that assertion that he has made?

Mr. KOSKINEN. That is my understanding.

Mr. NEAL. That's your understanding. And to the moment, there is no smoking gun linking the administration to Lois Lerner.

Mr. KOSKINEN. That's also my understanding.

Mr. NEAL. Now, I would hope that at some point, this committee might spend a hearing, maybe a morning talking about the success that you have had with offshoring accounts for individual taxpayers. The number is pretty stunning in what you have begun to collect from those who have voluntarily complied in Switzerland and in other tax havens. And it is a story that I would hope that we would have an opportunity to talk about.

Mr. Camp is correct when he says the tax system works on the basis of people believing that there is equity in it for all and that everybody carries their burden. And spending some time on offshoring and spending some time on compliance might be equally good for a hearing. But I know it doesn't fit with the determination that was made this morning for the purpose of this hearing.

Thank you, Commissioner.

Chairman CAMP. All right.

Mr. Nunes is recognized.

Mr. NUNES. Thank you, Mr. Chairman.

Mr. Commissioner, in September 2010, a letter from Chairman Baucus asking for an investigation of apolitical 501(c)(4) groups, that would have went to Mrs. Lerner, correct?

Mr. KOSKINEN. It would have gone to her? I don't know where it would have gone. I was not there.

Mr. NUNES. But if it went to her, assuming it did, like it should have, she would have responded.

Mr. KOSKINEN. She or the agency. Either she or the agency would respond to that. I haven't seen the letter. I don't know what the response would have been.

Mr. NUNES. Would we have that email.

Mr. KOSKINEN. Which email?

Mr. NUNES. Would we have the response?

Mr. KOSKINEN. The response I assume would not have been by email.

Mr. NUNES. There would be a letter, I assume——

Mr. KOSKINEN. There would be a letter.

Mr. NUNES [continuing]. Back to a Senator who chairs the Finance Committee.

Mr. KOSKINEN. If a letter comes in the from the Senator, there should be a response back.

Mr. NUNES. Then there was in October of 2010, Senator Durbin wrote Commissioner Shulman urging him to investigate conservative groups, specifically Crossroads GPS. That letter would have likely been sent to Ms. Lerner. Did Ms. Lerner ever write Senator Durbin or his staff back?

Mr. KOSKINEN. I have no idea.

Mr. NUNES. If she did, would we have any of the emails associated with it?

Mr. KOSKINEN. If she wrote back or the agency wrote back, there would be a hard copy. There would be a letter in the file as to what it said.

Mr. NUNES. And during the period before the crash, liberal leaning groups, Democracy 21, repeatedly wrote the IRS asking for an investigation of conservative leaning groups. Did Lois Lerner ever write them back?

Mr. KOSKINEN. I don't know whether she wrote them back or not.

Mr. NUNES. Would you have a copy of those letters?

Mr. KOSKINEN. You would have a copy of those letters.

Mr. NUNES. Could we get those letters?

Mr. KOSKINEN. If we have those letters, they probably have already been produced.

Mr. NUNES. In June 2011, Chairman Camp sent a letter to the IRS asking about abuses of the gift tax targeting. And just so you know, we do have that letter. We did receive a response. So the point here is that there were 83 specific employees that we asked for all of their emails on. You are aware of that, right?

Mr. KOSKINEN. I am aware of that. You asked for all the emails. We worked with the investigators to select the 83 that seemed to be most likely to be involved, and to select a range of search terms that would actually produce the emails that would be relevant to the investigation.

Mr. NUNES. But that was only emails between the 83.

Mr. KOSKINEN. No, that's any emails.

Mr. NUNES. For example, if Lois Lerner sent an email to Secretary Lew—

Mr. KOSKINEN. That would be in those emails searched for. There was no limitation that they would only be emails within the agency. The search terms were any emails to anyone. It is just the 83 were the email accounts that were searched to see if anybody of the 83 wrote to anybody else about any of those search terms, those emails would be produced.

Mr. NUNES. But Secretary Lew is not one of the 83.

Mr. KOSKINEN. No.

Mr. NUNES. You are telling me if there was an email—

Mr. KOSKINEN. If there was an email from any of the 83 to Secretary Lew, that email would be in their email box and would have been found and produced. The limitation was not the communications back and forth among the 83. It was the 83 custodians, as they are called, their emails, any email that in the time frame met any of the search terms that were agreed to, all of those emails were produced whether they were to someone within the 83, outside the 83 in the agency, or outside the agency.

Mr. NUNES. But do you understand Mr. Ryan's point when the letter you sent to the Senate last week on Friday, which is exactly what had happened when Lois Lerner planted the question in the audience way back? I mean, it just shows a pattern of abuse and a pattern of dumping things on Fridays. And then specifically—I am not trying to get into a tit for tat with you here. Okay? I am just saying why it is not believable is because you only talked about Lois Lerner's hard drive, which is one of the 83, but there were six additional folks in that 83 that have disappeared, too, and you didn't tell us about it on Friday.

Mr. KOSKINEN. Right. Can I explain?

Mr. NUNES. Sure.

Mr. KOSKINEN. Explain. We originally, as I said, hoped to complete the production of all Lois Lerner emails, complete the investigation, which had just started, of the other 82 and provide a complete report. Senate Finance Committee indicated that they were nearing conclusion—closure on their report, and they wanted an update on our letter in mid-March to this committee and Finance that we had found—that we had produced all the relevant emails to the IG investigation. We provided that letter. They also asked for an update on all of our production. And they asked for it no later than last Friday. The reason it was produced Friday rather than the end of this month was in response to a request from Finance. At the time we produced that report on Friday, we had no information about the other custodians that I had asked people to review. That information was provided to our IT person—people on Monday morning, who happened to then be briefing your staff Monday afternoon. I am under a lot of heat from the Senate—

Chairman CAMP. Time has expired.

Mr. KOSKINEN.—because I didn't know on Monday, and I didn't tell them on Monday because I didn't know. It was not included in the Friday report produced in response to a Finance Committee request, because when that report was prepared no one in the agency knew which, if any, of the other 82 custodians were involved.

Chairman CAMP. Time has expired.

Mr. Becerra.

Mr. BECERRA. Commissioner, thank you for being here. And let me add my regrets to you that this hearing has been conducted as less as a hearing than it has been as an inquisition. And you deserve better. You certainly are obligated to give us truthful answers. And we appreciate that you are trying to. Let me suggest to you one thing. You have a right to try to respond to any question. If you find that you are being badgered or not given an opportunity to respond, just take a breath and then try to get your answer out. If you are not given that opportunity, then recognize that, again, this is maybe not a hearing, but an inquisition. But you have a right to make sure the record reflects what you under oath would like to say.

Some want to confuse the real issue that's been raised by this investigation. Let me ask you a question. In this added scrutiny that IRS was giving to the so-called social welfare organizations, is there evidence that shows that any number of different types of organizations other than just far right or conservative organizations were being scrutinized?

Mr. KOSKINEN. There is evidence that organizations across the spectrum were reviewed. The bulk of the applications were from conservative groups, so the bulk of the reviews were of conservative groups.

Mr. BECERRA. But it wasn't just of conservative groups.

Mr. KOSKINEN. That is correct.

Mr. BECERRA. Okay. So some would like to portray this as just targeting or an attack on conservative groups. But the evidence, which has been revealed to everyone, including members in this committee, is otherwise. I think we are watching how people are trying to confuse the issue here. This investigation should truly be about what is really wrong with the system. And that is that today in America, these so-called social welfare organizations, these not-for-profit organizations that get special tax breaks that ordinary Americans don't get, they pay less in taxes than an organization that doesn't have that tax status as a 501(c)(4), they spent in the last election cycle, 2012, more money as social welfare organizations than the two political parties combined; \$256 million spent by so-called social welfare organizations to conduct political campaigns. While the two parties, which are there to conduct political campaigns, spent less than the \$256 million that these social welfare organizations spent.

I hope, at some point, Commissioner, we will have a chance to get into that, because my understanding is that we are seeing now the seeds of this dark money that's being spent. My understanding is there is an investigation by the State prosecutors in the State of Wisconsin of the Wisconsin Governor for perhaps coordinating illegally campaign activities in ways that might violate the law. What we are finding is that fewer and fewer of these organizations that are applying for this tax-exempt status that gives them special tax treatment are doing social welfare. They are doing nothing more than campaigning. Is that something that the IRS is concerned about, that what was to be a tax provision and tax status reserved for organizations that want to do social welfare is being used to conduct campaign activity?

Mr. KOSKINEN. Our concern at this point is to try, as I have testified on numerous occasions, to take a review of the regulations governing all (c) organizations and determine, can we provide clarity as to what's allowable activity, the amount of it that you can engage in without jeopardizing your tax exemption, and to which organizations should it apply. As you know, we have had over 150,000 comments on that draft regulation. We announced that sometime probably into early next year, we will review and repropose, ask for more comments, have a public hearing. I do think it is important—we are not in the political business. I think what is important is to provide clarity. Right now, it is an unclear standard. It is hard for people running those organizations to know what's allowable and not allowable. They should not operate those organizations worried that somebody's going to say the facts and circumstances changed, and now you are not eligible. So that our goal is to have, as I have said, a rule that's fair to everyone, clear, and easy to administer. And we are going to try to do that.

Mr. BECERRA. Final question. You are under oath. To your knowledge, are there any documents or requests for information that you have not responded to completely?

Mr. KOSKINEN. There are—we are responding as quickly as we can. We have far flung requests for documents that we have not been able to respond to now. There is no document request or information request that we are not going to respond to as quickly as we can. We will provide anything the committee would like.

Chairman CAMP. The time has expired.

Mr. Tiberi is recognized.

Mr. TIBERI. Commissioner, you have a really important job. A lot of Americans fear the IRS. Very important agency that has struggled to have a leader with any consistency over the last several years. And this Congress and this committee have heard from a lot of different leaders who come and go. And it is been quite frustrating for us and many of our constituents regarding—and I won't rehash the concern. But I think every member of this committee ought to do something this weekend and maybe Monday. Go talk to your case worker who deals with the IRS for your constituents. Get an earful from them. And maybe we wouldn't be apologizing to the IRS.

Let me tell you a story, sir. Small business man in my district paid his taxes on time forever. Forever. He had an automatic payment set up in fact with his bank to pay the IRS, probably like you have done as a business man in the past. October of last year, he found out one day—actually, the day that his payment was due to the IRS—that his account had been hacked. No fault of his own. Fraud. He did what any law-abiding citizen would do. He worked with the bank to close the account. The IRS had already accessed the account, but it had already been closed, and he knew that. He called the IRS and said, Hey, my account had been hacked. A payment was made. It was made incorrectly because they closed the account, so the payment is going to bounce. I don't want to get penalized. I don't want interest. What do I do? Well, thank you for letting us know. Send us a letter. Get us a check immediately. And all will be good.

It is the middle of June, sir. He is being charged penalty and interest because of that fraudulent payment. No fault of his own. He fears the IRS. That is just one case. That is one case, ladies and gentlemen.

And when these constituents have watched, long before you got to the IRS, by the way, long before you got there, have seen the IRS continually delay when there is no delay on their part if the IRS wants information. If they say, well, my document got destroyed, sorry, buddy, not an excuse. There seems to be two sets of rules, sir. And the frustration that we have is, quite frankly, everybody knows that this has going on for years, for 3 years.

And so if the President would have asked me to go over and be commissioner of the IRS, and I found out in May, April, March, February, what you found out, rather than bury it in a letter on page 15, here is what I would have done: Just a suggestion. Because of the lack of confidence the American people and this committee have because of how our constituents are treated differently than how the IRS leadership treats America, is Mr. Camp, Mr.

Levin, this just—I just found out this happened. Wouldn't cost a cent. Just pick up the phone. The President has a phone. You probably have a phone. Pick up the phone, call Mr. Wyden and say something very bad just happened. Don't know why. I don't think it is a coverup. I don't think it is criminal. But because of the past and the lack of transparency in the past and because we are a really important agency that the American people need to have confidence in and Congress needs to have confidence in, I just wanted you to be aware of this. And we are going to continue to try to get to the bottom of this. When you don't do that, for what reasons—I understand completely what you are saying, don't necessarily agree with, but I understand where you are coming from, but when we find it buried in a letter, and then on Monday, because we asked the question, not because you provided the information, because we asked the right question, and there are probably a lot of questions that we haven't figured out are the right questions yet, we get the right answer, there is a feeling here that, oh, my gosh, the IRS has no credibility. And it doesn't need to be that way.

This isn't about Republicans and Democrats. This is about our constituents, ladies and gentlemen. Talk to your IRS case worker. I can give you 12 more. I did IRS case work. Americans fear the IRS. And now, unfortunately, with a pattern of delay and disrespect and deceit, in many cases—not from you, sir—there is just no credibility. This is not good for our country. And my hope is that you can clean this up.

But I got to tell you I don't even have a question for you. This is amazingly awful. This is absolutely awful. This is not partisan. Just talk to your case workers, guys. This is not partisan. This is just Americans frustrated with an arrogance of an agency that is above the law in their opinion.

I yield back.

Chairman CAMP. Thank you.

Mr. Doggett is recognized.

Mr. DOGGETT. Well, the first thing I did in preparing for today's hearing was to talk with my case workers, our constituent service representatives, as we call them, in Austin and San Antonio. And what I found, Commissioner, is that when 250 IRS employees spend over 120,000 hours and almost \$20 million on responding to Congress, those employees are not able to respond to their ordinary duties. I found, for example, that as far as nonprofit community service organizations, that the Austin African American Cultural Center, that a small town area community foundation that wanted to raise money in that small town for the first time to support community activities, that a neighborhood community association in San Antonio, that the Unitarian Universalist Justice Ministry, that a video service that covers community organizations in San Antonio and tries to spread the word about their activities, all of them had waited months and, in some cases, over a year to try to get approval of their application because it would appear to me your folks are so busy responding to one claim after another, you have no additional resources, you are not able to respond to the job that the law asked you to do.

