

1 REVISITING IRS TARGETING: PROGRESS OF AGENCY REFORMS
2 AND CONGRESSIONAL OPTIONS

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4 WEDNESDAY, JULY 29, 2015

5 United States Senate,
6 Subcommittee on Oversight, Agency Action,
7 Federal Rights, and Federal Courts,
8 Committee on the Judiciary,
9 Washington, D.C.

10 The Subcommittee met, pursuant to notice, at 2:05 p.m.,
11 in room SD-106, Dirksen Senate Office Building, Hon. Ted
12 Cruz, Chairman of the Subcommittee, presiding.

13 Present: Senators Cruz, Sessions, Lee, Tillis, Coons,
14 Durbin, Whitehouse, Klobuchar, and Blumenthal.

1 and more out of the pockets of hardworking taxpayers, the
2 IRS has become more and more powerful. There are few things
3 more terrifying to an American citizen than the IRS come
4 knocking at your door.

5 But the last 6-1/2 years, it has taken an even darker
6 turn. Students of history are well aware that Richard Nixon
7 attempted to use the IRS to target his political enemies.
8 That was wrong. It was an abuse of power. And it is to the
9 credit of the professionals at the IRS that they refused
10 President Nixon's demands that the IRS be turned into a
11 political weapon.

12 The last 6-1/2 years, unfortunately, the IRS did not
13 demonstrate that same courage, that same integrity, that
14 same willingness to stand up to political demands. The
15 available evidence indicates that not only did the Obama
16 administration attempt to use the IRS to silence, to punish
17 its political enemies, but the Obama administration
18 succeeded in doing so.

19 When Richard Nixon abused his power, he was rightly
20 condemned by both parties for an abuse of power. And,
21 indeed, in the early days of the IRS scandal, the same was
22 true of the Obama administration. On the day that the
23 Inspector General report of the Treasury Department broke,
24 President Obama said he was outraged. He said, "I am angry,
25 and the American people have a right to be angry as well."

1 I do not say this often, but I agree emphatically with
2 President Obama. The American people have a right to be
3 angry when an instrument of the Federal Government is used
4 as a partisan cudgel to punish, to silence citizens that
5 dare speak out against their Government, that dare take a
6 differing policy view than the current party in power.

7 And yet although the American people had a right to be
8 angry, many months have passed, years have passed, and not
9 one single person has been indicted. Years have passed, and
10 many of the victims of illegal targeting have yet to be
11 interviewed.

12 Now, some might think that is curious. If the
13 President of the United States was telling the truth when he
14 said he was angry, one would expect action from prosecutors.
15 And yet subsequently the rather stunning news broke that the
16 Obama Justice Department put in charge of the investigation
17 a major Democratic donor who had given over \$6,000
18 personally to President Obama and the Democrats.

19 And wonder of wonder, marvel of marvels, when you ask a
20 major Democrat donor to investigate whether the IRS is
21 targeting the political enemies of the Obama White House,
22 nothing happens.

23 Twice we have seen Lois Lerner come before the United
24 States Congress, raise her hand, and plead the Fifth. Now,
25 that is her right under the Constitution, under the Bill of

1 Rights. But it is worth understanding what that means.
2 When you are pleading the Fifth, you are saying, "If I
3 answer your questions, I may well implicate myself in
4 criminal conduct." A senior official of the IRS twice
5 saying, "If I answer your questions, I could end up in the
6 slammer."

7 Anyone who cares about integrity in Government should
8 be horrified at senior Government officials saying, "I
9 cannot tell you what I did because criminal liability may
10 result."

11 And yet those protestations of how angry the President
12 was, how angry the American people should have been, somehow
13 faded into the mist. With a pattern we have seen of scandal
14 after scandal after scandal of this administration, on day
15 one the President always says he is angry. And then the
16 next step kicks in. The administration begins stonewalling,
17 begins denying witnesses, begins resisting turning over
18 documents, begins suddenly saying, "We have lost Lois
19 Lerner's e-mails."

20 Wonder of wonder, do not expect a Government agency to
21 actually keep records of e-mails being sent by senior
22 Government officials. "We have destroyed the hard drives."
23 I have to say Richard Nixon's ghost must have been smiling
24 at that protestation. Tricky Dick understood well
25 destroying e-mails. In his day, it was erasing tape. But

1 it was much the same. We should expect accountability from
2 our Government, and we should expect to know the extent to
3 which the Federal Government continues to target those who
4 appear to be the political enemies of the President.

5 There is a reason there is a growing hue and cry across
6 this country to abolish the IRS altogether. Part of it is
7 simply the abuses of the Tax Code, the burdens on job
8 creation, the burdens on people struggling to achieve the
9 American dream. Part of it is the complexity that nobody,
10 it seems, understands fully what the Tax Code says. Even
11 though with advanced professional training have to hire
12 specialized accountants to keep up with the vast complexity.
13 But the real reason why more and more Americans in all 50
14 States are saying, "Enough is enough," is we should not have
15 a Federal Government agency that becomes an intimidator
16 going after citizens, going after citizen groups, violating
17 their First Amendment right.

18 No politician has the right to use the machinery of the
19 executive branch to target their political enemies. When
20 Richard Nixon did it, it was wrong, and he rightly resigned
21 from the Presidency in disgrace for his abuse of power.

22 I am reminded of noted liberal constitutional law
23 professor Jonathan Turley, who voted for President Obama in
24 2008--he is no conservative--and yet Professor Turley has
25 told Congress that President Obama has become the embodiment

1 of the imperial Presidency, that Barack Obama has become the
2 President that Richard Milhous Nixon always wished he could
3 be.

4 This hearing is about ensuring accountability at the
5 IRS, both for past misconduct that continues to be covered
6 up, to be stonewalled, that continues to lack any
7 accountability, and also for current and future practice, to
8 answer the question, What is happening today? Right now,
9 who is being targeted by the Obama IRS? Is it limited to
10 501(c)(3) and (c)(4) groups? Or is it targeted to
11 individuals?

12 I cannot tell you how many individuals across this
13 country, as I travel the country, relay stories that say,
14 you know, "I got involved in the last election, the 2012
15 election. I supported, I raised money for Mitt Romney, I
16 raised money for Rick Perry, I raised money for some
17 Republican candidate. And I have been in business 20, 30,
18 40 years. I have never been audited. As soon as my name
19 was published in the papers, within months the tax man comes
20 knocking."

21 Now, one or two anecdotal stories does not prove a
22 pattern. But it is incumbent on the Senate, it is incumbent
23 on Congress to ask: Is there a pattern? If the IRS has
24 become a partisan arm of the Democratic National Committee,
25 there can be no stronger argument for ending the IRS as we

1 know it so that no administration, Democrat or Republican,
2 can use the IRS to target its political opponents.

3 If a Republican President did this, as Richard Nixon
4 tried, I can assure you I would be every bit as loud and
5 clear that it is an abuse of power. And for a Democratic
6 administration to do this and to find Democratic defenders
7 of this abuse of power is profoundly dangerous to the
8 liberty that is the basis for the incredible miracle we call
9 the United States of America.

10 Senator Coons?

11 OPENING STATEMENT OF HON. CHRISTOPHER COONS, A U.S.

12 SENATOR FROM THE STATE OF DELAWARE

13 Senator Coons. Thank you, Mr. Chairman.

14 Let me just state at the outset that the IRS activity
15 that is at the root of this hearing was unacceptable and
16 unfortunate. American citizens ought to be confident that
17 their Government will not target them for special scrutiny
18 because of their names or their political views.

19 But I would also note that the Treasury Inspector
20 General of Tax Administration has concluded that the IRS did
21 not willfully withhold or destroy documents, and many of the
22 allegations just made at the opening of this hearing strike
23 me as a rehashing of complex conspiracy theories already
24 thoroughly investigated and dismissed by the Inspector
25 General himself.

1 In 2010, a narrow five-Justice majority of the Supreme
2 Court decided Citizens United, which overturned multiple
3 Supreme Court precedents and threw open the door to
4 unfettered campaign spending by corporations and mega
5 donors. This decision led to a significant increase in
6 political and campaign spending, with 30 percent more being
7 spent by outside groups in the 2010 midterms than in 2008,
8 and then in 2012 an increase of six-fold over 2008.

9 While much of this spending was done independently or
10 through 527s or super PACs, much of it was also done through
11 501(c)(4) organizations. At first, one might think
12 501(c)(4)s as nonprofit social welfare organizations exist
13 wholly apart from the disputed campaign finance industrial
14 complex. Such organizations, after all, are required by
15 statute to be "operated exclusively for the promotion of
16 social welfare." And IRS regulations specify that social
17 welfare activities do not include campaign activity.

18 Rather than interpreting the statutory requirements for
19 such organizations in a strict and technical fashion,
20 however, the IRS has for many, many years decided to permit
21 some political activity by 501(c)(4)s, provided that their
22 primary purpose is the promotion of social welfare.

23 And so the world we live in is one where almost every
24 PAC now has an associated 501(c)(4) which is permitted to
25 engage in some electioneering activity as long as it does

1 not do too much of it and can, thus, operate totally tax
2 free and totally outside of the public disclosure regime
3 that is virtually that remains of the now tatters of our
4 campaign finance laws.

5 The IRS in this regard has an exceptionally difficult
6 job to do. The Supreme Court, having dismantled the heart
7 of the McCain-Feingold campaign finance reform bill, has
8 left the IRS to stand in the place of the Federal Election
9 Commission. Thousands of groups present themselves as
10 though they exist to promote social welfare, but really in
11 many cases they actually exist to funnel secret dollars
12 around the country to influence elections.

13 Many have seized upon the use of inappropriate criteria
14 by the IRS to single out 501(c)(4) applicant organizations
15 for further review as compelling evidence that the IRS is,
16 as I think has just been suggested, an evil organization.
17 You have heard the Chairman accuse the administration of
18 planning this activity at the highest levels and of having
19 been caught and of engaging in a far-ranging scheme to cover
20 up that involvement. These are very serious allegations.
21 They are also unfounded allegations.

22 The Republican Inspector General has found not one
23 shred of evidence that the inappropriate targeting of
24 applicant organizations was directed by individuals or
25 entities in Washington. IRS field personnel have uniformly

1 denied any involvement by supervisors in Washington or the
2 White House.

3 The supervisor of the screening agent who first
4 utilized 9/12 and Tea Party to screen organizations for
5 further review was himself a self-identified conservative
6 Republican who has said, and I quote, "I do not believe that
7 the screening of these cases had anything to do other than
8 with consistency and identifying issues that needed further
9 development."

10 And an IRS specialist in Washington called the idea
11 that there was White House involvement in directing this
12 "laughable." Progressive groups as well as conservative
13 ones were screened for further development investigation of
14 their files. Any disparity in the raw numbers of
15 organizations on either side that were targeted is likely a
16 result of the fact that, in 2010 to 2013, more than five
17 times as many conservative as liberal groups filed for tax-
18 exempt status under this Code section.

19 Much has been made of the great difficulty the IRS had
20 had producing e-mails from relevant custodians over the
21 relevant time period. My understanding through discussions
22 with Commissioner Koskinen is that the total number of e-
23 mails available to the IRS but not initially produced is
24 actually quite small, and that none of these e-mails suggest
25 a politically motivated conspiracy on the part of the IRS or

1 the administration. But I suspect we will develop that
2 further in these discussions today.

3 I will just note again that the Treasury Inspector
4 General has concluded the IRS did not willfully withhold or
5 destroy documents. Our campaign finance laws, frankly, are
6 broken. More and more power is being concentrated by super-
7 advantaged donors who are able to exert influence through
8 the propagation of shadowy organizations that lurk in the
9 vague rules that govern 501(c)(4) organizations. The
10 actions by IRS at the center of this hearing and about which
11 many Americans are rightfully upset and concerned were not
12 the result of malicious intent but, rather, the result of
13 workers attempting to administer an unworkable system that
14 has no clear lines and, frankly, makes little logical sense.

15 Rather than trying to score political points by
16 distorting a set of unfortunate but basically honest
17 mistakes by civil servants, we should instead ask ourselves
18 the question: How is it that we have all allowed such an
19 irrational system to continue to exist? We need clearer
20 rules, rules that define which activities are properly
21 viewed as social welfare, and which are properly viewed as
22 political. We need rules that put organizations on fair
23 notice, and we need rules the IRS can administer.