I believe that there has been a long-term commitment to hamstring, to encumber, to underfund the Internal Revenue Service

and discredit it and the whole concept of progressive taxation in this country.

Now, let me ask you, as to the seriousness of this investigation, sir, have you ever been in Benghazi?

Mr. KOSKINEN. No.

Mr. DOGGETT. Do you know if you or Ms. Lerner have ever had any responsibility for anything having to do with Benghazi and our Embassy there?

Mr. KOSKINEN. No.

Mr. DOGGETT. How about Area 51 out in Roswell, New Mexico, where all those space aliens allegedly came? Have you ever had any responsibility for that?

Mr. KOSKINEN. No.

Mr. DOGGETT. Have you ever had custody of the President's birth certificate?

Mr. KOSKINEN. No.

Mr. DOGGETT. Well, Commissioner, I believe one of the mistakes that you have made in dealing with the committee today is that you did assume professionally that this was a serious inquiry. I believe it is an endless conspiracy theory that's involved here that is being exploited solely for political purposes.

I don't approve of Ms. Lerner. I don't approve of the way the IRS handled all these matters.

But I think there is a much larger coverup issue here. And it is the desire of our Republican colleagues to cover up these purported social welfare organizations that don't want to disclose the secret corporate campaign contributions that they rely on to pollute our democracy.

It is not surprising to me that, without a letter from a Member of Congress, that the Internal Revenue Service would have at least questioned why one organization headed by Karl Rove of Texas, Crossroads GPS, was spending \$71 million in election cycle 2012. My concern is that it doesn't appear from the public record that there has been a determination as to whether that was a legitimate social welfare organization or not.

As my colleague Mr. Becerra indicated, we know from today's papers an elaborate chart, that another of these social welfare organizations headed by Mr. Rove, called Citizens for a Strong America, and we are sure all for that, but that that organization apparently was involved in polluting the political process in the State of Wisconsin.

I believe that this is a serious matter. The use of corporate secret money is a problem enough. But the determination to have that money be taxpayer-subsidized in social welfare organizations, in some cases headed by individuals who never had any interest in social welfare until they can claim it for themselves to pollute our democracy, that that is a serious problem.

I am pleased you are going to be coming forward with anything else that you can find. Because though this is not a serious investigation, but the endless pursuit, the obsession with conspiracy and conspiracies, we do need to have every bit of information, every shred of information that you can find, even though the people I talk about in Texas who have legitimate issues before the IRS are collateral damage in the process. But then I guess Mr. Rove and

some of his colleagues never much cared about collateral damage in other contexts anyway.

I yield back.

Chairman CAMP. Mr. Reichert is recognized.

Mr. REICHERT. Thank you, Mr. Chairman.

Mr. Koskinen, I believe that you are an honest man and that you want to do the right thing and that you took this job to improve the IRS and serve the American people. And so I just have a few questions. I used to be—I was a cop for 33 years. So I just want to kind of go through some questions and try to understand this thing, because it is pretty confusing I think to the American people. Wouldn't you agree with that?

Mr. KOSKINEN. It is a confusing—technology is confusing to all of us.

Mr. REICHERT. Yes. Okay. Well, so there is an IG investigation currently ongoing. Right?

Mr. KOSKINEN. There are two IG investigations, one on the response to the first IG report and another IG investigation going on into in fact the hard drive crash of Lois Lerner.

Mr. REICHERT. And you are fully cooperating with the IG's office?

Mr. KOSKINEN. We have always fully cooperated. I once chaired the intergovernmental agency of coordination of all inspectors general. I am a big supporter.

Mr. REICHERT. All right. And you provided them with all the information they asked for in the process of their investigation?

Mr. KOSKINEN. Yes.

Mr. REICHERT. All the requests. And you have kept them updated as much as you can on all the information that's developed on this investigation?

Mr. KOSKINEN. As they investigate, we have provided all the documents they want.

Mr. REICHERT. So I am a little confused today when I learn that the IG's office called our office here, our staff people here on the Ways and Means Committee and said that they didn't learn about the hard drive issue until the Ways and Means Committee put out their press release. How could that happen? The IG is conducting an investigation, and they have no idea there is hard drive issues or lost emails. Can you answer that question?

Mr. KOSKINEN. The investigation they were doing is the investigation of the response to their report. They have started an investigation on the issues regarding the hard drive. They were not doing an investigation of that.

Mr. REICHERT. But you just said you fully cooperated and provided them with all the information.

Mr. KOSKINEN. I meet with the IG once a month.

Mr. REICHERT. They have to learn, Mr. Koskinen, they have to learn through a press release from the Ways and Means Committee of the United States Congress, they have to learn from that that there is an issue that I would think as an old cop again, I would need to know. If I was conducting that investigation, and you were a part of that, and you were helping me and assisting me in that investigation, does that not make sense to you that that would be information that you would provide to the IG's office?

Mr. KOSKINEN. We are providing——

Mr. REICHERT. Yes or no. Yes or no because my time is limited. Would that not be information that you would provide to the IG's office? I just need a yes or no.

Mr. KOSKINEN. Yes. And we have provided it, and we will continue to provide information to them.

Mr. REICHERT. I think that's important. But you didn't provide it to them because they learned it in a press release. That's not correct. I think you want to be honest, but there have been some mistakes made, and I can understand that. You know, so let's just go through this, you know, very quickly. So we have, you know, a flagging of the Tea Party applications. People have gone over kind of the timeline here. Lois Lerner sends her emails to IRS employees. Cincy should probably not have these cases. Tea Party matter is very dangerous. We begin our investigation. We are told that any potential targeting was conducted by rogue employees in Ohio. We request all of Lois Lerner's emails. The internal review. Then we find out that emails are destroyed. Now we find out the hard drive is destroyed. Mr. Koskinen, the American people don't believe this. They can't—I can't—if you had an employee under investigation for some violation of your policy internally, you wouldn't accept, oh, Mr. Koskinen, Mr. Supervisor, Madam Supervisor, I lost my emails.

Mr. KOSKINEN. I would accept——

Mr. REICHERT. My hard drive. It blew up. So would you stop your investigation?

Mr. KOSKINEN. No, I would accept—if I found contemporaneous——

Mr. REICHERT. What happened if they would say, look, I have destroyed—I have destroyed my hard drive?

Mr. KOSKINEN. If I found contemporary——

Mr. REICHERT. What would you do, sir? What would you do, sir. What would you do, sir?

My time, thank you, Mr. Levin.

Chairman CAMP. Regular order. Regular order.

Mr. REICHERT. What would you do, sir, if an employee came to you and said my hard drive has—I destroyed it? I destroyed my hard drive?

Mr. KOSKINEN. If I found, investigated and found contemporaneous information from 3 years earlier that he in fact had worked very hard to restore his hard drive, he had got the best experts available to try to reconstitute the email and that had failed, I would tend to believe him.

Mr. REICHERT. The other six hard drives, they destroyed, too?

Mr. KOSKINEN. At this point, we are still investigating the other hard drives. As I noted, on one of them—actually, one of the ones on Monday turned out to have a failure in February of this year, which is outside the timeline. Ms. Flax's hard drive appears not to have caused the loss of a single email. Hard drive crashes alone do not cause email to be destroyed. We don't know that information. We will get it to you when we find it.

Chairman CAMP. Time has expired, Mr. Koskinen.

Mr. KOSKINEN. All right.

Chairman CAMP. And now Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman.

Mr. Commissioner, thank you very much for being here. I, too, want to thank you for your public service and your distinguished career. And I don't want to apologize to the IRS, but I do want to apologize to you as a professional in the way that you have been treated today. You know, if you could cut through a lot of the political theater that we see taking place on this dais today, I think there is actually some things that we can all from both sides of the aisle agree to. I think we are all pretty upset if in fact there was any inappropriate behavior on the part of the IRS. And I think most of us in previous hearings have expressed that. I don't care if you are a Democrat—actually, I do care if you are a Democrat or a Republican. But it doesn't matter if you are a Democrat or you are a Republican, a conservative or a liberal, you should receive equal and transparent treatment from the IRS. And if there is any targeting done, it was absolutely inexcusable. I think we are all at the least disappointed that Ms. Lerner took the Fifth. I think that helped create a lot of the political nonsense that we are seeing playing out today. I wish that would have gone smoother and we could have gotten to the bottom of some of these problems from the start. And I certainly hope that we all agree that given all of these hearings that we are having, a race to have our hearing before the other committee has theirs, and all the effort that's gone into this, it has really been a distraction from us being able to address the problems, a lot of the problems that are important to the American people; everything from tax reform to immigration reform, highway repair, a transportation bill. If we could just take a little bit of this time, maybe we could get some of the issues that would help put America back to work dealt with.

And I think all of us experienced the same situation as my friend from Ohio. We all can tell stories about constituent problems with not just the IRS but with anything. I will take the opportunity, I will take the lead from my friend from Ohio and the opportunity, given that you are here, to tell you I personally have been trying for weeks to get an appointment in my district with the IRS over a constituent matter that—a small business man in my district has been dealing with for a couple of years. And it is all based on a bill that the chairman and I co-authored and had signed into law dealing with conservation easements. So if you have any influence on your California office, please ask them to return my call. I would like to deal with that. But the thing that I found that has really pricked my interest today, in addition to getting this thing cleaned up and done with, is the issue of the lost and misplaced, and not knowing where they are or that the process for dealing with them is hard drives. A number of years ago, because of legislation that I carried dealing with electronic waste, we found out, not through our own resources, through press reports, that a number of hard drives from our intelligence community and from the Department of Defense were found in Third World countries in disposal sites. And that was a terrible breach of national security and caused me to amend our intelligence bill. And probably everybody here who was there then voted for that amendment and that bill. And we figured out how to deal with that in the intelligence community. But it sounds like we have the same security problem with

some of the hardware and software in your agency. And I would like to know if you think that's something that we should try and collaborate on to make sure that we can protect the records of the public as they are stored in your equipment.

Mr. KOSKINEN. No, it is an important issue, which is why when there is a hard drive that no longer is usable, it goes to a recycler and is destroyed rather than put in a waste dump or sent out somewhere else.

Mr. THOMPSON. Well, I would be happy to share with you the intel approach we took if you think that might help. In the remainder of my time, I know you had some things you were trying to say to the last—my last colleague who spoke to you. I would put my remaining time to you to answer any of those questions.

Mr. KOSKINEN. Thank you. I appreciate that.

I think the important thing to note is I would encourage everybody to talk to their case workers and to let us know if there are issues. I have spent a significant amount of time visiting the 25 largest IRS offices across the country, encouraging—I have met with over 10,000 employees—encouraging frontline employees, who often know best what is going on, to let me know if there is an issue, to give us their best insights and advice and suggestions for how to improve our operations. I am particularly concerned, and we are working on the backlog in the 501(c)(3) organizations. And we are doing our best to work that backlog down so that your constituents actually get an appropriate and prompt answer to their applications.

Chairman CAMP. All right. Time has expired.

Dr. Boustany.

Mr. BOUSTANY. Thank you, Mr. Chairman.

Commissioner, good to see you. I have to tell you I was damned angry on Friday when we got word about what happened with Lois Lerner's hard drive and all the news that's broken since then on this. And I am even angrier today about this. And it is interesting, you know, Chairman Camp and I sent a letter to Secretary Lew on Monday, and after months of stonewalling about documents, we finally got 2,500 documents 30 minutes before this committee convened its hearing. And it is just amazing that the White House or the Treasury can respond that quickly when spurred to do so, and we are still waiting for a lot of this information from your agency. But I want to explore some questions with regard to Nikole Flax. She had two computers, correct?

Mr. KOSKINEN. Correct.

Mr. BOUSTANY. She had one desktop and a laptop, is that right?

Mr. KOSKINEN. Yes.

Mr. BOUSTANY. Yes. Okay. Which hard drive failed?

Mr. KOSKINEN. I have been advised it was her laptop that failed, not her office computer.

Mr. BOUSTANY. Okay. And so how do you know where she has archived—or do you know where she has archived the key documents from the time frame that we are interested in?

Mr. KOSKINEN. Time frame you are interested in, everyone archives their documents on their hard drive in the office because

that's where most of the work is done and they want to be retrievable.

Mr. BOUSTANY. So can you attest that all relevant emails and documents, memos from Nikole Flax related to targeting are produceable? You have these?

Mr. KOSKINEN. I can attest at this point I am advised there is no evidence that any email was lost by Nikole Flax. I have not personally talked to her. And again, this is all information that's being developed as we talk.

Mr. BOUSTANY. Email, memos, all documents?

Mr. KOSKINEN. My understanding is no email of hers has been lost as a result of her hard drive crash.

Mr. BOUSTANY. Okay. And where is the laptop now which supposedly has hard drive problems?

Mr. KOSKINEN. I don't know. As I said—

Mr. BOUSTANY. You don't know.

Mr. KOSKINEN. We just got the list on Monday ourselves. We have been pursuing this. And we will in fact give you a full report on all the custodians, now seven; the eighth one is one that actually failed this year, and it doesn't count.

Mr. BOUSTANY. So we don't know where those hard drives are right now.

Mr. KOSKINEN. We don't know where those are. We will give you a full update on all of that.

Mr. BOUSTANY. It is unbelievable to me that you don't have that information. It's been a week since the information was made public to us.

Mr. KOSKINEN. The information was made public by you. We advised you in committee on Monday that this is all we had was the names. We are actually working through a review to find out what's the status of those, how many emails were lost. We will find out and we will know where the hard drives are. Many times you reconstitute the hard drive and it continues to function. We will give you that information when we have it. Part of the issue, as I said earlier, with providing partial information is then we get immediately asked, well, what is the answer to this, and we don't know the answer—

Mr. BOUSTANY. So we can expect this information in a timely manner.

Mr. KOSKINEN. In a timely manner, we will get you all of the information we are able to discover.

Mr. BOUSTANY. When was Lois Lerner's hard drive recycled and made irretrievable?

Mr. KOSKINEN. All I know is she was advised, as I noted, in the summer of 2011 that the Criminal Investigation Division had been unable to retrieve any emails off her hard drive, and it was recycled. I will get you the date, to the extent we have it, of when—

Mr. BOUSTANY. Get us that precise date. But I am really, really disturbed that it took this long for the committee to find out this information. Buried in the letter that we received on Friday.

Mr. KOSKINEN. As I noted, there are emails that actually—as I say, we have had a good close working relationship with your staff—there are emails last fall in the productions that referenced

her hard drive crash that no one was paying any attention to because they were looking at all of the relevant information. As we proceeded through, it was not until into April that we understood there was a crash. And it was not until mid-May that we could actually bound the issue and determine how many emails were available and how many were not.

Mr. BOUSTANY. But why wasn't this committee notified before a decision was made to completely recycle her hard drive?

Mr. KOSKINEN. The committee was not notified because that decision would have been made 3 years ago. That is not a decision—none of this had anything to do with the investigation. It was——

Mr. BOUSTANY. Well, I would submit it does have to do with the investigation, because we are trying to get necessary information. I know you were not there at the time. But I just thought maybe in your investigation of what's going on, you might be able to shed some light as to why we were not notified. It disturbs me that this decision was made internally without any kind of outside consultation when this committee was vigorously pursuing information regarding this targeting scandal.

Mr. KOSKINEN. I would like to make the record very clear, the decision about that hard drive was made 3 years ago. There has been no decision made since this investigation started, and certainly since I started, to have anything destroyed. Every email, every hard drive that people are using now is safe. Lois Lerner's hard drive after the crash is now in the possession of the IG.

Mr. BOUSTANY. I just want to make it very clear that any decisions that are made, we need to be notified. This committee needs to be notified prior to any decisions made about the disposition of those hard drives.

Chairman CAMP. All right. Thank you. Time has expired.

We will be going two to one.

Mr. Roskam is recognized.

Mr. ROSKAM. Thank you, Mr. Chairman.

Commissioner, I am going to make an observation. It will sound condescending, and I don't mean it be to be condescending. So go really deep into the meaning of what I am communicating. Growing up, my father would always tell me, Peter, make good choices. And we kind of have a running joke, one of my kids go out the door in the morning, or particularly in the evening, make good choices. And so I think you have made a bad choice. And it's not a bad choice based on invective or bad motivation. I think the administration came to you singularly as a person, as a white knight, as someone with a sterling reputation, someone who has had experience turning around bad organizations. And I think the administration is trading on your reputation.

So I think you have made a bad choice. Now you are in it now. But I think the decision to accept this responsibility as the IRS Commissioner and defending this administration was a bad choice. And I will make a prediction. I will make a prediction that in several months or in a year, you are not the Commissioner of the IRS anymore and that they will go out to someone else. Because now you are the third person in this. I don't ask you to respond to that. But it is an observation. And I mean no condescension in it.

So here is the point. You are being characterized today by the other side as the victim. I mean, the IRS as a victim is so richly ironic, you can hardly believe it. So you are not a victim today. The IRS is not a victim today. And here is the fundamental problem. Chairman Camp sent a letter on this whole issue, and then 10 days later—so think about the duration of 10 days. Ten days is the ability to panic at the IRS, reflect, plan, talk, and execute. And there was a crash 10 days after the chairman's letter. Now, I have got a slide. That's a fire. And inside that fire is a hard drive. I have got another slide. That's the hard drive after it was burned. And you know what, Commissioner? You know what was recoverable from that? One hundred percent of the data. So the notion that a hard drive or a server in the midst of this entire situation has been lost into oblivion is a case that even a white knight can't make.

I yield back.

Mr. KOSKINEN. Mr. Chairman, can I make a comment?

Chairman CAMP. He has yielded back his time. You may seek time from the other side—

Mr. KOSKINEN. All right.

Chairman CAMP [continuing]. Because it is now Mr. Blumenauer's time.

Ms. SANCHEZ. Mr. Chairman, I ask unanimous consent to allow the witness some time to respond to the allegation that Lois Lerner's drive was thrown into a fire and 100 percent of it was recoverable, because it's ridiculous.

Chairman CAMP. There is not a question pending for the witness. Mr. Roskam made a statement. I object myself to that.

Mr. Blumenauer, you are recognized and you may use your time as you see fit.

Mr. BLUMENAUER. Well, thank you. I appreciate that.

And I will try and be brief and turn a couple of those minutes over to you.

First of all, thank you for appearing. Mr. Roskam said that you are not going to be doing this forever. I am surprised anybody takes this job based on the treatment that has been accorded to people who had better things to do with their lives, had credible careers, and who stepped into difficult circumstances. Thank you. I appreciate it. I appreciate the fact that you are managing, or attempting to, 90,000 employees. You have a budget almost \$11 billion. And I appreciate that you are doing this with a workforce, since I have been in Congress, that has shrunk 25,000 employees, 10,000 I think in the last 4 years. That the budget, if this Congress in its wisdom, my Republican colleagues are cutting your budget. The training budget I think went from \$172 million to \$22 million for a Tax Code that we consistently make more complex. And often-times, we don't get our job done in time so that your employees can do their job. And then somehow we are pillorying you.

And some of this does sound condescending I will say, or not allowing you to answer questions, for a situation that Congress has made worse and has systematically assaulted the IRS in its capacity to function. What did we do in the government shutdown? What business furloughs its accounts receivable department? Not one that stays in business very long. Not one that has the capacity to deal with layers and layers of complexity and a vast system where

people pound away on the IRS and the people who work there. I am amazed that anybody takes those jobs, from you on down. And I appreciate they do. You know, it is a certain irony it is now the dicta of the Republican Party to assault the IRS at every turn and undercut its ability to function. Gee, they were Republican Presidents, starting with Lincoln and Taft and Roosevelt, that promoted the income tax, which doesn't collect itself.

I appreciate the hard work. I appreciate being able to tease out this. I appreciate my friend Mr. Doggett's reference to all manner of things that are being laid at your doorstep. I hope before we get through this budget process, we take a hard look at what this critical agency needs to function, like training, like people on the job. Not have budget cuts that we are told by the tax advocate a budget cut of \$1 costs the Federal Government \$7. And undercutting enforcement, which every dollar is over \$250 that's returned to the taxpayers for veterans' services, for environmental protection, for defense. I am sorry, I am taking more time than I wanted. I would like to turn to you to give you an unfettered minute or two if there is something that you would like to say.

Mr. KOSKINEN. Thank you very much.

Mr. BLUMENAUER. And I will just conclude with my thanks for your being here.

Mr. KOSKINEN. With regard to bad choices, I am sorry the Congressman has left, I have noted that when people ask why I took this job that perhaps I need counseling to make decisions going forward.

But I think if there is one issue I would like to have come out of this hearing, we have 90,000 dedicated employees that I have said I have talked to and listened to 10,000 of them. There is one point I want to come out of this, is I want to totally refute the suggestion that sometime in the next 6 to 12 months, I am going to fade away. I am firmly committed that I will serve the remaining 3 and a half years of my term come whatever it may be. And I think it is important for those employees, dedicated as they are to the mission of this agency, to have confidence that their leader, the Commissioner of the IRS, is not going to cut and run, is not going to decide it was a bad choice to take this job, is delighted to be working with them, and that I look forward to the next 3 and a half years of my term doing that.

I would also like to note the reference, again, that somehow it's unbelievable we lost the hard drive now is unbelievable because it was not lost now, it was not destroyed now. That was a decision made 3 years ago, before any of these investigations started. There should be no implication that anything has been destroyed or tampered with since this investigation started and certainly since I became Commissioner.

Chairman CAMP. Time has expired.

Mr. GERLACH. Thank you, Mr. Chairman.

Commissioner, on numerous occasions during your testimony here this morning, as well as on the first page of your written testimony that you presented to the committee, you cite numerous statistics of the amount of emails and other communications that the IRS has produced for this committee and certainly for the Senate Finance Committee. But frankly, all of these statistics are irrele-

vant if the effort doesn't get us to the full truth. And certainly all of these statistics are minuscule when compared to the constitutional rights of the average citizens that have been trampled on through the process that was at this point to our understanding guided by Lois Lerner, perhaps others within the IRS.

Since you have been on board at the IRS, you have had opportunity, obviously, to try to get your head around and hands around the scope of this investigation and the work that was actually conducted by Lois Lerner, perhaps others. So I would like to ask you, based upon your understanding of all that, what do you think Lois Lerner did wrong or did inappropriately in the handling of her duties while she was in charge of the tax-exempt organization application review process?

Mr. KOSKINEN. Good question. I have not independently investigated the matter, as I have said on occasions in the past. We have a lot of investigations going on. But I think it is clear, to the extent, as the IG found, that inappropriate criteria were used to select applications for further review, to the extent that applicants were required or requested to provide voluminous improper information, that was a mistake. It shouldn't have happened. And we should do everything we can to make sure it doesn't happen again. The IG made recommendations into what should be done. We have accepted all of those. We are implementing those. We are providing appropriate training and safeguards, because as I said earlier, I think it is critical for every American, no matter what their political beliefs, whether they go to church or they don't go to church, whatever meeting they went to last week, if they wrote an op-ed someplace, should be confident that if they hear from us, it's because of something in their return. And if somebody else had something else in their return that looked like that, they would hear from us again. I think that's critical. And that is a commitment we have made.

Mr. GERLACH. So you are basing that upon the IG's report and investigation, but yet you just said you didn't do your own investigation.

Mr. KOSKINEN. I have not.

Mr. GERLACH. I would think, however, that if I were to become head of an agency like the IRS I would want to conduct an internal investigation of my own agency to understand fully what happened so I knew what happened because I am in charge of that agency. Do you have any plans to do your own internal investigation of this activity?

Mr. KOSKINEN. When I arrived, it was very clear with all of the investigations going on, (A) the last thing I wanted to do was appear to be interfering with those investigations, talking to any of the potential witnesses. Secondly, my thought has been and continues to be, with six investigations and the amount of time going on, what I am looking forward to is being educated by the reports of those committees.

They are going to—you all have spent more and more time. I have an agency to run with 90,000 employees.

Mr. GERLACH. Okay, so you are not going to do your own investigation?

Mr. KOSKINEN. No, I am not going to be doing an investigation.

Mr. GERLACH. Okay.

Mr. KOSKINEN. I am looking forward to your facts. I am looking forward to your recommendations, will take those recommendations—

Mr. GERLACH. Well, it won't be our facts. It will be everybody's facts.

Mr. KOSKINEN. Everybody's facts, whatever they are.

Mr. GERLACH. Yeah, right. Let me ask you this in the time that I have: The new head of the Tax Exempt and Government Entities Division, Sunita Lough, recently announced that the IRS will restart audits of 501(c)(4) organizations that were selected during— for examination during the targeting and due to political activity. These audits were suspended after Acting Commissioner Werfel expressed concerns that they may have been tainted by the targeting.

Indeed, the committee has found evidence that Lois Lerner, in fact, bypassed internal controls as you just indicated, and reached in to hand-select the right-leaning group for audit. Given these concerns and the evidence that Lois Lerner improperly influenced the audit selection of these groups, why would the IRS choose to reopen these audits?

Mr. KOSKINEN. Because we think and I think it is unfair to them to leave them in limbo, that they deserve to have closure. We have made it clear in our reaching out to them—

Mr. GERLACH. Why not just process their application and provide the answer to them without auditing the process?

Mr. KOSKINEN. We are going to actually—we have noted that we are—any request for information that was inappropriate they don't have to respond to. There will be new appropriate requests for the normal follow-up. We want to close those investigations so those organizations are not left in limbo, not unable to function.

We will proceed with those effectively. It was my determination that we ought not to leave them out there, that we ought to appropriately review them—and in most of these cases, they get approved—and if they are going to get approved, we should do that.

Mr. GERLACH. Thank you.

Chairman CAMP. Dr. Price.

Mr. PRICE. Thank you, Mr. Chairman. Commissioner, I also want to thank you for your service. There is this notion that we on this side of the aisle don't appreciate what public servants do, and we do. But this is serious stuff. This is serious stuff.

The perception of my constituents, and many folks across this great land, is that there has been a chilling activity on the part of the Internal Revenue Service to target folks because of their political views, and not just target those organizations, but then the IRS took donor lists from organizations, shared them with other groups, and then those individuals on those donor lists were audited at a degree higher than the usual rate; significantly higher than the usual rate. That is chilling, chilling stuff.

So that's the sense that many of us have and our constituents have. Your job is to rebuild this trust. And with all due respect, the comments that we have heard today, the processes that you have gone through haven't begun to rebuild that trust. You have—you said that the work continues, the ongoing work continues. So

isn't it true that for our friends to draw the conclusion of innocence is likely premature? Is that not correct?

Mr. KOSKINEN. I am not sure who whose innocence you are worried about. I would like to note that the statistics with we have shared with this committee and we are happy to continue to work with you, do not show that any donors were audited at a higher rate than people in the public, generally. If they were, it was a mistake, but there is no evidence that there was any systematic attempt to—

Mr. PRICE. We will provide you with the information that we have because it is clear that there were individuals who have been—and anecdotally, there is no doubt about it. But the statistics will show that folks who donated to these groups were audited at a higher rate. I want to get to a couple of specific questions. You said that you knew, you learned about the crash of this hard drive in February of this year, is that correct?

Mr. KOSKINEN. I learned there was a problem, a potential problem in February. We did not know—I was not advised that there had been a crash until into May when our IT people discovered it, and it wasn't until into May that we understood and were able to complete the investigation of what the ramifications were, how many emails still existed and then started the investigation of how many other—

Mr. PRICE. When was Treasury informed?

Mr. KOSKINEN. I don't know when Treasury was informed. I did not—

Mr. PRICE. They had to have been informed by the IRS, though, correct?

Mr. KOSKINEN. My understanding from the White House letter is that sometime by mid-April in a conversation between counsel in the IRS and counsel at Treasury, they were advised that there was a problem with Lois Lerner's emails, and that it was being fully investigated.