24 I hope that the witnesses today will be able to shed
25 some light on this question: How do we reform the Tax Code

1 and the rules so that all Americans once again can regain
2 confidence that the IRS is operating fairly, transparently,
3 and without favor to enforce the laws that Congress has
4 enacted?

5 Thank you. Thank you, Mr. Chairman.

6 Chairman Cruz. Thank you, Senator Coons.

7 Now I ask Mr. Koskinen to please stand, raise your
8 right hand. Do you affirm that the testimony you are about
9 to give before the Committee will be the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 Mr. Koskinen. I do.

12 Chairman Cruz. Thank you, Mr. Koskinen. I welcome you
13 to this Committee. I thank you for coming to testify.

14 The Honorable John Koskinen is the 48th Commissioner of
15 the Internal Revenue Service. Prior to his appointment,
16 Commissioner Koskinen served as the Non-Executive Chairman
17 of Freddie Mac from 2008 to 2012 and its Acting Chief
18 Executive Of course, in 2009. Previously, he served as
19 president of the U.S. Soccer Foundation, Deputy Mayor and
20 City Administrator of Washington, D.C., and Deputy Director
21 for Management at the Office of Management and Budget. He
22 began his legal career clerking for Chief Judge David L.
23 Bazelon on the U.S. Court of Appeals for the D.C. Circuit.
24 Mr. Koskinen holds a bachelor's degree from Duke University
25 and a law degree from Yale Law School, something for which I

1 am sure we can all forgive him.

2 [Laughter.]

3 Chairman Cruz. Mr. Koskinen.

1 STATEMENT OF THE HONORABLE JOHN KOSKINEN,
2 COMMISSIONER, INTERNAL REVENUE SERVICE,
3 WASHINGTON, D.C.

4 Mr. Koskinen. Chairman Cruz, Ranking Member Coons, and
5 members of the Subcommittee, thank you for the opportunity
6 to discuss the work the IRS has been doing to correct the
7 management mistakes associated with the determination
8 process for tax-exempt status 2 years ago. Let me reiterate
9 my belief that the IRS must continue to do everything
10 possible to make sure all individuals and organizations can
11 be confident they will be treated fairly in their dealings
12 with this agency. They need to know they will receive fair
13 unbiased treatment, regardless of their political
14 affiliation, their position on contentious political issues,
15 or whom they supported in the last election.

16 Even with our declining resources, the IRS will still
17 audit over 1 million individual taxpayers this year. When
18 someone hears from us regarding their tax return, they need
19 to understand that it is only because of something that is
20 or should be in their return and not other factors. And if
21 someone else has the same issue on their return, they will
22 hear from us as well, within the limits of our budget
23 resources.

24 The situation described by the Inspector General in his
25 May 2013 report should never have happened, and we are doing

1 everything possible to ensure that the mistakes referenced
2 in that report do not happen again. As part of our work to
3 move forward, we have implemented all of the recommendations
4 the Inspector General made in his report. The IG noted our
5 efforts in a follow-up report issued in March of this year.
6 These are important steps.

7 For example, we have eliminated the use of
8 inappropriate criteria. We have expedited the processing of
9 section 501(c)(4) applications. We have developed new
10 training for employees in the determination area. We have
11 established a new process for documenting the reasons why
12 applications are chosen for further review. And we have
13 instituted a quality review process to ensure that
14 unnecessary or improper information requests are not sent to
15 applicants.

16 We have also reduced the inventory of section 501(c)(4)
17 applications, including the group of 145 cases in the
18 priority backlog that were pending for 120 days or more as
19 of May 2013. As of last month, 140 of these cases, or 97
20 percent of them, have been closed.

21 In addition, the Department of the Treasury and IRS
22 have begun the process of drafting guidance on how to
23 measure social welfare and non-social welfare activities of
24 section 501(c)(4) organizations. Our efforts to develop
25 this guidance have been greatly informed by the more than

1 160,000 public comments received in response to the 2013
2 proposed regulations.

3 We asked for and received comments on several issues,
4 including three major ones: first, the proposed definition
5 of "political campaign activity"; second, which tax-exempt
6 organizations the definition should apply to; and, third,
7 the amount of political activity an organization can engage
8 in consistent with its particular tax-exempt status. Our
9 goal is to provide guidance that is clear, fair to everyone,
10 and easy to administer.

11 The investigations into the determination process for
12 tax-exempt status also raised another issue that we have
13 been working to address, that is, the need to improve the
14 IRS' records retention practices. The IRS produced well
15 over 1 million pages of documents to comply with document
16 requests from the seven investigations ongoing into this
17 event. But our antiquated system for storing e-mails made
18 the process of retrieving those records extremely difficult
19 and time-consuming. Efforts are now underway to develop a
20 more modern e-mail retention system at the IRS. This will
21 allow the agency to more easily archive, search, and protect
22 electronic official records.

23 Once a modern system is established, the IRS should be
24 able to respond to even complex congressional inquiries much
25 more efficiently and effectively than in the past. Our goal

1 is to ensure that we have the ability to obtain official
2 records of the agency in a reliable and consistent manner.

3 Chairman Cruz, Ranking Member Coons, and members of the
4 Subcommittee, this concludes my testimony, and I would be
5 happy to take your questions.

6 [The prepared statement of Mr. Koskinen follows:]

1 Chairman Cruz. Thank you very much, Mr. Koskinen.

2 I would like to start by just asking: Was President
3 Obama wrong to say, "Americans have a right to be angry
4 about it, and I am angry about it"?

5 Mr. Koskinen. Yes.

6 Chairman Cruz. In the 806 days that have followed
7 since this scandal broke, through the Treasury Department's
8 Inspector General's report, has anyone been indicted?

9 Mr. Koskinen. No.

10 Chairman Cruz. Has anyone been fired?

11 Mr. Koskinen. There have been--at this point the five
12 major people, starting with the Commissioner on down through
13 the Director of Exempt Organizations, are all new. Everyone
14 else is gone.

15 Chairman Cruz. Was anyone fired for misconduct?

16 Mr. Koskinen. Starting with the Acting Commissioner,
17 they were all dismissed--not all of them. I am sorry. The
18 Acting Commissioner was; some retired.

19 Chairman Cruz. Well, let me ask you, based on your
20 assessment, were citizens wrongly targeted for their
21 political beliefs?

22 Mr. Koskinen. I have said in the past that the process
23 of selecting for determination review organizations simply
24 by the name of their--by the nature of their name was
25 totally inappropriate, it should not have happened, and it

1 should not happen again.

2 Chairman Cruz. I appreciate that. Let me ask the
3 question again: Were citizens wrongfully targeted for their
4 political beliefs?

5 Mr. Koskinen. At this point, that is the subject of
6 several investigations going on. The Senate Finance
7 Committee will issue its report sometime in the next 2
8 weeks. That has been the subject of their investigation.
9 They are the ones making that determination. I have not
10 made a separate investigation.

11 Chairman Cruz. Well, my friend Senator Coons suggested
12 that this was all--I am paraphrasing here--much ado about
13 nothing, that this had all been resolved and there is
14 nothing to see here. And yet I would note in September of
15 last year, the Senate Committee on Homeland Security and
16 Governmental Affairs, the Permanent Subcommittee on
17 Investigations, then chaired by Democratic Senator Tom
18 Carper, found that conservative groups were targeted? And
19 at this point, without objection, I am going to move the
20 full report of that Committee, all 228 pages, into the
21 record.

22 [The report follows:]

23 / SUBCOMMITTEE INSERT

1 Chairman Cruz. The report's Majority Staff Executive
2 Summary found, among other things, that not only did "the
3 IRS use inappropriate screening criteria when it flagged for
4 increased scrutiny applications based on the applicant's
5 names or political views rather than direct evidence of
6 their involvement with campaign activities," but that it
7 also was responsible for "significant program mismanagement,
8 including years-long delays in processing 501(c)(4)
9 applications and inappropriate, intrusive, and burdensome
10 questions of groups."

11 Indeed, I will point out the raw numbers: 100 percent
12 of all tax-exempt applications with the word "Tea Party,"
13 "patriots," or "9/12" in their names were processed as
14 political cases, compared to 30 percent of applications with
15 "progressive" in their name.

16 There were 298 total political advocacy cases; 83
17 percent of those--that translates to 248 out of those 298 of
18 these groups--were "right-leaning organizations."

19 Mr. Koskinen, does that strike you as anything other
20 than targeting citizen groups based on their political
21 views?

22 Mr. Koskinen. As the report you cited noted, there
23 were inappropriate criteria used, and we have agreed with
24 that and said you should never be selected for review simply
25 on the basis of your name. But the question of whether

1 there was "targeting" and whether this was directed for
2 political purposes or by someone outside the IRS as the
3 subject of the investigation, thus far my understanding is
4 there has been no evidence that there is any outside
5 influence on the IRS in this area.

6 Chairman Cruz. Were senior IRS officials motivated by
7 partisan political animus?

8 Mr. Koskinen. That is what the investigations are
9 about. That report that you cited did not find that. The
10 IG's report did not find that.

11 Chairman Cruz. Are you aware of any information to
12 suggest that senior IRS officials were motivated by partisan
13 political animus?

14 Mr. Koskinen. I have not reviewed the information that
15 has been provided. We have provide over 1,300,000
16 documents. I have not reviewed--

17 Chairman Cruz. Well, I would suggest that there is
18 nothing more important for you to review, and willful
19 blindness is not an acceptable approach. I would point out
20 that--

21 Mr. Koskinen. I would object to the criterion of
22 "willful blindness." We have--

23 Chairman Cruz. Well, you said you have not reviewed
24 the evidence.

25 Mr. Koskinen. Right, because we have been asked by

1 investigators, particularly the Inspector General, not to do
2 an investigation, not to interfere with their work, and we
3 have, in fact, therefore, avoided pursuing any discussions
4 with IRS employees so that we would not interfere or look
5 like we were trying to prejudice those investigations. That
6 is anything but "willful blindness."

7 Chairman Cruz. Well, I will point out that among the
8 Lois Lerner e-mails that have been made public, Ms. Lerner
9 in November 2012 referred to conservatives as "our own
10 crazies" and compared them to "terrorists."

11 I will point out as well, in February 2011, Ms. Lerner
12 stated, "Tea Party is very dangerous."

13 Now, in your judgment, does that strike you as partisan
14 political animus?

15 Mr. Koskinen. As your information noted, 30 percent of
16 the groups called "progressives" were also selected
17 inappropriately for review.

18 Chairman Cruz. I will ask the question again. Do
19 those descriptions from a senior Government official strike
20 you as partisan political animus?

21 Mr. Koskinen. Political animus? It demonstrates
22 clearly her political view. It does not demonstrate whether
23 she encouraged anyone to take any action based on her views.

24 Chairman Cruz. I have introduced legislation in
25 Congress to make it a Federal criminal offense for any

1 officer or employee of the Internal Revenue Service,
2 regardless of whether the officer or employee is acting
3 under color of law, to willfully act with the intent to
4 injury, oppress, threaten, intimidate, or single out and
5 subject to undue scrutiny for the purpose of harassment any
6 person or organization in any State based solely or
7 primarily on the political, economic, or social positions
8 held or expressed by the person or organization.

9 In your judgment, should targeting an individual based
10 on their political views be a Federal crime?

11 Mr. Koskinen. That is a decision of the Congress, but
12 I would certainly agree that anyone who does that in the IRS
13 should be dismissed.

14 Chairman Cruz. And would you agree it should be a
15 criminal offense for the IRS to use the full Government
16 power entrusted to it to target citizens for expressing
17 their political views?

18 Mr. Koskinen. I would agree that citizens should never
19 be targeted for expressing their views, and if Congress
20 decided to make that criminal offense, we would certainly
21 support that.

22 Chairman Cruz. Very good.

23 Senator Coons?

24 Senator Coons. Commissioner Koskinen, thank you for
25 appearing before us here today.

1 Just to review, you became the Commissioner of the IRS
2 at a time when it had had some significant and serious
3 problems. How many times have you now appeared to testify
4 about this 501(c)(4) controversy before Congress?