Mr. PRICE. It was IRS counsel that informed the Treasury, is that right?

Mr. KOSKINEN. That's my understanding, and that they were advised that we were investigating it.

Mr. PRICE. Now, Secretary Lew has refused, to date, to provide emails as it relates to Lois Lerner and other items to this committee. Don't you think it would be appropriate given—or maybe his computer is crashed—you don't know if Secretary Lew's computer is crashed, do you?

Mr. KOSKINEN. My understanding is that you now, as of this morning, I haven't seen any of these documents, or the presentations.

Mr. PRICE. Don't you think it would be appropriate for Secretary Lew—

Mr. KOSKINEN. The Treasury Department has provided you all of their Lois Lerner email.

Chairman CAMP. This morning, Dr. Price. This morning. We have not reviewed them yet.

Mr. KOSKINEN. None of us have had a chance to review those, but that's my understanding. So you do have now those emails, and

if there are any from—to or from Lois Lerner and Secretary Lew, you will have those.

Mr. PRICE. Do you know if Lois Lerner had a BlackBerry or an iPhone?

Mr. KOSKINEN. I do not know.

Mr. PRICE. You don't know.

Mr. KOSKINEN. I do not know.

Mr. PRICE. Do employees of the Internal Revenue Service carry mobile devices that are issued to them by the government?

Mr. KOSKINEN. They carry mobile devices. The mobile devices run the same email system, people do not have on their office BlackBerrys, if they have them, or whatever mobile devices they have, they all run against the same email account.

Mr. PRICE. Can you find out if Lois Lerner had an iPhone or a BlackBerry for us?

Mr. KOSKINEN. I can find that out and would be happy to let you know.

Mr. PRICE. There is a notion on the other side that the IRS is just strapped for money; doesn't have any money at all, can't do a doggone thing because they don't have any money. You are aware that the IRS has a studio that produced the famous Star Trek video that spends about \$5 million annually on that studio, are you not?

Mr. KOSKINEN. No longer. That studio has been closed. We now have a review board and produce very few videos and they are not done in a fancy studio. And that was all 4 years ago. Since then, our budget has been cut by \$850 million.

Mr. PRICE. You are also aware that IRS employees used 521,000 hours in fiscal year 2013, at a rate of about \$23.5 million for union activities, are you not?

Mr. KOSKINEN. That is right. That's consistent across the government in terms of union employees, and all Federal agencies have a right to spend some portion of their time on official business for the union. And the IRS has a union. And those employees, pursuant to that process, do spend time on union time.

Mr. PRICE. Might be appropriate for them to spend time on something else other than that.

Mr. KOSKINEN. As long as there is a union, they will spend time.

Chairman CAMP. Time is expired. Mr. Kind.

Mr. KIND. Thank you, Mr. Chairman. Mr. Commissioner, I want to thank you for your incredible patience and your testimony here today. And Mr. Commissioner, this, what you are seeing, is an expected reaction from an overzealous committee that is so desperate to find any type of evidence, any type of fact that may point to a cover-up that does not exist, point to a conspiracy that does not exist, and have instead chosen to go after a public servant who, by all accounts, is a model of integrity, honesty, and professionalism.

I think you are the right person, at the right place, at the right time to help turn around a troubled agency. And this committee and this Congress should be working with you to get an IRS that is more responsive to the needs of the American public than this fishing expedition and witch hunt which has been going on for too long right now.

Mr. Chairman, I also want to ask unanimous consent to get two articles inserted into today's record. One dated July 20th, 2011, a New York Times article that is titled "Three Groups Denied Break By IRS are Named." And another one by the Center for Public Integrity titled: "IRS Says Liberal Group Too Political for Social Welfare Status."

Chairman CAMP. Without objection so ordered.

Mr. KIND. And the reason I want those articles inserted today, Mr. Chairman, is to point out the extreme irony of this investigation. The only organizations that were applying for 501(c)(4) status with the IRS that were denied that application were organizations that were affiliated with Democratic candidates for office, not conservative organizations. In the case of the three groups that were denied status, they were Emerge Nevada, Emerge Maine, Emerge Massachusetts that only supported Democratic candidates for office. And in the other article, its subtitle is Agency Rejects Tax Exempt Application of a pro-Blanche Lincoln Arkansas For Commonsense. They were denied their application because they were viewed as too political.

And that's—and there's no evidence at all that the IRS has denied any conservative group applying for (c)(4) status during the entire course of this investigation.

So this fake rage occurring from the other side is just that. They are going after the IRS because of the political fodder that it brings to their base and it is unfortunate that we are having to conduct yet another witch hunt here today.

Mr. Commissioner, let me ask you some quick questions here with the remaining time because you are under oath and we want to make this explicitly clear with your testimony. But to your knowledge, has anyone at the IRS deliberately withheld any emails requested by this committee?

Mr. KOSKINEN. No.

Mr. KIND. To your knowledge, has anyone at the IRS withheld any information specifically requested by this committee?

Mr. KOSKINEN. No. I would note that we haven't produced all the information we have because it is voluminous, but we have withheld no information.

Mr. KIND. Has there been any attempt within the IRS to destroy any evidence to your knowledge?

Mr. KOSKINEN. No attempt by anyone during the course of this investigation to destroy any evidence. As noted, we freeze the email. In the past, emails were only retained for 6 months.

Mr. KIND. And to your knowledge, has there been any attempt to tamper with any evidence or information requested by this committee?

Mr. KOSKINEN. None.

Mr. KIND. And since you have been acting Commissioner at the IRS have you seen any evidence of any attempt to cover up information pertinent to this committee's investigation?

Mr. KOSKINEN. No.

Mr. KIND. What about any information requested by the other investigations that have been occurring? I think you testified to six investigations that are still pending with the IRS.

Mr. KOSKINEN. We are providing the same information to all of the investigators. The tax writing committees get unredacted information. The non-tax writing committees get redacted information. So they have got about 170,000 pages fewer of information than this committee and Senate Finance.

Mr. KIND. Have you seen any evidence of any direct involvement by the White House in the screening of (c)(4) applications that are the subject and involved in this investigation?

Mr. KOSKINEN. I have seen none.

Mr. KIND. And has there been any evidence of any White House involvement in the IRS's responses to the information requested by this committee?

Mr. KOSKINEN. I have seen none.

Mr. KIND. Could you just give us a quick status update on the computer system at the IRS that you encountered when you took over as Commissioner?

Mr. KOSKINEN. Our computer system, as I said, is somewhat antiquated. We have been updating as much as we can. As noted in my testimony, we have about a \$1 billion infrastructure as a result of the budget constraints. This year we are spending minimal amounts on that, as I noted. We still can't get all of the employees on to Windows 7. I heard a reference earlier of somebody going to Windows 10. We should be so fortunate to get everybody on Windows 7. So we are significantly constrained, and our budget has been significantly underfunded on a declining basis over the last 4 years.

Mr. KIND. If you had a specific request for this committee, this Congress in regards to what we can do to assist the IRS to get an updated, more modern, functioning computer system, what would that be?

Mr. KOSKINEN. We have given you proposal—the President's budget would allow to us continue to make progress in that regard. We have at this point, 4- to \$500 million of modernization in improvement activities that we would undertake.

Mr. KIND. Already, thank you. Thank you, Mr. Chairman.

Chairman CAMP. Thank you. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman, and to our witness here for your time today, thank you. I realize—I think we have a large issue here. I know it has been dismissed as an overzealous reach of the committee, or a conspiracy similar to various others over history, political theater. I think you agree that this is a serious issue, and I think that moving forward, I would ask for full cooperation. It has been frustrating with the various responses that have been offered over the last I think 13, 14 months now. You mentioned contemporaneous documentation. Could you expound on that? I have an idea what that is, but I would like you to expound—

Mr. KOSKINEN. I am sorry contemporaneous—

Mr. SMITH. Contemporaneous documentation that you referenced earlier.

Mr. KOSKINEN. I was talking about, and by the way, if you wouldn't mind, maybe I can give you the time in the middle of this 2 hours, the last question I answered about what we knew when. As I noted in—

Mr. SMITH. Sir, time is limited. If you would answer my question, please.

Mr. KOSKINEN. Okay, I will answer. Contemporaneous means that the email traffic that we have found in our search about the crash was email traffic at the time of the crash when—and the time of the attempted restoration 3 years ago.

Mr. SMITH. Okay, and various documentation is recommended by the IRS with tax filers. Documentation is required to be retained how long?

Mr. KOSKINEN. Generally, as a general matter, people are subject to audits for 3 years unless there is criminal activity, and then we can go back, actually, in some cases, unlimited amounts. But as a general matter, unless you are a willful evader, we limit our audits to 3 years.

Mr. SMITH. Now given, shifting gears just a bit here, when you look at the size of the IRS, 90,000 people that we are reminded at \$2.4 trillion revenue, many would say that the core of power in Washington, D.C. is the Tax Code, 10,000 pages in length, various other descriptions of this. And it was noted earlier that a budget cut of \$1 in the operating costs of the IRS results in costing revenues \$7. Would you agree with that assessment?

Mr. KOSKINEN. Could I what?

Mr. SMITH. That a \$1 budget cut would result in a \$7 cost to revenue?

Mr. KOSKINEN. It depends on whom you ask as to whether it is \$4, \$6, or \$8, or \$7, \$1, but it is clear, as I have said, for instance, if we had the pre-sequester, \$500 million that we were denied this year, we would have provided back over \$2 billion of revenue. So we do provide—we collect, in our personal activities four times—over four or five times the entire budget of the agency.

Mr. SMITH. Okay, obviously, there are many opinions here, and I have to tell you that given the complexity of the Tax Code, and I think that is the main reason why we are trying to reform the Tax Code to come up with a simpler approach, my question, how possible it is to iron these issues out, that some dismiss, others find very serious. And I would hope that we could have the full cooperation as we do move forward. I would hope that you agree that this is not a finished case. Would you agree with that?

Mr. KOSKINEN. No, and we are anxious and delighted to continue to cooperate, as I noted. And I think it is important for the record, again, we have had a very good working relationship with your staff. And we have followed leads that they wanted us to follow, and it has been I think productive and we continue to hope to do that and we will be as responsive as we can to requests of the committee. I think it is important for us to do that.

Mr. SMITH. Well, Mr. Chairman, I certainly hope that we can continue to get this resolved. I know that there are various characterizations here. It is disappointing that to—some would dismiss this situation here today. I hope that we can move forward. Thank you.

Chairman CAMP. Thank you. Mr. Paulsen.

Mr. PAULSEN. Thank you, Mr. Chairman. Mr. Koskinen, I won't go down the same line of questioning that has been used already, but I do want to highlight an example of a case in my district as

well. A small business person—I went out and toured this small business in Minnesota. This individual, small business person, that their company had been involved and subject to four different IRS audits over the past 10 years. The most of which—the most recent is actually still going on. So far, each of these audits has resulted in minimal, or zero, zero changes to the company's income tax returns and the most recent audit that is going on right now has been going on for 18 months. It has cost the company over about \$110,000.

It is an audit that is done to help train IRS employees, ironically at a cost to the company. The agency has asked the company to produce an inordinate amount of information, even requesting a receipt for a \$10 cab fare that occurred months ago. I am curious, Commissioner, if the company came forward tomorrow and said this information has been lost, this \$10 cab fare we cannot find it, similar to the hard drives being undiscoverable, you would understand that, right?

Mr. KOSKINEN. Yes.

Mr. PAULSEN. You would understand that and you wouldn't hold them accountable? They wouldn't have to produce that record?

Mr. KOSKINEN. I am not an exam agent, but if, as in this case, he said, I don't have the receipt, but I can by other information demonstrate that it is pretty close to \$10 is what I spent, that would be allowed, just as I provided you 24,000 Lois Lerner emails from the time of the crash.

Mr. PAULSEN. If they had a system of hard drive crashes these went forward and they came forward and said, there's nothing we can do; the servers are down; the hard drives are gone; we have no recollection; we can't retrieve the data, would you end the audits?

Mr. KOSKINEN. As I say, I am not an exam auditor expert. I can tell you that those trying to become compliant, whether they are individuals or they are businesses, we reach out to them and we are trying and anxious to work with taxpayers trying to become compliant. The ones we are concerned about are the people willingly and consciously avoiding taxes, especially those offshore. Those we are happy, I am happy to chase to the end of the earth and throw in jail. But the people trying to become compliant, we reach out to and do the best we can to, in fact, work with them.

Mr. PAULSEN. And this is following just clearly on the same situation that Mr. Tiberi identified earlier, or that others have identified with individual cases in their districts, with our constituents who look to the IRS for impartial judgment, obviously—

Mr. KOSKINEN. Right.

Mr. PAULSEN [continuing]. And understanding. Let me ask you, Commissioner Koskinen, if an employee at the IRS has a computer problem, is there a way to track when that employee called regarding the computer problem?

Mr. KOSKINEN. Yes, there are tickets, which is how we actually in February discovered that there had been a computer crash. I misspoke at the end of—middle of 2 hours at the last questioner, I said we didn't know about the crash until the end of April. We didn't know about the ramifications of the crash, as I said in my organized testimony. There was the ticket, in fact, information

from IT that said there was a crash which caused us to then take the time to figure out what did that mean? Had their emails been lost? That's when we then discovered in the production of the emails the track of the emails that confirmed that, in fact, there had been a crash, there had been a significant effort trying to locate the emails.

Mr. PAULSEN. So with that ticket would the IRS be able to track what the IT issue was that was actually being handled?

Mr. KOSKINEN. I don't know what the details of the ticket are, but I do know from the correspondence and the emails that it was a hard drive crash and from some of Ms. Lerner's emails that she was unable to get to her emails.

Mr. PAULSEN. Would you be able to check based on the ticket who handled that particular IT issue and how it was resolved, the tracking mechanism within the IRS?

Mr. KOSKINEN. I don't know what the ticket would show, but we would be happy to make sure you have the ticket and any information related to it.