5 Mr. Koskinen. Virtually every time I testify, it has
6 some elements of (c)(4) to it. This is almost my 30th
7 hearing in my hear and a half.

8 Senator Coons. And you have never turned down a
9 request to testify, have you?

10 Mr. Koskinen. Never.

11 Senator Coons. And roughly how many documents have you
12 turned over in response to the TIGTA investigations that you
13 just referenced?

14 Mr. Koskinen. As I noted, we have turned over to the
15 investigators 1,300,000 documents.

16 Senator Coons. And roughly how many of the e-mails
17 from Ms. Lerner did you produce?

18 Mr. Koskinen. We produced 78,000, including 24,000
19 from the period of her hard drive crash.

20 Senator Coons. And TIGTA is the Treasury Department
21 Inspector General for Tax. How many of Ms. Lerner's e-mails
22 has TIGTA found that you did not produce?

23 Mr. Koskinen. The Inspector General found 1,000, which
24 he noted had nothing to do with the investigation.

25 Senator Coons. So none of those e-mails were found to

1 show evidence of a politically motivated plot by the
2 administration or IRS senior leadership. Is that correct?

3 Mr. Koskinen. That is correct.

4 Senator Coons. So let me also just make sure I
5 understand. The Inspector General is charged with looking
6 into and investigating the very troubling, concerning, even
7 angering allegations that there was inappropriate targeting
8 based on the names, just the filed names of applicants for
9 501(c)(4)s. And it was the Inspector General that urged you
10 not to conduct your own separate investigation, and that is
11 the reason that TIGTA has been the primary leader of
12 investigations within the IRS into the resolution of this
13 matter rather than you as Commissioner. Is that correct?

14 Mr. Koskinen. That is correct. There are also six
15 other investigations going on, and we have agreed with all
16 of them that we also would not interfere with their
17 investigations, we would not try to talk to any of the
18 witnesses they wanted to talk to before they did.

19 Senator Coons. And has the Inspector General released
20 a report with concrete and specific recommendations about
21 how to cure some of the management flaws that were revealed
22 and how to deal with the outcome so far of this
23 investigation of the handling of 501(c)(4) cases?

24 Mr. Koskinen. Those were included in the Inspector
25 General's report in May of 2013.

1 Senator Coons. And have you complied with all nine of
2 the recommendations in that report?

3 Mr. Koskinen. We have complied with all of them. As I
4 noted, one of them was that we should provide clearer
5 guidance to (c)(4) organizations, and we are working on that
6 one.

7 Senator Coons. So just to get to that point, if I
8 could, Mr. Commissioner, the IRS Code says that (c)(4)
9 organizations must be--this is in the Code--operated
10 exclusively for social welfare, yet it is IRS regulations
11 that say that campaign activity can occur as long as it is
12 less than 50 percent. Is that correct?

13 Mr. Koskinen. That is correct. The IRS regs say that
14 as long as you are primarily a social welfare organization--
15 and social welfare activities have been held not to include
16 political campaigning--you are eligible to be and maintain
17 status as a (c)(4).

18 Senator Coons. And what are the benefits to an
19 applicant of being a 501(c)(4)?

20 Mr. Koskinen. Well, contributions are not tax
21 deductible, earnings of the 501(c)(4) revenues are not
22 taxes, and also donors are not publicly revealed.

23 Senator Coons. And did not the IRS attempt to clarify
24 the rules for (c)(4) in 2013 in a rulemaking?

25 Mr. Koskinen. A couple weeks before my confirmation

1 hearing, they did put out regulations, draft regulations,
2 which generated the 160,000 comments. They were
3 controversial drafts.

4 Senator Coons. And can you just explain the general
5 principles that you think any subsequent rulemaking ought to
6 follow and give us some insight into the timing and
7 direction of this important rulemaking effort?

8 Mr. Koskinen. One of the significant questions we
9 asked is to which (c) organizations, exempt organizations,
10 should a definition of "political activity" apply. We had a
11 lot of comments on all sides. When you look at the
12 statutory framework set up by the Congress, including
13 (c)(3)s, (4)s, (5)s, (6)s, and 527s, it is clear that the
14 Congress has set up a framework under which organizations
15 can pick and choose where they want to fit. And so,
16 therefore, we think that you ought to look at this as a full
17 statutory framework rather than isolate any one particular
18 organization.

19 So if an organization wants to spend less than half of
20 its money on politics, they can choose to become a (c)(4).
21 If they want to spend more money on politics, if they would
22 like to spend all their money on politics, they can do that
23 and be tax-exempt as a 527.

24 Our view is the IRS does not tell you where to go. The
25 framework does that if we actually have a consistent

1 definition across those terms. So it should look at--a
2 definition of "political activity" should be clearer than it
3 has been. It should not depend just on facts and
4 circumstances. And as we have looked at it, we are still
5 working through all of this, but the congressional
6 definitions have been for 527s, (c)(5)s, and (c)(6)s,
7 primarily, so primarily it does appear to be the appropriate
8 statutory interpretation.

9 So, again, we are not trying, as we look at this to
10 change significantly the rules under which people have been
11 operating. What we are trying to change is the lack of
12 clarity in terms of what counts as social welfare activity,
13 what counts as political activity, what counts as business-
14 related support, what counts as political activity. We
15 think if we could provide clearer definitions, those running
16 these organizations would have less to worry about somebody
17 coming after the fact and disagreeing with them because of
18 the "facts and circumstances."

19 Senator Coons. Last question for you. There has been
20 some discussion about audits as well as the initial filing.
21 The General Accounting Office, or GAO, which is widely
22 recognized as an independent review arm of the Federal
23 Government, conducted a study of the IRS' audit practices
24 into exempt organizations. Has there been any suggestion
25 through that that anybody in the IRS has targeted groups for

1 auditing based on their perceived political viewpoint?

2 Mr. Koskinen. The GAO report found no evidence of bias
3 in the selection process for audits of exempt organizations.
4 The IG has advised us, as they have done specific
5 investigations, of no evidence of any bias.

6 On the other hand, GAO did have suggestions as to how
7 we could improve our controls, and we are implementing those
8 because we think it is important to ensure that the
9 examination process also is fair to everyone and does not
10 select anyone for review on the basis of who they are, who
11 they voted for, what political rally they went to last week.

12 Senator Coons. Thank you, Commissioner.

13 Chairman Cruz. Thank you.

14 Senator Lee?

15 Senator Lee. Thank you very much, Mr. Chairman. And
16 thank you for joining us today.

17 I want to ask you, as a general matter, is the decision
18 of a Supreme Court case, a single decision by the Supreme
19 Court, grounds for reevaluating which organizations might be
20 eligible for tax-exempt status and which might not?

21 Mr. Koskinen. It depends on what the Supreme Court
22 says and what is at issue.

23 Senator Lee. Okay. One question I want to ask on this
24 subject is: If you watched or are familiar with the Supreme
25 Court's decision in the Obergefell case, during the oral

1 argument in that case, Justice Alito asked a very important
2 question of Solicitor General Verrilli. He asked him
3 whether, in light of the Supreme Court's ruling 30 years ago
4 in Bob Jones University v. United States, if the Supreme
5 Court decided, as it now has decided, that there is a
6 constitutional right to same-sex marriage, whether pursuant
7 to that ruling in Bob Jones University v. United States the
8 IRS might ultimately conclude that, for example, a religious
9 college or a university might be denied its tax-exempt
10 status on the basis that that religious college or
11 university does not recognize same-sex marriage, and on that
12 basis might make a decision, for example, about eligibility
13 for residing in housing for married students. He asked this
14 question of Solicitor General Verrilli. In light of that,
15 if we recognize a constitutional right to same-sex marriage,
16 is there a risk of one of these colleges or universities
17 losing their tax-exempt status?

18 Solicitor General Verrilli's response was chilling to
19 many. He said, "That is going to be an issue, Justice
20 Alito. That is certainly going to be an issue." He
21 reiterated this three or four times. He seemed quite
22 confident in his response.

23 So I would ask you whether you share that view. Is
24 that going to be an issue? And could that be an issue?

25 Mr. Koskinen. The Chairman last week asked the same

1 question in a letter asking for our response. We responded
2 to the Chairman and we have responded publicly that at this
3 time we see no basis for changing our examination criteria
4 as a result of the Supreme Court case.

5 Senator Lee. Okay. So when you say "at this time," is
6 that meant to qualify or restrict your answer? Are you
7 saying there is no basis upon which you could revisit tax-
8 exempt status?

9 Mr. Koskinen. At this time there is no basis for us to
10 revisit tax-exempt status on that grounds. We will
11 continue, obviously, to ensure that those who enjoy tax-
12 exempt status are still doing the work they said they were
13 going to do, but that exam and those reviews will continue
14 as they always have.

15 Senator Lee. I am still troubled by the fact that you
16 preface all this with "at this time." Are you saying that
17 you are holding open the possibility that at some future
18 point the IRS might open that up, might revisit that
19 question?

20 Mr. Koskinen. It is a good point. I do not mean to
21 leave uncertainty there. It is not the IRS' position to
22 make public policy. We implement the laws as they stand.
23 It is our view right now, in terms of the overall lay of the
24 land, there is no basis for us at this point to make any
25 change in our review policies or exam policies.

1 We cannot predict over the next years what is going to
2 happen in terms of decisions that will be made about public
3 policy, but those are not decisions we are going to make.

4 Senator Lee. So who would have to make those decisions
5 about public policy if they were to be made?

6 Mr. Koskinen. They would be legislative decisions.
7 They would be court decisions. They would not be decisions
8 by the Internal Revenue Service.

9 Senator Lee. Okay. So that would need to be made by
10 another branch of Government, certainly could not be made
11 within the IRS, because this is a legislative decision as a
12 policy matter. Is that correct?

13 Mr. Koskinen. Correct, yes.

14 Senator Lee. So to the extent that Solicitor General
15 Verrilli was suggesting otherwise when he said, "That is
16 certainly going to be an issue," he was mistaken?

17 Mr. Koskinen. Well, no, I think what--you would have
18 to ask him, I guess. He could say better. He did not say--

19 Senator Lee. You would disagree with that
20 characterization?

21 Mr. Koskinen. Not necessarily. He was not saying I
22 would be an issue with the IRS. I think what he was saying
23 is over time, in other areas over time, public policy
24 decisions have been made by courts and legislators that
25 ultimately then did influence tax-exempt status. The Bob

1 Jones case is one of those. But that was not a case of
2 policy made by the IRS. That was a case over 15 or 20 years
3 of decisions made by courts and legislators.

4 Senator Lee. But that was based on a determination
5 made by the IRS. That was on the basis of an action--Bob
6 Jones University v. United States involved a judicial
7 challenge of a decision by the IRS that a particular
8 university was no longer entitled to tax-exempt status.

9 Mr. Koskinen. That is right.

10 Senator Lee. So that was, in fact, made by the IRS,
11 right?

12 Mr. Koskinen. That was made by the IRS--

13 Senator Lee. Not by Congress.

14 Mr. Koskinen. --by regulation, or I will accept--the
15 regulation put out by the IRS before that case was based on
16 decisions made by Congress and the courts, and everyone was
17 given plenty of notice what the IRS interpretation was.
18 There is no basis for us to issue such regulation at this
19 time.

20 Senator Lee. But there was no act of Congress
21 requiring the action that IRS took in that case. The IRS
22 took the action.

23 Mr. Koskinen. There were court cases and legislative
24 cases, actions, taken over a 20-year period before the IRS
25 acted.

1 Senator Lee. Ultimately, that was not a decision made
2 by Congress as to that particular university.

3 Mr. Koskinen. Congress had passed various
4 antidiscrimination laws, as had State courts had made
5 rulings. All of those decisions were made by people outside
6 the IRS. All we do is follow whatever the public policy
7 that is set by other organizations.

8 Senator Lee. Okay. Mr. Chairman, I see my time has
9 expired. I would like to point out, as I recall, in that
10 case the determination was made by the IRS. There was a
11 finding made by the IRS that the university in question was
12 no longer charitable and, therefore, no longer entitled to
13 tax-exempt status.

14 Now, it is not my intent to revisit that case. This is
15 old case law going back more than 30 years. It is, however,
16 my point to make that in this case we could be talking about
17 IRS action that could occur.

18 Mr. Koskinen. At this point other actions would have
19 to take place before the IRS would consider issuing a
20 regulation, which would give people notice as to what we
21 thought the public policy was, and then cases and exams
22 would be conducted under that. At this point, as I say,
23 those actions will have to be taken by others. It is not
24 within the realm of the IRS to make those public policy
25 choices.

1 Senator Lee. Okay. So it could be preceded by
2 legislation or perhaps regulation.

3 Mr. Koskinen. It could be preceded by legislation or
4 court cases. The regulation in that particular case simply
5 reflected court cases and decisions that had been made by
6 other agencies and reflected a public policy that had been
7 adopted. It was not a policy decision by the IRS.

8 Senator Lee. Thank you, Mr. Chairman.

9 Chairman Cruz. Thank you.

10 Senator Durbin?

11 Senator Durbin. Thank you, Mr. Chairman. Thank you
12 for being here, Mr. Commissioner.

13 There is one aspect here I would like to ask a
14 question. So the story broke in May of 2013 about the
15 improper conduct involving the Internal Revenue Service, and
16 it is my understanding in the more than 2 years that have
17 transpired, you are testifying that either you or someone
18 from the agency has testified before Congress more than 30
19 times?

20 Mr. Koskinen. Correct.

21 Senator Durbin. And produced more than 1,300,000
22 documents?

23 Mr. Koskinen. Correct.

24 Senator Durbin. I understand some 52 current and
25 former employees have been interviewed?

1 Mr. Koskinen. Yes.

2 Senator Durbin. And do you have any idea how much this
3 has cost taxpayers in terms of expenses by the IRS?

4 Mr. Koskinen. We estimate both the hard costs and the
5 employee costs are about \$20 million.

6 Senator Durbin. What has happened to the
7 appropriations for the Internal Revenue Service in the last,
8 say, 5 years?

9 Mr. Koskinen. Over 5 years, every year the
10 appropriation has been cut by a total of \$1.2 billion.

11 Senator Durbin. If you begin with the premise--and I
12 think most Americans would--that organizations and people in
13 the United States should pay the taxes that are legally
14 required, what has been the situation with the IRS when it
15 comes to holding fast to that principle--auditing where
16 necessary to make sure that there is compliance and that
17 those who legally pay their taxes are not necessarily
18 harassed, but those who do not pay their taxes are held
19 accountable?

20 Mr. Koskinen. At this point we have 5,000 fewer
21 revenue agents, revenue officers, and criminal
22 investigators. The number of our exam audits in the field
23 are going down. The amount of our collections as a result
24 of examination processes are going down.

25 Senator Durbin. Is it fair to conclude, then, that

1 some people, some organizations, that are not paying their
2 proper taxes, their legally required taxes, are getting off
3 the hook?

4 Mr. Koskinen. Unfortunately, that is correct.

5 Senator Durbin. And, meanwhile, we call you back up
6 here again for more this and more evidence on a case that is
7 more than 2 years old that the IRS has spent some \$20
8 million in complying with requests for information by
9 Congress.

10 Mr. Koskinen. That is correct.

11 Senator Durbin. It appears, as my colleague Senator
12 Coons says, that this started with a Supreme Court decision
13 in Citizens United, but it really gets down to a question as
14 to whether an organization can be exempt from paying taxes
15 under our laws in the United States and can keep the sources
16 of their money secret, confidential, closed if they qualify
17 as a certain organization under the Internal Revenue Service
18 Code. Is that correct?

19 Mr. Koskinen. That is correct.

20 Senator Durbin. And it comes down to a basic question
21 as to whether this organization is a social welfare
22 organization operated exclusively for the promotion of
23 social welfare. Is that correct?

24 Mr. Koskinen. That is correct.

25 Senator Durbin. And a 1960 Treasury regulation

1 interpreted that to mean the organization is primarily
2 engaged in promoting in some way the common good and general
3 welfare of the people of the community. Are you familiar
4 with that?

5 Mr. Koskinen. Yes.

6 Senator Durbin. The regulation also states the
7 promotion of social welfare does not include direct or
8 indirect participation or intervention in political
9 campaigns on behalf of or in opposition to any candidate for
10 public office. Is that also correct?

11 Mr. Koskinen. That is correct.

12 Senator Durbin. And so it appears to be, from what I
13 have heard here today, a period when there were a large
14 number of people applying to become one of these 501(c)(4)
15 organizations.

16 Mr. Koskinen. Yes.

17 Senator Durbin. Do you recall the volume of
18 organizations or people, applications coming forward after
19 Citizens United?

20 Mr. Koskinen. There were well over 100, close to 200,
21 250 who showed up across the spectrum asking for
22 qualifications, determinations that they could be a (c)(4).
23 I would notes you can be a (c)(4) organization without
24 getting a determination from us. You can set up a business
25 and simply start filing the requisite annual reports.

1 Senator Durbin. You have made it clear that you do not
2 believe--and I share this belief--that a group should be
3 targeted because their name suggests a political leaning or
4 a political bias. Is that correct?

5 Mr. Koskinen. That is absolutely correct.

6 Senator Durbin. But does the IRS have any obligation
7 to establish or determine whether an applicant, in fact, is
8 eligible to be tax-exempt, that is, to escape liability in
9 paying the laws of the United--taxes of the United States?

10 Mr. Koskinen. It is our obligation to enforce the Tax
11 Code, and I might note there is some indication abroad,
12 while we are looking at new regulations, as if we are not
13 going to be enforcing the Tax Code, and that could not be
14 farther from the truth. The GAO in effect has reviewed our
15 exam procedures and said they are appropriate, we need to
16 improve our controls, and we are going to do that. But we
17 are not out of business. We will continue to operate under
18 what we think are unclear but existing regulations that have
19 been around for a long time on facts and circumstances, and
20 we have an obligation to enforce the law.

21 Senator Durbin. Mr. Commissioner, I have an impression
22 and I want to know if you share it: The vast majority of
23 Americans as individuals and organizations and companies do
24 their best to pay their legally obligated taxes.

25 Mr. Koskinen. That is our experience as well, and, in

1 fact, we have tried to make it clear. If you are trying to
2 be compliant, we are anxious to work with you. If you are
3 having difficulties, you do not have to hire somebody off
4 late-night TV to talk to us. We will talk with you; we will
5 work with you. The people that we chase are the people who
6 are consciously deciding not to pay their taxes.

7 Senator Durbin. I hope the chase continues, and I hope
8 we give you the resources to do it.

9 Chairman Cruz. Thank you.

10 Senator Sessions?

11 Senator Sessions. Thank you.

12 Mr. Koskinen, I have great respect for the line
13 officers in the IRS. As a Federal prosecutor, I always held
14 them in high esteem and great respect. So I am not
15 questioning their fidelity, but what I am concerned about is
16 the leadership of the IRS at a critical point in history
17 using the power of that august institution for political
18 ends. That is what President Nixon apparently--or his
19 underlings--did, and they paid a great price for it. It is
20 absolutely unacceptable, I think you would agree.

21 Mr. Koskinen. I would agree.

22 Senator Sessions. With regard to the cost of this, we
23 have not spent too much money trying to get to the bottom of
24 this. And, frankly, I do not think we have had the kind of
25 cooperation from the President, from the agency, the

1 Service, or the FBI or Department of Justice for that
2 matter. There are real problems out here. We have not
3 cleared the air.

4 The Tea Party sprang up at this time, and they
5 requested what they were entitled to under the law, and they
6 were pretty clearly targeted in a degree that was
7 extraordinary. You said they were targeted because of their
8 names. Well, apparently if your name is conservative, one
9 of the names in the title was conservative, "Tea Party" or
10 "patriot," you got targeted. And so I think that leads us
11 quite to believe that they were targeted for their political
12 views more than left-leaning groups were targeted.

13 Mr. Koskinen, how often have you been to the White
14 House since you have been in office?

15 Mr. Koskinen. I have been I think three or four times.
16 Most all of those were to meet with the Treasury Secretary
17 and the Secretary of HHS to coordinate last fall the
18 implementation of the back end of the Affordable Care Act.

19 Senator Sessions. Well, that does not surprise me too
20 much. There could be quite legitimate reasons for that.
21 But Lois Lerner, who was in charge of this program,
22 apparently went to the White House 35 times. Does that
23 strike you as odd?

24 Mr. Koskinen. No. It depends what she was going for.
25 There were numerous meetings in the White House throughout

1 the period of the implementation, for instance, of the
2 Affordable Care Act. The IRS has had--

3 Senator Sessions. Well, she did not have the
4 Affordable Care Act under her portfolio, did she? She had
5 tax-exempt groups. Is that right?

6 Mr. Koskinen. Right, I have no idea what she was
7 doing. I had not realized she went 35 times.

8 Senator Sessions. So you do not know who she talked
9 to.

10 Mr. Koskinen. I have no idea who she--

11 Senator Sessions. And you do not know what was said in
12 those conversations.

13 Mr. Koskinen. I do not.

14 Senator Sessions. But you acknowledge that there was
15 an inappropriate targeting of tax-exempt groups and groups
16 applying for tax-exempt status.

17 Mr. Koskinen. There was an inappropriate selection.
18 The question of whether they were targeted is the question
19 that the investigators are looking at. But, clearly, that
20 inappropriate selection should not have happened. It should
21 not have happened to conservative groups. It should not
22 have happened to progressive groups. You should not be
23 subject to special review because of the name of your
24 organization or the activity of your organization.

25 Senator Sessions. Well, you are exactly right about

1 that. And I do not think we have gotten to the bottom of
2 it. That is what I am concerned about. I know we have had
3 a number of hearings, but I do not think we have gotten
4 there yet.

5 Do you think if the FBI was going to investigate--and
6 they did investigate, did they not?

7 Mr. Koskinen. To my understanding, yes, the FBI and
8 the Justice Department are one of the investigations. There
9 are four congressional investigations. The Inspector
10 General has had two investigations.

11 Senator Sessions. Well, has the FBI notified you that
12 the investigations are still ongoing? Or have they been
13 concluded?

14 Mr. Koskinen. We have had no information from the FBI
15 either way.

16 Senator Sessions. I am very careful about how I
17 conduct myself in these matters. I did have an opportunity
18 to talk to Mr. Comey and suggested he talk to the victims of
19 the activities from the IRS. Do you think it would be
20 proper for the IRS to interview people who have had their
21 tax-exempt status delayed or otherwise investigated
22 improperly?

23 Mr. Koskinen. I do not think we ought to be talking
24 with them. I think we ought to do what we have done, which
25 is proceed to promptly process their applications. We

1 should talk to them to find out whatever we need to know.
2 We obviously asked inappropriate questions and far too much
3 irrelevant data from them in that time frame, and that will
4 not happen again.

5 Senator Sessions. I think we have got to get to the
6 bottom of what happened. Watergate did not just say, "We
7 are not going to see it happen again." They said, "Who did
8 what when? Who knew what when?" And we have not gotten to
9 the bottom of that, and I am not happy that the FBI has not
10 even investigated and interviewed some of the victims in my
11 State who had their status delayed improperly, it appears.

12 Mr. Koskinen. The Senate Finance Committee is one of
13 the investigators, and they hopefully will put out their
14 report, they said, sometime in the next couple weeks, and we
15 will see what they have found.

16 Senator Sessions. Well, they do not have grand jury
17 power.

18 With regard to the million pages you talked about
19 providing to the FBI or to, I guess, other agencies, is it
20 not a fact that Lois Lerner and Sarah Ingram sent the FBI 21
21 discs containing a million pages of taxpayers' filings
22 focusing on the possible prosecution of conservative groups?

23 Mr. Koskinen. My understanding is those discs, which
24 are shared to the public--we distribute those to the public--
25 -were shared with the Department of Justice.

1 Senator Sessions. Well, they certainly did, and they
2 were apparently calling on them--look, we all know what the
3 situation was. The Tea Party had sprung up in America. The
4 President was running for reelection. A lot of these
5 groups, they seized upon the ability to establish these kind
6 of organizations and seek a taxpaying tax status that they
7 wanted to achieve. It was delayed and obstructed. And I
8 believe the, 20, 30-some-odd visits to the White House by
9 Mrs. Lerner were not all innocent. I believe it had
10 something to do with the election. I think we are in the
11 real world here. Every member of this body has to run for
12 reelection. We know that those kind of actions should not
13 take place.