Mr. PAULSEN. Can you identify or tell me who at the IRS in the IT area handled Ms. Lerner's computer crash issue in 2011? Is that knowable, who handled that IT crash issue?

Mr. KOSKINEN. Yes, it was a frontline—the correspondence was with a frontline IT manager. What was not ordinary was when it couldn't be retrieved by the normal IT experts, to have it sent to the experts at the Criminal Investigation Division, which was an additional step taken—

Mr. PAULSEN. Can you tell me what caused Ms. Lerner's hardware crash?

Mr. KOSKINEN. Pardon?

Mr. PAULSEN. Can you tell me what caused the crash itself?

Mr. KOSKINEN. I do not know what caused the crash. In fact, in my understanding with computers, 3 to 5 percent of them crash as a general industry standard and there is no way to know why they crashed.

Mr. PAULSEN. Can you rule out, Commissioner, what you know, or based on these tickets, can you rule out that Lois Lerner destroyed her own computer? Can you rule that out?

Mr. KOSKINEN. There is no evidence that she did. And in fact, if she had done that—

Mr. PAULSEN. Can you rule that out, though?

Mr. KOSKINEN. Well, you can never rule out something you don't know. But at this point there is no evidence, or the evidence is she worked very hard to try to restore her email.

Mr. PAULSEN. And can you answer the questions about the hard drive crashes for the other six employees as well that were involved in the targeting, similar situation? Can we identify and make sure that they were not done intentionally?

Mr. KOSKINEN. We are investigating that right now, and as I said, we will give you all of the information we are able to determine about when those computers crashed, whether any emails were lost, what has been done with the hard drives. To the extent they are still available, they will be made available.

Chairman CAMP. Thank you. Mr. Pascrell is recognized.

Mr. PASCRELL. Thank you, Mr. Chairman. Let me give you 15, 20 seconds, sir. I am over here.

Mr. KOSKINEN. I am sorry. You are behind the stenographer.

Mr. PASCRELL. To answer one of the questions you weren't able to answer before in question, you wanted to correct the record.

Mr. KOSKINEN. That was just, and I started to correct the record, that as I said in my testimony, written testimony, we knew with the IT ticket in February there had been a crash. What we didn't know until late April, was what the implications were. Had their emails been lost? If so, were there other emails that were from Lois in that time frame. So I have been consistent except for that one point, I am told.

Mr. PASCRELL. Thank you. Do you agree that when the IRS grants a group tax-exempt status, now, that means that there is an advantage of one group as compared to another group in how they are taxed? This is important.

Mr. KOSKINEN. Yes.

Mr. PASCRELL. And I don't know what the number is, how much money the Federal Government doesn't take in because we do exempt. I mean, the total amount of money. I am not—that's not my question.

Can they save significant tax advantage to a group, whether they are left, right, north, south, doesn't matter, a significant tax advantage to that group, and its operations are being implicitly subsidized by you and me—you and I.

Mr. KOSKINEN. That's correct.

Mr. PASCRELL. Okay. Is that correct?

Mr. KOSKINEN. That is correct.

Mr. PASCRELL. Yeah, I am not using hyperbole here, am I? That's exactly what happens.

Mr. KOSKINEN. That's exactly what happens.

Mr. PASCRELL. So the taxpayers out there, do you actually think—I am going to ask your opinion—do you actually think they understand about what this is all about? I mean, this is not about what happened to the black box. This is about protecting the coverage that we have decided in our infinite wisdom to provide certain groups that are social groups, but not political groups. Now, do you believe the IRS has a responsibility to protect the taxpayers of this country by ensuring that the groups that we allow to operate as tax exempt are operating in a way that is consistent with the law?

Mr. KOSKINEN. I do and that applies to all 501(c) organizations.

Mr. PASCRELL. Now, according to the law in this area, tax exempt 501(c)(4) groups are required to operate exclusively for social welfare in that that must be their primary purpose. Am I correct or incorrect?

Mr. KOSKINEN. That is correct. The regulation provides that your primary purpose has to be social welfare activity.

Mr. PASCRELL. Now, let me ask you this then: Can you describe the process that the IRS currently uses to determine a 501(c)(4) group is really a social welfare group or is engaging in an inappropriate amount of political activity? Is that an intensive

process that requires a lot of money? Requires a lot of manpower? Explain.

Mr. KOSKINEN. It is a complicated process. We have 1,600,000 tax-exempt organizations.

Mr. PASCRELL. How many?

Mr. KOSKINEN. 1,600,000 total of which somewhere in the range of 100, or 150,000 are (c)(4) social welfare organizations. A lot of them are garden clubs or people that have nothing to do with advocacy. When an organization applies for exemption, the historic process has been, their activities or proposed activities will be determined on a facts-and-circumstances test. And then there are a long set of examples and complicated regulations that describe how to determine the amount of activity that is social welfare activity, and what kinds of activities and the facts and circumstances are political activities, and so it is a complicated process.

Mr. PASCRELL. But it is intensive?

Mr. KOSKINEN. And it is intensive.

Mr. PASCRELL. And it should be.

Mr. KOSKINEN. And it's what?

Mr. PASCRELL. And it should be.

Mr. KOSKINEN. Yes, we take seriously across all 501(c)s our determination process.

Mr. PASCRELL. In the last 4 years, how many organizations went from 501(c)(4)s to like any other organizations, in the last 4 years?

Chairman CAMP. Answer quickly, please.

Mr. KOSKINEN. I don't know the answer, but I will get that for you.

Chairman CAMP. Mr. Marchant.

Ms. SANCHEZ. Mr. Chairman.

Chairman CAMP. Yes.

Ms. SANCHEZ. Parliamentary inquiry.

Chairman CAMP. Yes, please state parliamentary inquiry.

Ms. SANCHEZ. Since we are being summoned to vote and not all members will be given a chance to ask questions, I would like to know if those of us who do not have an opportunity to question the witness may submit comments and questions for the record?

Chairman CAMP. Yes, and my plan is to recess and come back after votes, but—

Ms. SANCHEZ. Some of us have travel plans after votes.

Chairman CAMP. I understand, yes, but members will be able to submit questions. Mr. Marchant.

Mr. MARCHANT. I am privileged—

Chairman CAMP. Your microphone.

Mr. KOSKINEN. I keep forgetting to turn mine on as well.

Mr. MARCHANT. This one is working. I am privileged to have a district that has a vast number of people that are very high tech. So Mr. Chairman, I would like to submit for the record a letter from one of my high-tech people that has some suggestions on how you may recover some of these emails that we are looking for.

Chairman CAMP. Without objection, so ordered.

Mr. MARCHANT. This—

Mr. KOSKINEN. Can I have a copy of that letter as well as for the record?

Mr. MARCHANT. Yes. I would be happy to provide it to you.

Mr. KOSKINEN. That would be great.

Mr. MARCHANT. This entire inquiry was started because there were constituents in our district that were harassed and treated differently by the IRS. And whether we get all of the emails, ever get all of the emails involved in this, I think that it has already been established that this committee is dealing with this issue today not because it is a witch hunt, but because we have—our citizens in our districts were discriminated against and treated badly by the IRS. So that is why we are here today.

Do you believe it's important for this committee to receive all of the emails from Ms. Lerner's email account and all of the emails from all of the persons that have been identified of interest in this case?

Mr. KOSKINEN. I have always thought that was important.

Mr. MARCHANT. Is the IRS and its emails exempt from monitoring by the FBI or the NSA?

Mr. KOSKINEN. I have no information about that. But I have no indication that we are exempt from anybody's monitoring.

Mr. MARCHANT. So we don't know that the emails are not totally all recoverable in some process?

Mr. KOSKINEN. If the NSA was monitoring all of our emails and collecting them and saving them someplace, then they might be there. But I am not aware that that was done.

Mr. MARCHANT. Have you, as a Commissioner, personally contacted the White House, the Treasury, the Federal Elections Commission, and any other possible Federal agency that Lois Lerner may have contacted by email?

Mr. KOSKINEN. I have not contacted any of those agencies about any of the issues involved in this investigation, including her email.

Mr. MARCHANT. Would you be willing to commit to this committee that you will contact these agencies and request from them that all emails that they have—that they have on their records and can produce from Lois Lerner, and all of the people of interest, and request of them that they furnish them to you?

Mr. KOSKINEN. This committee, I think, has already requested them. We don't have authority over them and I am delighted to know that the White House and Treasury already have produced those. But with the other committees, I am happy to, on behalf of the committee, make a request that they provide any emails they may have. If you will give me that—remind me of the list of the agencies again, that would be helpful.

Mr. MARCHANT. I will submit it to you in writing.

Mr. KOSKINEN. Great.

Mr. MARCHANT. Thank you, Mr. Chairman.

Chairman CAMP. Thank you. Ms. Black.

Mrs. BLACK. Thank you, Mr. Chairman, and thank you Mr. Commissioner for being here today. I am a bit confused about the timeline here and what was known or was not known about Ms. Lerner's computer and the crash of her computer, and therefore, the lack of our ability to be able to get all of the emails. And this has gone on for about a year and a half now, and I read in your testimony before you came, and then I know you read your testi-

mony to us, it appears that the first time you were made aware that there was actually a crashed computer was when you saw that the date distribution of the email was uneven.

Mr. KOSKINEN. No, I didn't see that. I was—pardon me?

Mrs. BLACK. Am I understanding that correctly that that was the first time that you knew about the crashed computer was when you determined after all of these files were given and you went back to look at them, you did a limited search there, and you said, whoa, there is something wrong here because there is an uneven distribution. Was that the first time that you were made aware that there was a crashed computer?

Mr. KOSKINEN. That's the first time I was aware. That pattern caused people to do an investigation, and they found that there had been a crash, so I won't told two separate issues. I was told that there was a pattern problem, and IT had determined that there had been a computer crash.

Mrs. BLACK. So during this period of time, I find it very interesting, that is, we are asking for these emails, and we are asking for them over and over and over again, and they are not coming back to us in a timely fashion. And this was prior to your even getting there. That all of a sudden, you look and say, well, wait a minute, we don't have emails from this time period. Something else might have gone on, that that is when we find out, or you find out, or anybody in the agency that has been getting this request from us and other—from the OGR committee for emails, that's the first time it is found out? I find that to be very curious.

No one else knew, no one else would come and say that? You had to find this out because you saw that there was some kind of uneven distribution in the dates? Does that seem odd to you?

Mr. KOSKINEN. No, the way the emails are pulled out of the pool of emails that are in the server there, is they are all pulled together in just a pool. The emails were extracted initially and 11,000 of them were provided in response to the search terms, so they don't get pulled out by time—

Mrs. BLACK. Mr. Commissioner, I know how many emails. You have talked about that so many times—

Mr. KOSKINEN. No, no. They get pulled out initially. I am just saying, they get pulled out initially by subject matter.

Mrs. BLACK. This—let me just finish this because I only have a limited amount of time. But this discussion, and you say here, the discussion of the hard drive was made 3 years ago. And the hard drive is in the hands of the IG. So is that—I am confused here, does the—

Mr. KOSKINEN. Two hard drives.

Mrs. BLACK. Okay.

Mr. KOSKINEN. The hard drive that was recycled and destroyed was the hard drive that crashed in 2011. A new hard drive was provided to Ms. Lerner and she used that from then on, and that hard drive is—

Mrs. BLACK. That hard drive is gone. It is not in—

Mr. KOSKINEN. That hard drive was gone 3 years ago. This replacement hard drive was preserved and is in the hands of the Inspector General.

Mrs. BLACK. Okay, so we still do have a crashed hard drive that is not recoverable that is missing that information, and we will never get it because it is somewhere gone in space.

Mr. KOSKINEN. Three years ago.

Mrs. BLACK. Now, is it not true that there are also a requirement by law that you keep paper records as well if computers do go down? Do you not have paper records that are required? That's my understanding.

Mr. KOSKINEN. We are required by law to keep paper records of official records, and there's a definition under the Federal Records Act what our official records are for agency transactions. And then the employee is to print them out, create a hard copy of it, and preserve it.

Mrs. BLACK. Okay, so I find all of that to be very curious that in all of these questions of us asking for these emails, that all of a sudden just recently someone comes up to say, oh, by the way, Lois Lerner's email or hard drive is crashed, and we destroyed it. It is just gone. Can't retrieve it. Now, these six other computers that we talk about that, or the other custodians—

Mr. KOSKINEN. Right.

Mrs. BLACK [continuing]. I find that really curious, too, that that would be limited to that. So maybe you can help me out. Are there other computers that you have found? What percentage of computers, total computers have crashed within the Department? Are there more than just this six? Because it seems like if there are six people that are connected with this, then you may have had a huge crash over there with this many computers being crashed in just what we are asking for.

Mr. KOSKINEN. Right, the industry standard is you get 3 to 5 percent failures, which means—

Mrs. BLACK. Is this 3 to 5 percent—

Mr. KOSKINEN. No, it means across 90,000 employees.

Mrs. BLACK. So six of them that are related to this that are custodians?

Mr. KOSKINEN. The 82 we have looked at had—at this point we are looking at 7, which is within what the industry normally expects, which is why I asked for a search.

Mrs. BLACK. I have one more question for you—

Mr. KOSKINEN. Sure.

Mrs. BLACK [continuing]. Because my time is going to run out here.

Have you had any information that is taxpayer information lost due to these crashes?

Mr. KOSKINEN. I have no indication that taxpayer information has been lost.

Mrs. BLACK. So this information is lost, but all of this information, you have on millions of taxpayers have not crashed, not been lost, not been destroyed, is that correct?

Mr. KOSKINEN. There have been thousands of hard drive crashes in the IRS across time.

Mrs. BLACK. But we haven't lost any taxpayer information?

Mr. KOSKINEN. That I know of. But I don't know—the taxpayer information is saved in separate files so we have access to it.

Mrs. BLACK. Thank you, Mr. Chairman. I will have follow-up questions in writing.

Chairman CAMP. Mr. Crowley, and then the committee will recess.