14 And I do not suppose that we know everything yet, but I
15 do not think we have gotten to the bottom of it, and I hope
16 that we will.

17 Thank you, Senator Cruz, for having this hearing.

18 Chairman Cruz. Thank you.

19 Senator Whitehouse?

20 Senator Whitehouse. Thank you, Chairman.

21 Welcome, Commissioner Koskinen. I wanted to ask you
22 about the forms that applicants to the Internal Revenue
23 Service for 501(c)(4) or 501(c)(3) status are obliged to
24 fill out. The application, is that a--that is an official
25 Government form, correct?

1 Mr. Koskinen. Yes.

2 Senator Whitehouse. What are your expectations as to
3 the truthfulness of the applicant's content in the
4 submission of the form?

5 Mr. Koskinen. They submit those forms as a general
6 matter under penalty of perjury. They, in fact, submit
7 those as if they accurately describe the activities they are
8 about to engage in.

9 Senator Whitehouse. So if an organization says on a
10 1024 Form, for instance, or if it is a 501(c)(3), a 990
11 Form, that it has not engaged in any political activity or
12 that it has no plans to engage in any political activity,
13 what are your expectations with regard to that statement on
14 those forms?

15 Mr. Koskinen. Our expectation would be it would be
16 like 90 percent of the 501(c)(4)s, and that is, it would
17 have nothing to do with politics. Those are local Kiwanis
18 Clubs, Garden Clubs, a lot of social welfare activity
19 organizations that have nothing to do with politics.

20 Senator Whitehouse. And you would expect that
21 assertion to be a truthful one. Correct?

22 Mr. Koskinen. You would.

23 Senator Whitehouse. Let us say that you find out that
24 the organization has, in fact, engaged in political activity
25 after having filed the form indicating to the contrary.

1 What takes place then?

2 Mr. Koskinen. When we do examinations of exempt
3 organizations, in particular, it is not an on-off switch.
4 If you move over a line one way or another, we do not
5 immediately say, well, you are no longer eligible to be tax-
6 exempt. For most (c)(3)s, (4)s, (5)s, and (6)s we audit, if
7 there is a problem, it is usually a modest one that they
8 have done something wrong. Oftentimes they forgot to pay
9 their payroll taxes or something else. Our goal is to--

10 Senator Whitehouse. But on this question of claiming
11 that you will not be involved in political activity--

12 Mr. Koskinen. But if they say they are not going to be
13 involved in political activities and the organization is
14 eligible to be, then we would put them on warning that they
15 need to accurately and adequately report their activities.
16 If after being given that advice they continue to operate,
17 they continue not to perform appropriately, then we would
18 consider revoking their exemption.

19 Senator Whitehouse. Have you done that recently?

20 Mr. Koskinen. I do not think I am aware of any tax-
21 exempt organization in the last year or two that we have
22 revoked, but we have, when we have reviewed them, given them
23 guidance, education, encouraged them to make sure that they
24 are following both the prescriptions and the laws and
25 regulations, but also their representations as to what their

1 activities would be.

2 Senator Whitehouse. And how do you engage with them
3 once you have discovered that they are not conforming to the
4 statement that they made to your organization under penalty
5 of perjury?

6 Mr. Koskinen. We will oftentimes, depending on the
7 nature of the difference, correspond with them in writing.
8 We will contact them, depending if it is a more egregious
9 issue. On occasion, we will visit them. We will review
10 their books and records if that is appropriate. It does not
11 happen often. Generally, our review of tax-exempt
12 organizations have to do with failure to pay employee taxes,
13 failure to pay unrelated business income taxes, or
14 defalcations where there has been private inurement as a
15 result of misbehavior by an executive.

16 Senator Whitehouse. Is it important that organizations
17 who apply to the IRS for one of these types of status tell
18 the truth to you about their political activity? And if so,
19 why is that important?

20 Mr. Koskinen. It is important to us because, as I said
21 earlier, Congress has set up a framework for tax exemption
22 that allows organizations to decide where in that framework
23 they would fit, but they ultimately are getting the benefit
24 of a tax exemption, either on their income or, if they are a
25 501(c)(3), contributions are tax deductible to the donor.

1 So it is important for them to fit within the framework that
2 Congress set up; otherwise, they are not eligible for those
3 tax benefits.

4 Senator Whitehouse. Are you familiar at all with 18
5 United States Code Section 1001, the false statement
6 statute?

7 Mr. Koskinen. I know about it generally.

8 Senator Whitehouse. Do you know enough about it to
9 know whether or not Form 1024 and Form 990 qualify as
10 Federal forms that are subject to its strictures against
11 filing false statements?

12 Mr. Koskinen. I would assume they are, but I do not
13 know that for a fact.

14 Senator Whitehouse. Okay. I will leave it at that.
15 Thank you very much.

16 Chairman Cruz. Thank you.

17 Senator Blumenthal?

18 Senator Blumenthal. Thanks, Mr. Chairman.

19 Regarding 501(c)(3)s and 501(c)(4)s and focusing for
20 the moment on how the IRS will monitor the political
21 activity of 501(c)(4)s, organizations that will be active in
22 the coming election, I take it that regulations are
23 necessary for the IRS to do its job concerning 501(c)(4)s,
24 and the IRS has indicated that regulations defining
25 political activity are unlikely to be introduced until after

1 the 2016 election. Is that correct?

2 Mr. Koskinen. Those would be the updated regulations.
3 There are regulations that exist now that have been in
4 effect since 1959 that still guide us in our examinations.

5 Senator Blumenthal. Was that 1959?

6 Mr. Koskinen. 1959. The existing regulations talking
7 about judging political activities on a facts and
8 circumstances basis have been out there that long. The goal
9 in response to the Inspector General was to make those
10 regulations clearer so there would be less doubt, less
11 concern on all parties' parts as to what counts and does not
12 count.

13 Senator Blumenthal. If those regulations are not
14 released before the election, does that not create
15 enforcement problems for the IRS?

16 Mr. Koskinen. No. That is what I said. There is a
17 misimpression that while we are drafting updated or new
18 regulations that we simply do not have any authority. We
19 actually continue to have the authority we have always had
20 for the last 50 years under the existing regulations, and
21 our intention is to continue to discharge our obligation to
22 enforce the tax law.

23 Senator Blumenthal. Will the new regulations be
24 different from the ones that exist now?

25 Mr. Koskinen. We are working hard in response

1 especially with the benefit of the advice we have gotten
2 from a lot of organizations to make them clearer, easier to
3 understand, and easier for us to enforce.

4 Senator Blumenthal. So they are going to be the same
5 substantively, just clearer?

6 Mr. Koskinen. They will basically--as a friend of mine
7 says, we are not trying to adjust the strike zone. We are
8 trying to dust off home plate and make it clearer, what fits
9 within the definition of "political activity" and what does
10 not, and to whom it does apply.

11 Senator Blumenthal. Okay. I would say that might make
12 the strike zone slightly different. It is not just looking
13 down at home plate. It is also looking at the other
14 features of the strike zone. Would you not agree?

15 Mr. Koskinen. Yes. We need to, as I say--the biggest
16 change, if there is one, will be to make it clear to
17 everyone that there is a statutory framework set up by
18 Congress that runs from the 501(c)(3)s through the 527s.
19 Organizations can pick where they want to be, but we hope
20 that we will be able to provide clearer guidance,
21 particularly with regard to political activity, as to what
22 counts and what does not count.

23 Senator Blumenthal. So you anticipate no problems in
24 the enforcement of the existing regulations to 501(c)(4)
25 organizations?

1 Mr. Koskinen. We will continue to enforce the existing
2 regulations. The only problem is I think the Inspector
3 General is right. Purely a facts and circumstances test,
4 even with all the examples we provided, provides less
5 clarity than we think is important and necessary, but we
6 will live with the regulations we have until new regulations
7 are in force.

8 Senator Blumenthal. There is talk--and, in fact, more
9 than talk, there are proposals to, in effect outsource part
10 of IRS tax enforcement to private debt collectors. How
11 would privatizing IRS enforcement in the highway bill, for
12 example, affect the IRS' ability to effectively collect
13 payments?

14 Mr. Koskinen. We have tried that twice before, and
15 notwithstanding the projections that you would make more
16 money that way, the Government did not make more money. It
17 complicates our life because we have to spend a lot of time
18 making sure that there is not abuse of taxpayers by those
19 tax collectors.

20 In the present day and age, it is even more complicated
21 than it was in those two previous circumstances because one
22 of the most prevalent tax scams right now is people calling
23 and masquerading as if they are from the IRS, threatening
24 people, causing them to make improper payments to criminals,
25 provide criminals with personal information.

1 So now if you suddenly have private debt collectors
2 calling up saying they are from the IRS, they are going to
3 run into the work that we and the Inspector General and
4 everybody else has had, warning taxpayers that, you know, we
5 do not--if you are surprised to hear from us, you are not
6 hearing from us. And so there is going to be more
7 difficulty for somebody from the private sector trying to
8 collect taxes.

9 Senator Blumenthal. Which goes to my next and final
10 question relating to calls that ordinary taxpayers and
11 people may receive from people, mostly con artists,
12 purporting to be from the IRS. Have you detected an
13 increase in the frequency of those kinds of scams--"I am
14 from the IRS. We need to know your Social Security number"?

15 Mr. Koskinen. It is a rampant scam for the last year
16 and a half. The Inspector General has 600,000 reports of
17 those scams. We have been trying to say if you are
18 surprised to hear from us, you are not hearing from us. We
19 write you first. You will get several notices from us.

20 Secondly, when we call you, we will never threaten you.
21 We will never tell you to make a payment immediately. We
22 will never tell you to put it on a debit card. We will
23 never tell you to mail it to some post office box that you
24 have never heard of.

25 Senator Blumenthal. What will you tell them to do?

1 What should they expect?

2 Mr. Koskinen. What they should expect is they should
3 get a notice from us, a letter explaining what the audit or
4 the request is, why we think there is an issue on their
5 return. We advise them of their rights to appeal if they
6 disagree. We encourage them to make payments. We provide
7 installment payment opportunities as well for them. But
8 they--

9 Senator Blumenthal. Do you do that on the phone, or do
10 you invite them in?

11 Mr. Koskinen. We will do that by letter; we will do it
12 by phone; and ultimately, we will do it in person if we move
13 through the entire process.

14 Senator Blumenthal. Thank you very much. Thank you
15 for your service.

16 Chairman Cruz. Thank you very much.

17 Mr. Koskinen, when was the political leadership at the
18 IRS first aware of the improper targeting of citizens?

19 Mr. Koskinen. My understanding is that Lois Lerner
20 knew of what were called "be on the lookout lists" or "BOLO
21 lists" sometime in the 2012 period.

22 Chairman Cruz. When was the political leadership at
23 the Department of Treasury aware of it?

24 Mr. Koskinen. I have no idea.

25 Chairman Cruz. When was the political leadership at

1 the White House aware of it?

2 Mr. Koskinen. I have no idea. This all pre-dates my
3 appearance on the scene.

4 Chairman Cruz. But the public revelation of this did
5 not occur until 2013 after the 2012 election. Is that
6 correct?

7 Mr. Koskinen. That is correct.

8 Chairman Cruz. So what can you tell us--Mr. William
9 Wilkins, the Chief Counsel of the IRS, on April 23, 2012,
10 met with President Obama and 12 others in the Roosevelt
11 Room. Now, tax analysts have claimed that meeting was a
12 photo op, and yet the meeting lasted 7 hours. Wilkins
13 checked in at 3:45 p.m.; he left at 11:09 p.m. And the IRS
14 changed the targeting criteria 2 days later.

15 What can you tell us about that meeting with the
16 President of the United States?

17 Mr. Koskinen. I have no information about that
18 meeting.

19 Chairman Cruz. All right. Let us shift to something
20 else. The IRS demanded of one citizens group, the Coalition
21 for Life of Iowa, that they tell the IRS the content of
22 their prayers. Is it appropriate for the IRS to demand of
23 citizens they share the content of their prayers?

24 Mr. Koskinen. I think that that sounds totally
25 inappropriate and should not happen.

1 Chairman Cruz. The IRS also demanded that each member
2 of the Coalition for Life send a signed declaration that
3 they would not picket Planned Parenthood. Is it appropriate
4 for the IRS to demand of citizen groups that they pledge not
5 to exercise their free speech rights?

6 Mr. Koskinen. Absolutely no.

7 Chairman Cruz. Is the IRS still doing it?

8 Mr. Koskinen. Absolutely not.

9 Chairman Cruz. So that is not being done. There will
10 not be any testimony from any citizens groups that the
11 current IRS is making similar demands.

12 Mr. Koskinen. If they are, it will be the first I hear
13 of it, and we will pursue that immediately because we have
14 made it clear that we should not have any interest
15 whatsoever in whatever your issue is that you are advocating
16 for. Issue advocacy is part of social welfare. People are
17 advocating on issues, on both sides of many controversial
18 issues. We encourage that. That is the whole purpose of
19 the social welfare--part of the purpose. There are a lot of
20 Kiwanis Clubs. But basically we support that. We should
21 not be indicating any preference as to how people exercise
22 their right to advocate on behalf of either side of any
23 issue.

24 Chairman Cruz. Are you willing to apologize on behalf
25 of the IRS to demanding of a citizen group the content of

1 their prayers?

2 Mr. Koskinen. I already have apologized to anyone who
3 was inappropriately selected for inappropriate questions. I
4 have apologized to those who were stuck in the process for
5 an inordinate amount of time. No one should have to wait
6 for 2 years to get an answer. I would note you could get--
7 you can be a (c)(4) and go out and you do not need our
8 determination, but the reason people want determinations to
9 some extent is because the law is unclear enough that they
10 would like to have some representation from the IRS that
11 what they are planning to do is all right and within the
12 realm, and that is appropriate. And we have apologized, and
13 I would apologize again today. People should not be treated
14 that way.

15 Chairman Cruz. Can you tell the Committee why the IRS
16 settled with the National Organization of Marriage for
17 \$50,000 in taxpayer money for wrongfully giving their
18 confidential IRS documents to an individual who was working
19 with the Obama Presidential campaign?

20 Mr. Koskinen. I do not know anything about that
21 particular case.

22 Chairman Cruz. Well, I would ask you to follow up with
23 this Committee in writing and to explain why the IRS gave
24 confidential information to an individual who was working
25 with the Presidential campaign as a partisan operative.

1 Let me ask a different question. The lead investigator
2 at the Department of Justice of this scandal is a major
3 Democratic donor, has given over \$6,000 to President Obama
4 and Democrats. Are you comfortable with this scandal being
5 investigated by a major Democratic donor?

6 Mr. Koskinen. It is not my position to make a
7 determination who, whether it is in the congressional
8 investigations, the IG investigation, or the Department of
9 Justice investigation, is doing the investigation. We have
10 supported all of them.

11 Chairman Cruz. Well, I would think as the Commissioner
12 you would be concerned about the integrity of the IRS. Have
13 you asked either Attorney General Holder or Attorney General
14 Lynch for a special prosecutor who at a very minimum is not
15 a major Democratic donor?

16 Mr. Koskinen. I have had no conversations with either
17 of them about this.

18 Chairman Cruz. All right. Let me ask one additional
19 question or a couple of additional questions on a different
20 line. I mentioned in my opening that I have received
21 numerous anecdotal reports from individuals who became
22 donors or bundlers for Republican Presidential candidates
23 who subsequently found for the first time in their lives
24 they were the target of IRS audits.

25 Of the individuals who were publicly identified as

1 bundlers for the John McCain 2008 Presidential campaign, do
2 you know what percentage of those individuals were audited?

3 Mr. Koskinen. I do not.

4 Chairman Cruz. Do you know what percentage of the 2008
5 Obama campaign bundlers were audited?

6 Mr. Koskinen. I do not.

7 Chairman Cruz. In 2012, do you know what percentage of
8 the bundlers for Mitt Romney were audited?

9 Mr. Koskinen. I do not.

10 Chairman Cruz. Do you know what percentage of the
11 bundlers for President Obama's campaign were audited?

12 Mr. Koskinen. No.

13 Chairman Cruz. I am going to follow up with a letter
14 asking you to provide this Committee that information, not
15 individual tax returns but the aggregate numbers, the
16 percentages of the publicly released lists of bundlers for
17 each of those campaigns.

18 Mr. Koskinen. Right. As I have noted, we will do a
19 million audits this year, even with the constrained
20 resources. Those will include people active in politics on
21 both sides of the political spectrum, people who have never
22 been involved in politics, people who go to rallies, people
23 who organize, people who demonstrate. The only reason we
24 are contacting them--and our process has been reviewed. GAO
25 has been reviewing it. GAO is issuing a report today or

1 tomorrow on our exam selection process with suggestions of
2 how to make it better but finding no examples of anyone who
3 was improperly selected for an audit. We take this very
4 seriously.

5 Chairman Cruz. I am glad you take it seriously. My
6 question here is not focused on groups and 501(c)(4) or
7 (c)(3) applications. It is individuals.

8 Mr. Koskinen. And the million audits are going to be
9 of individuals, and some of them will be Democrats, some
10 will be Republicans. Some go to church, some do not. None
11 of that makes any difference.

12 Chairman Cruz. So will you commit to this Committee to
13 provide the aggregate percentages of the bundlers on each
14 side in our follow-up correspondence?

15 Mr. Koskinen. Again, we do not track people by whether
16 they are bundlers from one political organization or--

17 Chairman Cruz. We will provide the names, and I am
18 asking, of these publicly identified names, what percentage
19 was audited on the Republican side and what percentage on
20 the Democrat side. If the percentages are roughly equal,
21 that will be beneficial to the IRS. If they are not, it
22 will naturally raise subsequent questions. I do not know
23 the answer to this question--

24 Mr. Koskinen. I do not either.

25 Chairman Cruz. It is within the control of the IRS.

1 Mr. Koskinen. The only caveat I will give you is we
2 have a statutory criminal law that says we cannot give out
3 individual taxpayer information, so we will have to figure
4 out if there is a way we can aggregate it so it is not
5 taxpayer information.

6 Chairman Cruz. And that is why I am asking for
7 aggregate data, not any individuals, and simply a percentage
8 of each of the publicly identified list.

9 [The information follows:]

10 / SUBCOMMITTEE INSERT

1 Chairman Cruz. Thank you.

2 Senator Coons?

3 Senator Coons. Thank you, Mr. Chairman.

4 Commissioner, to the analysis requested by the
5 Chairman, if it seems as you review this aggregate data that
6 more of one group of bundlers than another has been audited,
7 it would also be instructive if you would suggest whether
8 there are neutral IRS-based previously approved auditing
9 principles that might lead towards one group being more
10 heavily reviewed than the other.

11 Mr. Koskinen. I would be happy to do that. As I say,
12 GAO has looked at--our audits of individuals are all
13 selected automatically. They have looked at it and have
14 determined that while we need to monitor that to make sure
15 we know what our objectives are and how we are proceeding,
16 they found no evidence that that system in any way biases
17 the audit process and the audit selection process.

18 Senator Coons. Right. So helping ensure that members
19 of this Committee and the general public are better informed
20 about that audit selection process might help, first of all,
21 any inappropriate conclusions that this is somehow targeted
22 or politically driven.

23 Mr. Koskinen. Right. We will try to work with the
24 Committee. We will be happy to get you as much data as we
25 can.

1 Senator Coons. Another member of the Committee
2 questioned you rather aggressively previously about the FBI
3 not having investigated certain people aggressively enough,
4 the Inspector General, and there not being any indictments
5 so far. Unless I misunderstand, due to the public
6 statements, the relevant Inspector General is a self-
7 identified Republican. The relevant current Director of the
8 FBI is a self-identified Republican. After 2 years of
9 searching investigations, is it not possible that there are
10 no indictments because they have found no cause for criminal
11 convictions?

12 Mr. Koskinen. That is a possibility. Obviously, they
13 are not going to indict people unless they think there has
14 been a criminal law violation.

15 Senator Blumenthal. Let me ask you a last question, if
16 I might, because we have got other Senators eager to
17 question.

18 If an organization does not qualify under 501(c)(4) due
19 to its overt political activity, can that organization
20 qualify for another tax-exempt status that does not burden
21 or limit it in any way its First Amendment activity?

22 Mr. Koskinen. Yes, it can become a 527, which allows
23 them--in fact, requires them to be primarily a political
24 organization. So they have to spend more than half the
25 money on politics. But that requires you to notify us that

1 you are going to be one of those organizations. What you do
2 not want to do is end up not as tax-exempt because then you
3 have an obligation to file a corporate tax return, and not
4 filing a return is a serious offense.

5 But the statutory program set up by the Congress allows
6 you to decide you want to spend all of your money or
7 significantly all of us as a political organization, and you
8 can become a 527 and still be tax-exempt.

9 Senator Coons. So if you are a Kiwanis Club or a
10 Garden Club and you are really a social welfare
11 organization, you typically file under (c)(4). If you are
12 an expressly political advocacy organization, you typically
13 file under 527. Why would any organization that is
14 attempting to influence elections choose 501(c)(4)?

15 Mr. Koskinen. The major attraction of a (c)(4), if you
16 are a social welfare organization primarily, is you do not
17 reveal your donors.

18 Senator Coons. Thank you very much for your testimony
19 today, Commissioner.

20 Chairman Cruz. Senator Lee.

21 Senator Lee. Thank you, Mr. Chairman.

22 I wanted to follow up with you on our earlier line of
23 questioning. Will you commit to me that while you remain on
24 as the Commissioner of the IRS, as long as you remain there,
25 you will not, in the absence of a directive by Congress or

1 by the courts, a subsequent directive and one not in place
2 right now, that you will not take any action to remove the
3 tax-exempt status from religious colleges and universities
4 based on their belief that marriage is between a man and a
5 woman?

6 Mr. Koskinen. I can make that commitment.

7 Senator Lee. Thank you. You can understand why this
8 is a significant issue. I deeply appreciate your
9 willingness to make that commitment, and I assume that is a
10 commitment that you are empowered to make. In other words,
11 if an action like what I described were to be taken, it
12 would be taken by you rather than by the White House. Is
13 that correct?

14 Mr. Koskinen. It would be a regulation--we would issue
15 a regulation, which Treasury and the IRS issue jointly. If
16 we ever did that, we would issue it for public comment.
17 There would be no surprises. We are not sneaking up on
18 anybody. Down the road, if the IRS ever moves in that
19 direction because of public policy changes, it would first
20 issue a draft regulation for public comment. So the public
21 would have plenty of notice and plenty of opportunity to
22 comment. And that is not going to happen in the next 2-1/2
23 years.

24 Senator Lee. So you are committing to me that you will
25 not issue such a regulation.

1 Mr. Koskinen. In the next 2-1/2 years.

2 Senator Lee. Thank you.

3 Chairman Cruz. Senator Whitehouse.

4 Senator Whitehouse. Thank you, Chairman.

5 Back to the application forms again, on the 1024
6 application form, which is the form by which an organization
7 applies for 501(c)(4) status, there is a question--it is
8 Question 15--and it asks this, I will quote it: "Has the
9 organization spent or does it plan to spend any money
10 attempting to influence the selection, nomination, election,
11 or appointment of any person to any Federal, State, or local
12 public office, or to an office in a political organization?"
13 You are familiar with that question?

14 Mr. Koskinen. Yes.

15 Senator Whitehouse. There is a Pulitzer Prize-winning
16 nonprofit investigative group, nonpartisan investigative
17 group, ProPublica, which back, I want to say, in 2012
18 investigated these 501(c)(4) filings. They looked at 104
19 organizations that had reported electioneering activity. It
20 reported they had spent money in elections to the Federal
21 Election Commission. The Federal Election Commission has a
22 form that you are required to fill out, and you have to
23 report your activity.

24 ProPublica cross-checked the organizations who swore to
25 the Federal Election Commission that they had spent X amount

1 of dollars in political activity, and then cross-checked
2 them against the 501(c)(4) filings, this Question 15. And
3 it turned out that 32 of them had told the IRS that they
4 spent no money to influence elections, i.e., they answered
5 that Question 15, "No."