Mr. CROWLEY. Mr. Chairman, thank you very much. Commissioner, welcome. Let me start by saying, I understand the suspicions of the majority upon hearing 2 years worth of emails just disappeared. Put the shoe on the other foot. When Democrats were investigating the lies and the incompetence of the Bush administration, we would be in disbelief at this ineptitude as well—as you were, for example, when we learned that the Bush White House admitted that it lost nearly 5 million, 5 million emails between March 2003 and October 2005 related to the allegations of the politically motivated dismissal of then-U.S. attorneys.

Fortunately, we can put suspicious minds at ease today. The Inspector General for the IRS, a man named J. Russell George, who was a Republican political appointee of President George W. Bush, has already testified that Ms. Lerner did not learn about the inappropriate criteria being used in local Cincinnati IRS office until a meeting of June 29th, 2011, at least 16 days after Ms. Lerner's hard drive crashed.

Yes, her computer crashed more than 2 weeks before she was notified about the inappropriate actions happening in Cincinnati. Now, like those who continue to refuse to believe that the birth certificate from the State of Hawaii is actually real, a conspiracy theorist will continue to rattle sabers, but really, does anyone in this room want to be seen in that light?

Commissioner, as I mentioned, welcome. Today, the IRS has provided over 770,000 pages of documents involved in this investigation. Is that correct, sir?

Mr. KOSKINEN. That's correct.

Mr. CROWLEY. And included in these, in those thousands of pages of emails, PowerPoint presentations, and notes delivered to Congress over 9 months ago, wasn't there information that specifically mentions the crash of Ms. Lerner's computer?

Mr. KOSKINEN. Yes. Over time starting in the fall, and through the spring, the emails from Lois about her failure, her computer failure and the emails about the attempts to restore it have all been provided to this committee.

Mr. CROWLEY. So the crash in Ms. Lerner's computer should come as no surprise, no surprise if the majority were actually reading the documents that the IRS was sending up. You may not want to answer that question.

Do you think American taxpayers would be upset to know that this phony investigation has already cost them over \$16 million and counting when the Republicans aren't even doing the basic due diligence of reading the documents that you are providing and sending to Congress?

I wouldn't necessarily want you to answer that question.

Mr. KOSKINEN. I am not answering that question.

Mr. CROWLEY. Commissioner, or could it be that the majority in their zeal for an Academy Award for the best outrage in a fake drama are more upset that they were caught actually not reading the documents the IRS had sent up here, thereby providing, prov-

ing—sorry, proving that they are more concerned with the show trial than an actually—than actually finding answers. And once again, I am not going to ask you to answer that question.

The Democrats on this committee have been outraged as has been said over and over again from the first day we heard about Ms. Lerner's apology to a tax conference. We are angered by any singling out of any tax-exempt application based on ideology, whether it be for progressive groups or Tea Party extremists. And contrary to what Mr. Ryan said, progressive groups were targeted as well. That is a full statement that he made.

We led the charge for her to be fired. We have agreed to oversight hearings with the determined zeal to find answers. And for that reason, Mr. Chairman, in an effort to get to the truth, the next hearing on this matter should be with the Inspector General of the IRS who has not been before this committee for over a year. Anything else would show that this committee is not using its time and resources seriously. With that, I thank the commissioner for being here today, and I yield back the balance of my time.

Chairman CAMP. Thank you. The committee stands in recess until shortly after votes are concluded.

[Recess.]

Chairman CAMP. The committee will resume. Mr. Reed is recognized for 5 minutes.

Mr. REED. Thank you, Mr. Chairman, and thank you, Commissioner, for being here today, and thank you for allowing us to go vote and come back and continue this hearing, Mr. Chairman.

This is a really important issue, obviously. To now hear the loss of some critical emails, to me is something that is—I don't understand how that could happen, why that could happen, but I want to get to the bottom of it as much as possible. And one of the things I found in your testimony that was intriguing was the actual referral of Lois Lerner's hard drive and how she went about to try to "recover" these emails.

So my understanding is that she asked the IT representative to—my hard drive failed. There's a problem with it. Can you take a look at it? That makes sense to me. But then there is another step. There is a step where it was referred to your criminal investigation department, your forensic experts in the IRS. Now, those are the folks that are well-trained in the area of criminal investigations, and these are top-notch forensic people, correct?

Mr. KOSKINEN. Correct.

Mr. REED. Okay, so there is about an 11-day, maybe 12-day—it is like July 20th, where the technician, the IT guy goes to Lois Lerner supposedly and says, we can't do anything about it, and then all of a sudden, she is told about 12 days later, as a last resort we are sending your hard drive to the CI, the criminal investigation, IRS division, for the forensic lab. Who was involved in any of those decision-makings that you are aware of during that period of time to send it to the forensic lab?

Mr. KOSKINEN. I don't know any of the names of people who caused it to go there. It, as I noted in my testimony, is an extraordinary step in the sense of normally, if a hard drive is irretrievable, it would simply be destroyed.

Mr. REED. That's my question, because you're referencing your testimony, this is an extraordinary effort. And so we are dealing with a normal hard drive situation according to you for 3 years—from 3 years ago.

Mr. KOSKINEN. Right.

Mr. REED. And yet, there is an extraordinary step taken sending to it the foreign lab.

Mr. KOSKINEN. Correct.

Mr. REED. I am very interested to know, who made that decision, why that decision was made, and I will also submit some follow-up questions in writing so I can just—

Mr. KOSKINEN. That would be fine. My understanding just from the emails that are in that train and otherwise, is that it was a reflection of Ms. Lerner's strong attempt to try to recover email.

Mr. REED. So do you think that Ms. Lerner is the one who asked it to go to the criminal investigation unit?

Mr. KOSKINEN. I don't know whether she was or not. I know she was pushing very hard to try to get the emails. On occasion, criminal investigation will do that, but it is an extraordinary step, because as you note they are very good at this, but they are spending most of their time with drug dealers and other criminal cases.

Mr. REED. And I know I am running on a limited time. On the forensic—these are the well-trained people.

Mr. KOSKINEN. Right.

Mr. REED. Now, when I have ever dealt with the criminal investigations, people in that—people like David Reichert, police officers, there's reports that they go through. Have you see the report that the criminal investigation forensic report people provided as they did their review of Lois Lerner's hard drive?

Mr. KOSKINEN. I have not.

Mr. REED. Are there any reports that exist that the criminal investigation forensic unit will have completed?

Mr. KOSKINEN. I don't know.

Mr. REED. Were they typically—

Mr. KOSKINEN. But we can—

Mr. REED. I mean, they are your criminal investigators. You have referred this matter 3 years ago, supposedly, to the criminal investigation unit to do a complete forensics—these are like the CSI guys. They are the guys that we watch on TV.

Mr. KOSKINEN. That is right. If you could restore the emails, they would have been able to do it.

Mr. REED. But also they are doing an investigation as to why this hard drive failed is my understanding too, isn't that correct?

Mr. KOSKINEN. No, there are any number of reasons as to why a hard drive fails. They would care—my assumption would be, they wouldn't care why it failed. Their request was, can you reconstitute—

Mr. REED. Oh, no, no, no. See, they are criminal investigators. Because if there is malfeasance—

Mr. KOSKINEN. They are also civil investigators.

Mr. REED. Yeah, but they are criminal investigations into your agency that are designed to catch criminals, and they are trying to figure out what criminal behavior potentially—if I get a referral, if

you send the hard drive to a criminal investigator in the IRS, my understanding, they are looking for illegal activity.

Mr. KOSKINEN. No, actually—

Mr. REED. In other words, did somebody potentially damage this hard drive on purpose? What caused the damage? I mean, isn't that something they would do in their normal course of business?

Mr. KOSKINEN. They also do civil cases. All of our civil prosecutions and cases are investigated by criminal investigators.

Mr. REED. Would you agree with me—would you agree with me that the criminal investigators are looking for criminal activity and that someone is trying to hide evidence, destroy evidence, that is relevant to a tax proceeding, that they are the guys that look into the forensics of the computer program to figure out what is going on?

Mr. KOSKINEN. They will do that on occasion. There is no indication they were doing anything other than retrieving emails.

Mr. REED. Yeah, so they received this hard drive on something as critical as this, and that's why I am asking those questions. I am very interested in knowing what those forensic folks, who they were—do you know who they were, first off?

Mr. KOSKINEN. I don't know who they were.

Mr. REED. Yeah, I would like to really know who they were, when they completed it, the paperwork and the documentation for chain of evidence purposes that they are trained in, I would definitely like to know what those records are and have them provide it to our office. And I guess my time is expired, and with that, I yield back.

Mr. KOSKINEN. Great, that's fine. Good.

Chairman CAMP. Thank you. Mr. Young is recognized.

Mr. YOUNG. Mr. Commissioner, you have mentioned a number of times today that the IRS learned of certain things at certain periods of time; that perhaps even your office has learned of certain things at different periods of time. I would like to know, and you correct me if you have already spoken to this, when you knew personally as Commissioner of the IRS, when you knew that we had a problem here that emails were lost or destroyed; that that constituted a larger issue and so forth.

Mr. KOSKINEN. When I first was advised about it, we didn't know whether any emails had been lost or destroyed. But in February—

Mr. YOUNG. When were you first advised of it, just so I am clear, February?

Mr. KOSKINEN. In February, I was advised that there was an issue with her emails, and subsequently, in the same time, I was advised about that, and there was evidence that there had been a hard drive crash, but nobody knew what the implications of that were in terms of whether any emails had been lost, or whether the hard drive had been recovered. All I knew, I was advised in February was that there was an issue with the initial production, review of emails, once we had started looking at all of her emails, and that there was a hard-drive cash and we needed to investigate what that meant. And that's what proceeded.

Going forward by mid-March we had determined, found the fact that there had been an attempt to reconstitute the hard drive un-

successfully, then started reprocessing all of her emails to make sure there were none missing and reprocessing all of the custodial emails to see what email of Ms. Lerner's were available.

Mr. YOUNG. Okay. So you thought it was presumably premature at that point. I have given you the opportunity to offer all the context you wanted to. Premature to notify this committee or anyone else of your knowledge, your personal knowledge.

Mr. KOSKINEN. My approach was that we needed to know, A, what this meant, what had been the result, and ultimately what emails, if any, were available and what emails, to the extent we could find them, were not available. And that if we gave a fulsome report, it would be more productive. And in fact, that's been my normal practice.

Mr. YOUNG. And others have spoken to the fulsomeness of that report, so I won't get into that, sir. We have invoked the Federal Recordkeeping Act. You yourself invoked it on at least one occasion, the Federal Records Act, that requires agencies to store and preserve certain documents. Why did the IRS change its document retention policy in May of 2013, the same month Lois Lerner announced this targeting initiative?

Mr. KOSKINEN. IRS—I wasn't here, but my understanding, they changed their document retention policy in May in response to this investigation. In other words, once the investigation started, the instructions went out to save all emails of everyone, that we would no longer recycle them every 6 months, that we would in fact make sure that nothing was changed.

Mr. YOUNG. Okay. Thank you, sir. Please explain to me why the IRS did not instead change its document retention policy when TIGTA initiated its investigation and started working with the IRS, whereupon it presumably became clear that there was a document retention problem.

Mr. KOSKINEN. I wasn't there at the start of the TIGTA investigation, but I would note there is no evidence at this point we know of that any emails were lost after that point in time.

Mr. YOUNG. Okay.

Mr. KOSKINEN. But then I would stress that, as I have noted several times, the final request I made was to review all custodians, and that process has been going on. We got the identification of those this week, and we are reviewing that, and we will share all of that information with you as well.

Mr. YOUNG. Okay. It is my understanding that Sunita Lough, who is the new head of the Tax Exempt and Government Entities Division, has resumed audits of 501(c)(4) organizations that were selected for examination during the targeting and due to political activity. These audits were suspended after the Acting Commissioner Werfel expressed concerns they may have been tainted by targeting. Given these concerns and the evidence Lois Lerner improperly influenced the audit selection of right-leaning groups, why would the IRS choose to reopen these audits?

Mr. KOSKINEN. Well, they were left as pending. It is my decision that those organizations deserve the right to get to closure on that. We made it clear to them that whatever requests for documentation in the past, which may or may not have been overreaching, would not apply. We would do this in a straightforward

way. My thought was it was important to let them know that they could get to closure. And we expect that we will.

Mr. YOUNG. But these groups were targeted we now know, and you resumed audits among a body of different groups that may have been improperly targeted. And that seems not only counter-intuitive, but certainly ill-advised.

Mr. KOSKINEN. Well—

Chairman CAMP. Time has expired. If you could answer briefly.

Mr. KOSKINEN. To the extent that an audit had begun, it seemed to me better for them and better for the process to close those so there was no implication that had we completed the audit, they might have actually been decertified or had a problem. So that we are moving toward closure, and we don't have any reason to assume that they won't all be cleared and that they will be able to operate appropriately.

Mr. YOUNG. My time has expired. Thank you, sir.

Chairman CAMP. Thank you.

Mr. Kelly.

Mr. KELLY. Thank you, chairman. Thank you for having the hearing.

Commissioner, good to see you again. We had about an hour's conversation earlier this week. I think the one thing we both agreed on is that I believe there is almost irreparable damage done to the agency, and the process, as it continues to unwind, makes it harder for the American people. Now I am talking about average everyday people who are held to an entirely different set of standards when it comes to what the IRS needs from them and documents, information that they need to keep for a long, long time. And when you are on the other side of the table, you are really not allowed to say, Well, my hard drive crashed. You know how this stuff goes. I just can't get to it.

But one of the things I think that really makes this important—this has nothing do with the IRS by the way, and you and I agreed on that Tuesday—what we do agree on is that, again, the irreparable damage. And kind of the building back again what people have known for a couple hundred years. I think if you go back to I think it is Daniel Webster and Chief Justice Marshall, they say the power to tax is the power to destroy. So, for over 200 years, this is in the back of people's minds. And as I have sat in the private sector and watched the IRS come in, there is nothing more chilling than to get that letter, or that call, or that visit, because you know right away, it's going to be a tough day for you.