6 Could you respond to what red flags that might raise
7 about how you can say to one Federal agency that you spent X
8 dollars on electioneering and tell another agency that you
9 neither spent nor planned to spend any money attempting to
10 influence the selection, nomination, election, or
11 appointment of any person to any Federal, State, or local
12 public office? It does not seem to add up.

13 Mr. Koskinen. It does not. The definitions the
14 Federal Election Commission uses and the IRS uses under
15 (c)(4)s do not overlap entirely, but if you spent a lot of
16 money and reported to the FEC and said you were spending no
17 money and reported to the IRS, that would not seem to be
18 consistent and not be appropriate.

19 Senator Whitehouse. Thank you very much.

20 Chairman Cruz. Senator Tillis.

21 Senator Tillis. Thank you, Mr. Chair. And I know I am
22 not on this Subcommittee, but I do appreciate the
23 opportunity. I thank you for holding this important hearing
24 and the opportunity to ask some questions.

25 Before I get started with the questions, I wanted to

1 share an experience I had in the Aging Committee a couple of
2 months ago where we were talking about IRS scams, or scams,
3 people pretending to be IRS, and literally over the course
4 of 24 hours convincing people to take thousands of dollars
5 out of their bank accounts and use these prepaid cards to
6 pay off what they thought was their debt.

7 My observation in that is that the kind of perception
8 that the average American person has when they get a call
9 from the IRS, that it would be so believable that somebody
10 would call up, say, "You owe us a debt, and you have 24
11 hours to pay it," suggests to me that we need to continue to
12 work on a culture where the American people are literally
13 afraid of the IRS. And these are not just, you know, a
14 small business. I have heard CEOs, I have heard very
15 prominent people, I have heard good middle-class folks--
16 everybody literally afraid of the IRS.

17 So I think there is a culture there that I hope in the
18 process of your remaining tenure there that you can work on,
19 because the IRS, people should not be afraid of them.
20 People should be prepared to see them as a customer service
21 organization. When they do have a tax issue, we should be
22 helping them solve it, not frightening them in the way that
23 I think there are a number of examples, at least in my State
24 of North Carolina.

25 Mr. Koskinen. I could not agree with you more. One of

1 the things that surprised me when I started was how much
2 time we spend actually trying to help taxpayers. I think
3 that message needs to get out there. I am serious when I
4 say if you have a tax problem and you are trying to be
5 compliant, you do not have to go, as I said, to late-night
6 TV or get somebody else. You can talk to us directly. We
7 want to work with you. We are here to help you.

8 Senator Tillis. Well, thank you. And for any North
9 Carolinians that are watching this hearing or hear about it,
10 I hope that they know the moment they get a call from the
11 IRS that is anything less than respectful and helpful, I
12 want them to call my office, because the next call will be a
13 conference call with me and the taxpayer talking to an IRS
14 person. And I think we need to make sure that we are doing
15 a much better job in terms of establishing you all as
16 somebody that helps, does not literally frighten the average
17 citizen.

18 I have got a quick question really related to this
19 behavior, and I want to get on to the next panel, so I will
20 try and be brief. But we have a number of examples where we
21 do see that maybe there was an overzealous agent or person
22 on the other end of the line representing the IRS. What
23 sort of actions have been taken when you are able to tie
24 that to a specific person to fire them?

25 Mr. Koskinen. Without going into detail, we have

1 dismissed on a regular basis--we dismiss over 1,000 people a
2 year. Now, sometimes that is for inappropriately accessing
3 taxpayer information. Sometimes it is for inappropriate
4 behavior with a taxpayer on the line. We know how to--and
5 the IRS employees accept that, the union accepts that we
6 have a high standard of performance. You can also be
7 dismissed for just being delinquent on your taxes.

8 So I do not know about anybody else, but we are an
9 agency that knows how to, in fact, remove employees that are
10 creating problems.

11 Senator Tillis. I want to go back and just ask you, if
12 you would, to give me a sense of how well you think you all
13 responded to the--I believe you received in February 2014 a
14 resent subpoena from the House Committee on Oversight and
15 Government Reform. I believe it was about 18 days after you
16 got the subpoena that we found out about the 400 or so
17 backup tapes containing relevant e-mails had been
18 magnetically erased. We did not find out about that until
19 June of 2014, so 3 or 4 months later.

20 Do you consider that to be an appropriate response to
21 our oversight function here in the Senate and in the House,
22 that time lag and that process?

23 Mr. Koskinen. The time lag, there was an
24 investigation--I did not know about it until April. What we
25 did between April and June, the 6 to 8 weeks, was, in fact,

1 to make sure that we could provide you as much information
2 from that period as possible. That is when we found the
3 24,000 Lois Lerner e-mails from the time her hard drive
4 crashed.

5 Senator Tillis. Thank you, Mr. Chair. I am looking
6 forward to the next panel.

7 Chairman Cruz. Thank you, Senator.

8 Senator Tillis. And thank you, Mr. Commissioner.

9 Mr. Koskinen. Thank you.

10 Chairman Cruz. Senator Sessions.

11 Senator Sessions. Just briefly, to me the question is
12 not the complexity of the issue. I do not think it is that
13 complex, but these issues can be debatable on occasion. The
14 question is: Has there been a targeting of groups based on
15 their political or philosophical approach to life? That is
16 absolutely unacceptable. And the way I see it is that we
17 should follow the leads where they go. Ms. Lerner is gone
18 now from the department, but it is not over as far as I am
19 concerned.

20 I can remember well John Mitchell, John Dean, Haldeman,
21 Ehrlichman, and the White House going down because they had
22 participated, blessed, or approved these kind of activities
23 that targeted people politically when they had no right to
24 do so.

25 Ms. Lerner goes to the White House 35 times, and that

1 raises a question with me, during a campaign, having groups
2 that do not agree with the President's policies being
3 targeted disproportionately. So I want to know who all knew
4 about it.

5 The way I look at these numbers, one total of data of
6 IRS targeting statistics of files showed that 104
7 conservative groups were targeted and 7 progressive; that of
8 those approved, all 7 progressive groups were approved, and
9 only 48 of the 104 of the conservative groups were approved.
10 And Ms. Lerner--and I think every Tea Party group was held
11 up. And Ms. Lerner in 2011 stated, "The Tea Party is
12 dangerous."

13 Well, first, let me ask you this: Will you assure us
14 that you will utilize every power that you have to ensure
15 that all evidence relevant to this matter is brought forth?

16 Mr. Koskinen. I will, and we have done that. And the
17 Senate Finance Committee has all of that information and all
18 of those e-mails, and I think all of us are looking forward
19 to what their report tells us.

20 Senator Sessions. And if Ms. Lerner discussed any of
21 these plans to target these groups that politically may not
22 have been in accord with the President or his policies or
23 his politics, would that be wrong?

24 Mr. Koskinen. That would be wrong. There is no
25 evidence that anybody outside the IRS had any conversations

1 with her about that or that she even had directives
2 internally. But it would be wrong.

3 Senator Sessions. Well, I think it would be wrong,
4 too.

5 Thank you, Mr. Chairman.

6 Chairman Cruz. Thank you very much.

7 This will be my final line of questions, and thank you
8 for being here for what has been an extended hearing. I
9 want to briefly say you mentioned there is no evidence that
10 Ms. Lerner or anyone else had conversations with political
11 operatives.

12 Mr. Koskinen. About targeting conservative groups.

13 Chairman Cruz. At the White House or elsewhere. You
14 would agree that that would be a serious concern if it
15 occurred, and that a fair and impartial investigation would
16 include answering that question.

17 Mr. Koskinen. Yes. As I say, all of the information
18 that the Senator has talked about has been available, is
19 available. The Senate Finance Committee has been working on
20 this for 2 years, and they have announced that sometime in
21 the next couple weeks they are going to put out their
22 report.

23 Chairman Cruz. And you would expect that any such
24 investigation would include political operatives at the
25 White House.

1 Mr. Koskinen. Yes. We have produced--actually, there
2 are no e-mails on this subject out of the IRS to the White
3 House or the Treasury Department. We produced everything
4 that we could find. Other investigations are proceeding,
5 but thus far, we have not seen any external e-mails or
6 discussions with that. But it would be inappropriate--it is
7 inappropriate and it was wrong for these groups to be
8 selected just by their names. Whether somebody was
9 consciously targeting them or not, it was still the wrong
10 thing to do. It should not have happened.

11 Chairman Cruz. Well, and a serious investigation into
12 the 35 meetings Lois Lerner had at the White House that
13 Senator Sessions referenced would naturally begin with the
14 agenda of each of those 35 meetings, the participants who
15 attended them, and inquiring what was discussed at those
16 meetings. Would you agree with that?

17 Mr. Koskinen. That sounds like a perfectly
18 understandable way to go.

19 Chairman Cruz. Okay. I want to focus on the IRS'
20 recordkeeping, particularly concerning Lois Lerner. The
21 House Oversight and Government Reform Committee has produced
22 a detailed timeline of the IRS' recordkeeping failures, and
23 I want to, without objection, enter it into the record
24 because it is too detailed to read in its entirety.

25 [The information follows:]

1 / SUBCOMMITTEE INSERT

1 Chairman Cruz. But I do want to highlight a couple of
2 components of it. On June 13, 2011, Lois Lerner reports to
3 IT that her computer is inoperable, and we are told that the
4 IRS made unsuccessful attempts to recover the hard drive.

5 On August 2, 2013, 3 months after Lois Lerner invoked
6 the Fifth Amendment, House Oversight Committee Chairman
7 Darrell Issa issued the first subpoena to the Treasury
8 Department for IRS materials. At that point, August 2,
9 2013, this created a legal obligation on the part of the IRS
10 to preserve Lois Lerner's e-mails.

11 On March 4, months after that subpoena issued, IRS
12 employees at the IRS Data Center in Martinsburg, West
13 Virginia, magnetically erased 422 backup tapes, destroying
14 information likely to contain up to 24,000 Lois Lerner e-
15 mails from 2011 during the mobilization of the IRS'
16 targeting efforts.

17 Now, my first question is: Do you consider a
18 congressional subpoena to create a binding legal obligation
19 on the IRS and on you as the Commissioner?

20 Mr. Koskinen. Yes.

21 Chairman Cruz. Can you explain why the IRS disregarded
22 the subpoenas and destroyed Lois Lerner's e-mails?

23 Mr. Koskinen. The Inspector General for Tax
24 Administration of the Treasury Department spent a year
25 investigating that subject and concluded that there was no

1 evidence that anyone in the IRS, including the employees who
2 did the action, did that in any way to interfere with a
3 congressional investigation or did it to destroy evidence.

4 Chairman Cruz. So you stated why it was not done. Can
5 you explain why it was done?

6 Mr. Koskinen. It was done because it was a mistake
7 that should not have happened. Again, there was a clear
8 order. The IG reviewed that order and talked to everyone
9 about it throughout the IRS to preserve evidence, including
10 all of the tapes that existed. That order went out. There
11 was a follow-up. There were two or three follow-ups,
12 including from counsel in my office, to, in fact, make sure
13 that evidence was preserved. That order, by the time it
14 trickled down through, was misunderstood to not apply to
15 what--as the IG said, this was old and viewed as junk, and
16 so the employees, when they got it, assumed in their normal
17 course that they should, in fact, prepare it for
18 destruction. That should not have happened. It was a
19 mistake. The IG said nobody did it purposefully. Nobody
20 was trying to avoid anything. But it still should not have
21 happened.

22 Chairman Cruz. So after the records were destroyed,
23 you testified, not once but twice before Congress, that IRS'
24 records were intact, that nothing had been destroyed, and
25 the IRS would be turning over all relevant documents. That

1 was once on March 26, 2014, and a second time on June 20,
2 2014.

3 Mr. Koskinen. That is what I had been advised. That
4 is what I believed. I testified at that time truthfully to
5 what I knew.

6 Chairman Cruz. So the first statement was made 22 days
7 after the IRS had destroyed approximately 24,000 e-mails.
8 You were unaware of it at that time.

9 Mr. Koskinen. That is right. It was done by two
10 employees on the midnight shift in Martinsburg, West
11 Virginia. The first we knew about it was almost a year
12 later.