Now, whether people actually do that or not is another question. It's what people believe, because perception is reality.

I would just say to you on this, see everything I look at, we knew well in advance that Ms. Lerner's emails were not going to be available. I mean, years ago, we knew they weren't going to be available. And I think the thing that bothers people on the committee is that we were told, No, you are going to get everything. Just give us a little more time. Just give us a little more time. How much more time do you think not just this committee but the American people can withstand? I think we have reached a point now where they are exhausted of waiting.

This is not an indictment of you, because I think you are trying to do the right thing. But the agency right now is tainted. And it's kind of reaffirmed what most of us believe, that we are guilty until we prove ourselves innocent. Now, in this case, I am looking at this information, I can't understand why, with all the knowledge that we knew, going back as far as 2011, that this stuff wasn't retrievable and telling Ms. Lerner herself, Hey, listen, sorry, can't get it for you. As a last resort, we sent your hard drive CI's, the IRS Criminal Investigation, forensic lab to attempt data recovery. On August 5, 2011, after 3 weeks of attempts to retrieve her emails, Ms. Lerner was advised, unfortunately, the news is not good. The sectors on the hard drive were bad which made your data unrecoverable. I am very sorry. Everyone involved tried to do their best. And so the IRS knew this.

You see where I am coming from. If you knew it so long ago, why is it so difficult to just tell people the truth? I am not accusing you. But this is a very dangerous slope that we are on. When do we tell the American people the truth? That truthfully, right now, we are not going to be able to answer what you are asking us. I just don't get it. What is the strategy as you move forward? How do you restore the faith and confidence of the people of the United States in this agency and in this body? We have all taken an oath to defend the Constitution. And yet I see there is two set of rules. There is one for the general public. There is one for your agency. General public is not allowed to keep bad records. General public is not allowed to have hard drives crash. The general public is not allowed to do some of the same things that we have allowed the agency to do. And they say, see, you don't understand, this is the way it has to play out. Again, going back to our conversation on Tuesday, where do you see this going? Because I don't see a bright end to this anywhere along the way. At the very least, it's going to come out that somehow people knew about this but refused to be forthcoming about it. That is the best you can do on this.

Mr. KOSKINEN. The record should note that no one knew in the IRS about this at the time we have been working on until we actually in February discovered it. The emails involved in fact were provided to this committee along the way in the normal production, and nobody was paying attention—

Mr. KELLY. No, no, no, Commissioner that is not true. You knew in August—not you, because you weren't there, the agency knew in August of 2011 that they couldn't retrieve this information, yet we have been constantly told we will get you everything. And the fact that you haven't been forthcoming—not you but your agency—adds to the dilemma that now we face. We have reinforced the people's greatest fear, that the IRS works in a completely different set of rules than the general public. People's constitutional rights have been violated, but we have chosen to turn a blind eye and a deaf ear to the American people, and have continued to stonewall them, hoping that somehow we can run out the clock. This is not a partisan issue. This is bipartisan. And I don't want to hear anybody say it's about an election. Is it about an election? I would say it is about an election. But it's not the way they intone it. So, listen, I appreciate you being here. I admire what you are trying to do. But I got to tell you, this is a long uphill climb to re-

store faith and confidence the American people have to have in this form of government we have.

Chairman CAMP. Time has expired.

Mr. KELLY. Because that's what it comes down to. It's all about trust, and nobody trusts the IRS right now. In fact, they don't trust us as much as they need to.

Chairman CAMP. Thank you. Time has expired.

Mr. Griffin.

Mr. GRIFFIN. Thank you, Mr. Chairman.

Thank you, Commissioner, for being here. I just want to follow up on a few of the issues. When asked by my colleagues why the timing of the disclosure regarding the hard drives was June as opposed to May or April or March or earlier, you indicated that you thought it made sense to just wait until you got all the information or did your analysis or what have you and to sort of, once you got all that figured out, then let us know.

I would just tell you, having been a counsel on the House Government Reform Committee, having served on this committee, having served at the White House and in the Department of Justice, I wouldn't take that approach anymore. That is not the way this city works. When you know and anyone at the IRS—in fact, I would say that you were disserved your—by the legislative folks at the IRS. If they did not tell you when you started, they should have walked in and said, This is a hot topic. There are numerous hearings on the Hill. Senators and Members of Congress, particularly the Ways and Means Committee, is going to want to know what's going on with this Lois Lerner situation. By the way, we have some hard drive problems, and we never told anybody. Let's not wait. It's in everybody's interests to tell the Hill.

Now, I know about the 770,000 documents and all that stuff. I used to be the guy on the House Government Reform Committee who on a Friday night got a box, got 10 boxes from the White House in the late 1990s. I was the guy that actually went through those thousands. And I can tell you that the numbers are misleading, because you get a bunch of blank sheets, you get a bunch of nothing. There is not a lot of substance there usually. Yes, I understand you are producing them, a bunch of them. But the number in and of itself doesn't tell you a lot.

But the bottom line is I would just approach this committee differently, and I think you would get a different response from now on. Because people here feel like they need to know, and they want it to be a conversation. They don't want it to be a situation, and I know how this works, where the leg folks say, and the White House says, Don't answer that unless they ask you specifically. If they don't ask the right question, don't give them that answer. Now I can tell you that happens all the time. And I know for a fact that it happened to one of my colleagues here that was telling me earlier, not necessarily with you, but with someone else.

I give you an example. So you were interviewed in March of this year in a fellow committee, and you were interviewed by the Chairman Boustany up there, Dr. Boustany, and there were numerous times where you were asked about the Lois Lerner emails. And you would say things like, We are going to produce them. We are working on redactions. We are looking at this; we are looking at that.

There was never one mention of an issue, as you describe it. There was never one mention of a glitch. And you know, with all due respect, my daughter's here with me this week. That's like when she—I don't ask the right question about what she ate, and then I find out that she ate a box of cookies and she didn't tell me because I didn't ask the right question. Well, she didn't tell me because she knew I'd be mad. And I think you had numerous opportunities in these transcripts to just say, Hey, we are going to get you all the emails that we have, but I want you to know we have got some problems. And you should know about the hard drive. And it never happened.

We faced this with Lois Lerner when we asked about the (c)4s. We never asked them the precise right question, so we never got our answer. I know how that game's played. I have been up here long enough. And I'm saying if you want to get a different attitude from this committee, go ahead and share what the political people are telling you not to share. Just tell us. Just tell us, share it. And if it's surplusage, we'll ignore it.

And one more thing. I do have a question. Do you know of anyone in the IRS who has gone before a grand jury on this issue, or do you know of any grand jury subpoenas that have been issued on this investigation?

Mr. KOSKINEN. I know of none.

Mr. GRIFFIN. None. None whatsoever. Do you know of a Department of Justice investigation on this at all, criminal investigation?

Mr. KOSKINEN. I don't know anything about that investigation. I have not interfered with anybody's investigation.

Mr. GRIFFIN. Thank you.

Chairman CAMP. Thank you.

Mr. Renacci.

Mr. RENACCI. Thank you, Mr. Chairman.

Thank you, Commissioner, for being here. And thank you for sticking around. Just a couple things to try and wrap up some things I heard. You testified earlier that 3 to 5 percent is a normal crash rate for hard drives.

Mr. KOSKINEN. That's what I am advised.

Mr. RENACCI. Okay. And there were 82 IRS employees with some potential political role in political targeting; seven hard drives failed. That's approximately 9 percent. Can you get me some information as to what the normal crash rate is for the IRS computers?

Mr. KOSKINEN. I would be delighted to get that. I am advised that once you get outside the warranty period, the failure rate goes to 10 to 16 percent, but we will get you all of that information.

Mr. RENACCI. I would appreciate that. The other thing that concerned me based on what I have been hearing today is that there was a hard drive failure, it was realized, it was then investigated. At some point in time, someone said we can't get the information off of it. And then it was destroyed. Is that a normal process to destroy, especially in the middle of an investigation, destroy a hard drive?

Mr. KOSKINEN. I would stress again that that hard drive was never destroyed during an investigation. Nothing has been destroyed during this investigation. That hard drive was destroyed 3

years ago, after it was irretrievable in terms of email, and it had nothing to do with this investigation.

Mr. RENACCI. Okay. Well, I would also tell you that I practiced in front of the IRS for about 25 years as a CPA. I have had to—I have had some very unusual clients, I will tell you, that had some information that wasn't around, had their hard drives lost, had a lot of things occur, and had to listen to the IRS say to them, Why did you destroy, even though you weren't being audited back then, why would you destroy something that has information that might be needed? And I know you talked about the 3 years and the 10 years. But I have also seen the IRS bring a guy down on his knees in tears because they said we are going to prosecute you to the full extent of the law because you don't have the proper information. Now, when did the standard change that the individual that you are auditing has to do certain things but the IRS doesn't have to keep information or have to keep hard drives or have to make sure that their documentation is safe?

Mr. KOSKINEN. As the record will note, from all the indications we have, Ms. Lerner worked very hard and the IT department worked very hard to restore that information, not to lose it.

Mr. RENACCI. I understand that. But when did it change that there would be a destruction of a document, which is a hard drive, knowing that it could potentially—there is data on there that might be needed?

Mr. KOSKINEN. Nobody at that time viewed the data as being related to an investigation. As a general matter, if an employee's hard drive fails and the information cannot be retrieved, it is regularly recycled and destroyed.

Mr. RENACCI. I will also tell you that it's interesting how you answer those questions. And your answers—I think you have heard people saying we have to restore trust to the American people. Your answers probably should be that we are going to make sure that we look at our processes in the future. I wasn't here 3 years ago. And we are going to make sure we are not destroying hard drives until we fully know that they are not going to be an issue for the future. And that would be what something I think the American people would rather hear than, Well, it was destroyed, especially in this situation that we have today.

Mr. KOSKINEN. It's a very good suggestion, but I think it's important not to leave any implication here that there was any attempt to get rid of evidence even before the investigation started. I think it's important to remind people that the evidence demonstrates Ms. Lerner worked very hard, the IT system people worked very hard, the CI Division worked very hard trying to restore the emails.

Mr. RENACCI. I don't practice in front of the IRS any more; of course, I am here. But if I did, I wonder how that answer would be taken sitting in front of an IRS agent.

Mr. KOSKINEN. If a client came before the IRS and said, I have lost the data, but here's all the evidence that when I lost it all, I did to try to retrieve it, here is alternate evidence, like the 24,000 emails that we have provided, I would hope that the IRS would look at the person as somebody who is trying to comply, not somebody who is trying to evade.

Mr. RENACCI. Well, I can tell you from past history that doesn't happen. And in many cases, I am not going to tell you in all cases, because you do have some very good employees, but in some cases, I have seen them actually prosecute to the full extent of the law, which is not fair when an individual says, I don't have it, I have lost it, I don't have the opportunity to get it, and I don't have other information available to bring it together. So, again, this is all about the American people and them having an opportunity to get some full faith back in the IRS. But at the same time, how are they ever going to do that when you stand there and say, We didn't do anything wrong, we destroyed a hard drive, it wasn't part of the process, but yet when the other side, when the shoe's on the other side and the individual taxpayer sits in front of you and says, I don't have the information, they are always prosecuted to the full extent of the law? Thank you. I yield back.

Chairman CAMP. All right.

Thank you very much.

Mr. Renacci is our last questioner.

With that, this hearing is now adjourned.

[Whereupon, at 1:00 p.m., the committee was adjourned.]

[Submissions for the record follow:]



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

June 20, 2014

The Honorable Dave Camp
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Camp:

I write in response to your recent letter to Secretary Lew regarding the Committee's investigation related to the Internal Revenue Service (IRS) and the Treasury Inspector General for Tax Administration's May 14, 2013 audit report. Since Congress's investigations began over a year ago, the IRS has produced over 700,000 pages of documents covering a period of over four years, over 35 IRS and Treasury employees have been interviewed, and over 15 hearings have been conducted where questions relating to these issues have come up. There has been no evidence that Treasury was involved in the screening of applications for tax-exempt status described in the TIGTA report or that Lois Lerner communicated with anyone at the Treasury Department about these matters.

Nonetheless, Treasury is committed to continuing to work with Congress as it performs its oversight role. Treasury has conducted searches to identify communications with Lois Lerner, not limited by subject matter. Enclosed you will find the materials we have located that are responsive to your request for communications between Lois Lerner and any persons within Treasury for the period between January 1, 2009 and May 1, 2011.

In response to your questions, IRS informed Treasury in April 2014 that Ms. Lerner's custodial email box appeared to contain very few emails prior to 2011. Treasury agreed with the IRS that it should inform Congress as soon as it was able to provide accurate and complete information, although Treasury ultimately deferred to the IRS on how to handle the matter.

Thank you for your letter. We are firmly committed to cooperating with the Committee's review.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alastair Fitzpayne".

Alastair M. Fitzpayne
Assistant Secretary for Legislative Affairs

Enclosure

Identical letter sent to:

The Honorable Charles Boustany, Jr.

THE WHITE HOUSE
WASHINGTON

June 18, 2014

The Honorable Dave Camp
Chairman
Committee on Ways and Means
United State House of Representatives
Washington, D.C. 20515

The Honorable Ron Wyden
Chairman
Committee on Finance
United State Senate
Washington, D.C. 20515

Dear Chairmen Camp and Wyden:

I write in response to your letters to the President dated June 16, 2014 and June 17, 2014, respectively, regarding the Committees' investigations related to the Internal Revenue Service (IRS) and the Treasury Inspector General for Tax Administration's May 14, 2013 audit report. Your letters requests all communications between Lois Lerner and any persons within the Executive Office of the President (EOP) for the period between January 1, 2009 and May 1, 2011.

We conducted a search for responsive documents and were unable to identify any communications between Lois Lerner and persons within the EOP during the requested period. We identified three communications where a third party emailed both Lois Lerner and persons within the EOP. One communication is a spam email from October 2009. Two communications are emails from February 2009 where a person sought tax assistance and, according to one of the emails, included a number of officials in Congress and at Federal agencies as recipients. These documents are enclosed. As the two documents from February 2009 include personally identifiable taxpayer information, we trust you will treat the information with appropriate care.

Chairman Camp's letter also asked when the EOP was informed, and by whom, that some of Lois Lerner's emails could not be located. In April of this year, Treasury's Office of General Counsel informed the White House Counsel's Office that it appeared Ms. Lerner's custodial email account contained very few emails prior to April 2011 and that the IRS was investigating the issue and, if necessary, would explore alternate means to locate additional emails.

Sincerely,



W. Neil Eggleston
Counsel to the President

Enclosures

DEVIN NUNES
21st DISTRICT, CALIFORNIA

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEES:
HEALTH
TRADE
COMMITTEE ON BUDGET

ASSISTANT REPUBLICAN WHIP
The Honorable Sander M. Levin
Chairman, Ways and Means Committee
1102 Longworth House Office Building
Washington, DC 20515



UNITED STATES
HOUSE OF REPRESENTATIVES
September 21, 2010

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264 CLINTON AVENUE
SUITE 206
CLOVIS, CA 95612
(559) 327-8235

WWW.NUNESHOUSE.GOV

Dear Chairman Levin:

Based on recent reports, there is reason to believe that Obama Administration officials have misused confidential tax information. Such activity raises serious questions about the rule of law and our tax system.

On August 9, 2010, the President delivered a speech in which he chastised Americans for Prosperity, founded by David Koch of Koch Industries, for exercising their First Amendment rights. Several weeks later, on August 30, 2010, *The New Yorker* printed an article entitled "*Covert Affairs: the billionaire brothers who are waging war against Obama*," which attacked David and Charles Koch for their political beliefs. The apparently coordinated attack on the Koch family and their private company was continued on September 10, 2010, with comments by Democratic Congressional Campaign Committee Chairman Chris Van Hollen. Six days later, the President made yet another attack while speaking to a partisan audience.

The Weekly Standard recently reported that during this sustained effort to discredit two private citizens and a private corporation, White House officials had specific knowledge of Koch Industries' tax liabilities. As evidence, *The Weekly Standard* reported that during an August 27, 2010 conference call on corporate taxes, a "senior Obama administration official" singled out Koch Industries during an on-the-record briefing about corporate taxes as a multibillion dollar business that does not pay corporate income taxes.

Under current law, neither individuals nor private corporations are publically required to disclose tax information. Moreover, federal taxpayers have a statutory right to privacy and confidentiality in their dealings with the Internal Revenue Service (IRS). I find it absolutely appalling to consider that a government official would use tax information to discredit or injure someone, especially in response to an exercise of First Amendment rights.

Whether accurate or not, recent press accounts of White House staff violating federal law by accessing or misusing confidential tax information of private corporations raises significant concerns. Considering the IRS falls under the jurisdiction of the Ways and Means Committee it is incumbent upon the Committee to immediately conduct oversight hearings to determine the veracity of the allegations. It is important to discover the facts in this case and any other instances where privacy laws have been violated.

I am convinced that allowing such privacy violations to go unchallenged sets an extremely dangerous precedent and constitutes a failure of leadership. Accordingly, it is my sincere hope that, as Chairman of the Ways and Means Committee, you will investigate this serious matter.

Best regards,

Devin Nunes
Devin Nunes
Member of Congress

Cc: The Honorable Dave Camp, Ranking Member, Ways and Means Committee



ARVEL HATHCOCK
3716 N White Chapel Blvd
Southlake TX 76092
arvel@thehathcocks.com

June 18, 2014
Congressman Kenny Marchant
1110 Longworth HOB
Washington, DC 20515

Dear Congressman Marchant:

I am a constituent living in the district. I am writing today to provide you with my thoughts concerning the missing emails of IRS employee Lois Lerner. I am in the email software business and have been involved with electronic mail for 30 years. I founded and own Alt-N Technologies, Ltd which is a software company focused on the electronic mail space and is recognized as a leader in the electronic mail industry. My start was as a computer programmer (which I still am today) so I actually "write the code" that makes email work - all day, every day. I am therefore quite familiar with how it can and should work. Finally, I have been involved for many years in the creation and implementation of the various industry standards relating to electronic mail upon which all email software interoperates (whether it was software written by me or not).

At first, I found the claim that Ms. Lerner's emails were irretrievably lost as a result of the hard drive within her personal workstation PC to be inconceivable. Electronic mail is not stored on its user's personal PCs. In the mid-90's my colleagues in the IETF (Internet Engineering Task Force) standardized something called IMAP (Internet Message Access Protocol) which changed the paradigm from one of storing mail on workstation PC's to storing mail on a centralized mail server. Two of the core reasons for this were to prevent the loss of email due to workstation crashes and to centralize all email on a single server so it could be easily archived and backed-up. Microsoft's email server - which press reports say is what the IRS uses - supports IMAP and something called Exchange Server ActiveSync which operates in a similar way to IMAP in terms of storing mail on a centralized server. These technologies dominate the market and make email better and safer.

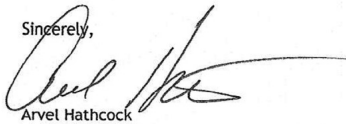
Since yesterday I have learned through press reports that IT decision makers at the IRS have supposedly enacted policies which circumvented the centralized storage of email by actually allowing and encouraging users to store mail on their personal workstation PCs and not on the server which contradicts nearly two decades of industry best practice. It never occurred to me that any responsible IT administrator would ever allow, enable, or encourage such a thing - especially in a government agency. Further, press reports have stated that the IRS IT department does not operate an email archiving system. This is incomprehensible to us in the industry. For some portions of the private sector it would be illegal but it is in every case irresponsible and dumb.

ARVEL HATHCOCK
3716 N White Chapel Blvd
Southlake, TX 76092

As a result of these rather convenient but bone-headed policies I must modify my position to say that it is at least theoretically possible that the IRS does not have the emails in question. However, that does not mean that the emails are irretrievable. These emails went somewhere and when an email crosses from one mail server to another there is a copy of it in both places. Also, mail servers maintain log files which will (at minimum) document the "meta-data" of every email transaction. Mail server log files record the SMTP (Simple Mail Transfer Protocol) data either in part or in whole which will show who sent the message, to whom they sent it, and when. More advanced mail systems (like the one I wrote) log the entire SMTP transaction and even the Subject: text of messages. It is standard IT practice to maintain these logs for diagnosing delivery issues and recording transactions. The recipients of any missing email will have similar records kept by their mail server. These logs won't have the actual message content but they will show who sent what to whom.

In conclusion, yesterday, I was steadfast and certain that this "the dog ate my homework" excuse was an outright lie but that was based on my assumption of basic competence and responsibility by IRS IT policy makers and administrators. I still find it unbelievable.

Sincerely,



Arvel Hathcock

IRS says liberal group too political for 'social welfare' status



Published on *Center for Public Integrity* (<http://www.publicintegrity.org>)

[Home](#) > IRS says liberal group too political for 'social welfare' status

IRS says liberal group too political for 'social welfare' status ^[1]

Agency rejects tax-exempt application of pro-Blanche Lincoln Arkansans for Common Sense

By Michael Beckel ^[2]

16 hours, 22 minutes ago

The Internal Revenue Service wasn't just targeting tea party organizations and other conservative groups that applied for tax-exempt status.

The agency recently denied the application of a liberal group that played a prominent role in the failed re-election bid of Senate Agriculture Committee Chairwoman Blanche Lincoln in 2010.

In a [letter](#) ^[3] dated March, 19, 2014, and publicly released last week, the IRS told liberal group Arkansans for Common Sense that it did not qualify for tax-exempt status under Sec. 501(c)(4) of the U.S. tax code — the section for organizations "operated exclusively for the promotion of social welfare."

"You are not primarily operated for the promotion of social welfare of the people of the community because your primary activities are the participation in a political campaign on behalf of or in opposition to a candidate for public office," stated [the letter](#) ^[3], which was redacted, as required by law, to omit identifying information about the group and candidates in question.

But Ben Noble, the former executive director of the [now-defunct](#) ^[4] Arkansans for Common Sense, confirmed to the [Center for Public Integrity](#) ^[5] that his group "did receive a rejection letter."

An initial rejection letter from the IRS to Arkansans for Common Sense was dated May 7, 2013 — just three days before IRS official Lois Lerner [acknowledged](#) ^[6] the targeting of applications from political advocacy groups for 501(c)(4) status.

The March 2014 letter rejects Arkansans for Common Sense's appeal and notes that the group is now required to file income tax returns.

Ahead of Lincoln's contentious 2010 primary battle against fellow Democrat Bill Halter, Arkansans for Common Sense spent \$192,000 on advertisements urging voters to support Lincoln. After Halter forced Lincoln into a runoff, the group launched a \$446,000 negative ad blitz against him.

Those expenditures — which were [reported to the Federal Election Commission](#) ^[7] because they expressly advocated for Lincoln's election or Halter's defeat — constituted 49.5 percent of Arkansans for Common Sense's total \$1.3 million in spending in 2012, according to the group's [2010 tax return](#) ^[8].

When the FEC asked who was bankrolling the groups' ads, Arkansans for Common Sense [told the agency](#) ^[9] that its donors made contributions to support its "general purpose of educating the public on a wide range of issues of general concern." Social welfare nonprofits are only required tell the FEC the names of donors who give to help produce specific ads — something that rarely happens.

Arkansans for Common Sense continued to run pro-Lincoln advertisements ahead of the general U.S. Senate election, which she ultimately lost to Republican John Boozman.

According to its [2010 tax return](#) ^[8], Arkansans for Common Sense spent \$1.2 million on "radio and television time in order to educate Arkansas on key issues facing the state." Based on records Arkansans for Common Sense later submitted to the IRS, the agency concluded that "about 85 percent" of the group's expenses for media buys were incurred "during periods leading up to the primary and general elections."

Nonprofits organized under Sec. 501(c)(4) of the U.S. tax code have played an increasingly important role in elections following the U.S. Supreme Court's [Citizens United v. Federal Election Commission ruling](#) ^[10] in January 2010.

That decision held that corporations, including certain nonprofit corporations and unions, could spend general treasury funds on advertisements that called for the election or defeat of candidates.

Critics have contended that some political groups are masquerading as social welfare nonprofits to avoid disclosing the names of their donors. Campaign finance reform groups have [repeatedly](#) ^[11] [asked](#) ^[12] the IRS to investigate big-spending social welfare nonprofits such as the pro-Republican Crossroads GPS and pro-Democratic Priorities USA.

At the same time, the IRS has been the focus of Republican-led congressional inquiries and withering criticism stemming from its [practice](#) ^[13] [earlier](#) ^[14] [this](#) ^[15] [decade](#) ^[16] of targeting primarily conservative organizations for heavy scrutiny while reviewing their applications for tax-exempt status.

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July 20, 2011

3 Groups Denied Break by I.R.S. Are Named

By STEPHANIE STROM

Three nonprofit advocacy groups that were denied tax exemption by the Internal Revenue Service were all units of Emerge America, an organization devoted to cultivating female political leaders for local, state and federal government.

The I.R.S. denied tax exemption to the groups — Emerge Nevada, Emerge Maine and Emerge Massachusetts — because, the agency wrote in denial letters, they were set up specifically to cultivate Democratic candidates. Their Web sites ask for evidence that participants in their training programs are Democrats.

News of the I.R.S. decision, which surfaced in heavily redacted denial letters to the groups that were posted to the agency's Web site last Thursday, raised concerns among advocacy groups, known as 501(c)(4) organizations after the section of the tax code that governs them, at large.

Crossroads GPS, a conservative advocacy organization with ties to Karl Rove, the Republican strategist, sent an e-mail to supporters on Tuesday, assuring them that it was not one of the three groups denied exemption.

Karen Middleton, president of Emerge America, acknowledged on Wednesday that the three state organizations had been denied an exemption. She said the groups were in the process of converting into 527 organizations, which are also tax-exempt but disclose their donors, unlike 501(c)(4) groups.

"We're all small organizations," Ms. Middleton said. "We train about 25 Democratic women each year in each state where we work, and we don't engage in any work that involved candidates or campaigns."

The I.R.S. has approved five other state Emerge organizations — in California, Arizona, New Mexico, Wisconsin and Kentucky — as advocacy groups.

"It's just bizarre," said Kimberly Ellis, executive director of Emerge California. "Nevada has

been around and waiting for approval for the last five years, and in the interim, Oregon and Kentucky are established and file for their approval — and Kentucky gets it but Nevada, Maine and Massachusetts don't."

Michelle Eldridge, an I.R.S. spokeswoman, said the agency could not comment on individual taxpayers.

Paul Streckfus, a former I.R.S. official, said such inconsistency was not unusual. In part, it is because the office that handles approval of tax-exempt groups, he said, receives hundreds if not thousands of applications a day at its office in Cincinnati. Some of the applications are then sent for processing at field offices around the country, and, in some cases, to headquarters in Washington.

"My guess is that the one that recently got approved went to a different office than the ones that were denied, which seem to have been handled in Washington," Mr. Streckfus said.

Ms. Ellis said Kentucky's application was processed in an I.R.S. office in the Western United States. She did not know where the still-pending application of Emerge Oregon ended up.

Submission for Record
House of Representatives
Ways and Means Committee

20 June 2014

For the record,

I would like to have the following statements added to the official record of the Oversight Hearing.

The testimony regarding that emails were lost due to the crash of the hard drive on a desktop or even a laptop computer was knowingly false and misleading.

Emails are not stored in the hard drive of any computer; they are stored on an email server. If they were stored on the computer hard drive you would only be able to access them on that computer and no other computer or electronic device.

In order for the emails to be lost, it would have had to have been the email server that crashed and all the emails for everyone on the server would have been lost.

In order for the emails in question to have been lost for only 1 or 6 employees, someone would have to physically log into the email server and remove them.

Any and all testimony saying, "the emails were lost because the hard drive on a computer crashed", is a complete and total falsehood.

Thank you,

Paul V. Redgate