13 Chairman Cruz. The second statement was made 7 days
14 after the IRS formally notified Congress that all of Lois
15 Lerner's e-mails between January 2009 and April 2011 had
16 been destroyed. Were you aware that the IRS had notified
17 Congress of that?

18 Mr. Koskinen. We notified the Congress that, in fact--
19 I am sorry. In 2014, we notified the Congress that her hard
20 drive had crashed and that it had been unable--in 2011, no
21 one had been able to retrieve the e-mails. We then
22 discovered and found 24,000 e-mails from the time her hard
23 drive collapsed, and we advised the Congress of that.

24 Chairman Cruz. You notified Congress, the IRS notified
25 Congress that Lois Lerner's e-mails had been destroyed.

1 Mr. Koskinen. Her hard driven had self-destructed. We
2 did not destroy it. IRS did not destroy her e-mails.

3 Chairman Cruz. But 7 days later, you testified to
4 Congress that all of the records were intact. Was that
5 testimony truthful?

6 Mr. Koskinen. When I testified to that, that was a
7 testimony about Lois Lerner's hard drive crash, and my
8 testimony at that point was truthful on the basis of what I
9 knew.

10 Chairman Cruz. Let me ask you, if a citizen was being
11 audited by the IRS and an American citizen responded to the
12 IRS that his or her records, business records, charitable
13 contribution records, whatever records, were destroyed
14 because a hard drive went down, would the IRS accept that
15 from a citizen and exonerate the citizen from wrongdoing?

16 Mr. Koskinen. We would accept it from the citizen and
17 work with the citizen, which we do in many cases, to
18 reconstruct records to the best of their ability and ours
19 to, in fact, be able to conclude with an audit. We do not
20 automatically penalize them for the fact that their records
21 have disappeared. We actually will work with them to figure
22 out what other records are there or are there other ways
23 that we and they can figure out what they owe as taxes.

24 Chairman Cruz. And how would the IRS respond to a
25 citizen whose electronic records were destroyed after a

1 subpoena had issued and the citizen was under a legal
2 obligation to preserve those records?

3 Mr. Koskinen. If the citizen had done that, we would
4 respond unhappily. If it were a corporation and two
5 employees in Martinsburg, West Virginia, ignoring the
6 subpoena had done it, we would do an investigation, as the
7 IG did, to find out if that was purposeful. In this case,
8 the IG determined nobody did this to avoid disclosure;
9 nobody did this to interfere with an investigation.

10 Chairman Cruz. Now, you have spent time in the private
11 sector.

12 Mr. Koskinen. Twenty years.

13 Chairman Cruz. If you were the CEO of a corporation
14 and the corporation were subject to a binding subpoena, and
15 an employee of that corporation destroyed records in
16 violation of the subpoena, would you expect a CEO to be
17 held accountable for the corporation's defiance of a
18 subpoena?

19 Mr. Koskinen. I would not view it as defiance, but I
20 would expect to be held accountable. I am accountable as
21 the head of the IRS.

22 Chairman Cruz. Thank you.

23 Senator Coons?

24 Senator Coons. No further questions, Mr. Chairman,
25 although I believe Senator Whitehouse does.

1 Chairman Cruz. Senator.

2 Senator Whitehouse. Thank you, Commissioner. One last
3 question. The narrative has developed during the course of
4 today's inquiry that the Obama administration intruded into
5 the IRS with respect to the conservative political
6 organizations because it was concerned about the
7 conservative organizations' efforts to influence the
8 upcoming 2012 election, and that that would have been
9 contrary to the political interests of the administration,
10 and that was their motivation for trying to influence the
11 IRS to pursue this.

12 If the predicate of that was that these were
13 organizations whose purpose was to attempt to influence the
14 Presidential election of 2012, would the truthful answer to
15 the Question 15 form be, "Yes"?

16 Mr. Koskinen. No.

17 Senator Whitehouse. Why would that not be the case?

18 Mr. Gray. Because then if the purpose of the
19 organization was to engage in political activity in the 2012
20 election, it should be reflected on their application.

21 Senator Whitehouse. That is what I mean. So if
22 Question 15 says, "Has the organization spent or does it
23 plan to spend any money attempting to influence the
24 selection, nomination, election, or appointment of any
25 person to any Federal, State, or local public office?" the

1 truthful answer is, "Yes." Correct? If that is what they
2 intended to do.

3 Mr. Koskinen. If that is what they intended to do, and
4 certainly if that is what they did.

5 Senator Whitehouse. So if the Obama administration's
6 purpose was to try to defeat that, the fundamental predicate
7 of all of that is that these organizations did, in fact,
8 have that intention and should have answered, "Yes," to
9 Question 15, "We do plan to spend--spend or plan to spend to
10 influence the election."

11 Mr. Koskinen. If that was their intention, that should
12 have been their answer.

13 Senator Whitehouse. Correct.

14 Mr. Koskinen. I would note there is no evidence that
15 anyone in the White House or the Treasury indicated or
16 encouraged the IRS to take any action.

17 Senator Whitehouse. Yes. I am not here to vindicate
18 that narrative. I am just pointing out that that element of
19 it would suggest that the answer to Question 15 must be yes
20 if it is to be truthful.

21 Mr. Koskinen. That is correct.

22 Senator Whitehouse. Thank you.

23 Senator Sessions. Mr. Chairman, could I--

24 Chairman Cruz. Senator Sessions.

25 Senator Sessions. You know, the Tea Party group in

1 Alabama was asked to list the names of all their members and
2 all their donors and the date that they gave. Do you think
3 that is a proper question? And do you know who is
4 responsible for asking that question?

5 Mr. Koskinen. I do not know who is responsible for
6 asking that question. In some cases, depending on the
7 organization, it may be appropriate to find out who, in
8 fact, on your 990 you list donors, although we are about to
9 try to change that. As a general matter, who gives to you
10 should not matter as to what you are about to do.

11 Senator Sessions. And what about lists of members?

12 Mr. Koskinen. The list of members should not be an
13 issue that we are concerned about.

14 Senator Sessions. Well, it troubles me that Mr. Comey
15 and the FBI have not bothered to even talk to Ms. Gerritson,
16 head of the Tea Party in Wetumpka, in Alabama, about these
17 questions. Those are the kinds of things that they were
18 asked about. I am concerned about that.

19 Thank you, Mr. Chairman.

20 Chairman Cruz. And just to clarify, is the IRS
21 currently asking applicants either their list of members or
22 their list of donors?

23 Mr. Koskinen. No, not to my knowledge at all.

24 Chairman Cruz. Would you know if they were?

25 Mr. Koskinen. I would know if they were. As I say,

1 there may be occasions where, depending on your activity, we
2 would want to know are you getting support from other
3 charities. If you are going to be a (c)(4) and engage in
4 politics, are you getting support from other political
5 organizations in terms of where is your money coming from?
6 But we would at this point have no need to know who your
7 members are, no need to know a list of all of your donors.

8 Chairman Cruz. Thank you, Mr. Koskinen. This first
9 panel is excused. We appreciate your taking the time to
10 participate in this hearing.

11 We will take a very brief break to welcome up the
12 second panel, and we will start momentarily with the second
13 panel.

14 Mr. Koskinen. Thank you, Mr. Chairman.

15 [Recess at 3:50 p.m. to 3:55 p.m.]

1 Chairman Cruz. Welcome, everyone. I would ask you to
2 please stand and be sworn in. Please raise your right hand.
3 Do you affirm that the testimony you are about to give
4 before the Committee will be the truth, the whole truth, and
5 nothing but the truth, so help you God?

6 Ms. Mitchell. I do.

7 Mr. Spaulding. I do.

8 Mr. Greim. I do.

9 Mr. Noble. I do.

10 Ms. Walker. I do.

11 Ms. Aviv. I do.

12 Ms. Martin. I do.

13 Mr. Colvin. I do.

14 Mr. Sekulow. I do.

15 Chairman Cruz. Thank you very much. Welcome. I am
16 going to briefly introduce each of our nine witnesses, and
17 then we are going to get straight to testimony.

18 Cleta Mitchell is a partner and political law attorney
19 in the Washington, D.C., office of Foley & Lardner, where
20 she advises nonprofit and issue organizations as well as
21 campaigns on State and Federal campaign finance and election
22 law. She has served as legal counsel to the National
23 Republican Senatorial Committee, counsel to the National
24 Republican Congressional Committee, and president of the
25 Republican National Lawyers Association.

1 Stephen Spaulding is policy counsel at Common Cause
2 where he focuses his research on campaign finance reform,
3 voting rights, election administration, and governmental
4 transportation. Previously, he was a litigation associate
5 at Goodwin Procter.

6 Edward Greim is a partner at the law firm of Graves
7 Garrett in Kansas City, Missouri, where he practices
8 political law. Previously, he was a litigation associate at
9 Bryan Cave in New York.

10 Lawrence Noble is senior counsel to the Campaign Legal
11 Center and an adjunct professor at the George Washington
12 University Law School, where he teaches campaign finance
13 law. Previously, he was president and CEO of Americans for
14 Campaign Reform, practiced political law at Skadden, Arps,
15 Slate, Meagher & Flom, and was the executive director and
16 general counsel of the Center for Responsive Politics. He
17 also served as General Counsel of the Federal Election
18 Commission from 1987 to 2000.

19 Toby Marie Walker is the co-founder and president of
20 the Waco Tea Party. She is a highly decorated grassroots
21 activist. She has earned Watchdog of the Month and Tea
22 Party Leader of the Year from AFP Texas and the Sam Adams
23 Alliance has awarded her "Rookie of the Year."

24 Diana Aviv is president and CEO of Independent Sector,
25 a national leadership network for America's nonprofits,

1 foundations, and corporate giving programs. Previously, Ms.
2 Aviv was associate executive vice chair at the Jewish
3 Council of Public Affairs and director of programs at the
4 National Council of Jewish Women. In December 2010, she was
5 appointed by President Obama to the White House Council for
6 Community Solutions.

7 Jenny Beth Martin is the president and co-founder of
8 Tea Party Patriots, one of the largest national umbrella
9 groups within the Tea Party Movement. Before founding the
10 Tea Party Patriots, she had transitioned out of her career
11 as a technology executive for The Home Depot.

12 Gregory Colvin is chairman of the board of Adler &
13 Colvin, a San Francisco law firm that specializes in the
14 representation of nonprofit organizations and their donors.
15 He currently serves as the chair of the Drafting Committee
16 of Bright Lines Project sponsored by Public Citizen, which
17 is aimed at reforming IRS rules defining political campaign
18 activity.

19 And, finally, Jay Sekulow is chief counsel of the
20 American Center for Law and Justice, a law firm and
21 grassroots organization with more than 1 million members.
22 Mr. Sekulow has argued 12 cases before the United States
23 Supreme Court and is widely recognized as one of the leading
24 litigators defending religious liberty in the country.

25 A number of the members of this panel are long-time

1 friends of mine. We have been side by side in a great many
2 endeavors, and it is a pleasure to welcome each of you here
3 today.

4 Ms. Mitchell, we will begin with your testimony.

1 STATEMENT OF CLETA MITCHELL, PARTNER, FOLEY &
2 LARDNER LLP, WASHINGTON, D.C.

3 Ms. Mitchell. Thank you, Mr. Chairman, Mr. Ranking
4 Member, and members of the Subcommittee. Thank you for
5 allowing me to testify today, and thank you for conducting
6 this hearing about the IRS and its targeting of hundreds of
7 citizens organizations and, indeed, thousands of individual
8 citizens based on their political viewpoints, their
9 involvement with and contributions to conservative
10 organizations, candidates, and causes.

11 While the President of the United States joked about ad
12 denied this scandal ever occurred--on a comedy show, no
13 less--I am here to tell you that I experienced it firsthand
14 on behalf and with and for my clients and hundreds of others
15 like them across the Nation, beginning in the fall of 2009,
16 the first year of the Obama administration. It is not a
17 joke, it is not funny, and it is not pretend.

18 Mr. Chairman, you are asking the right questions. Have
19 laws been broken? And what should Congress do about it?

20 So the answer to your first question is yes, laws have
21 been broken. IRS officials, including former Commissioner
22 Shulman, Acting Commissioner Steven Miller, Exempt
23 Organizations Unit Director Lois Lerner, and now IRS
24 Commissioner John Koskinen have all at one time or another
25 lied to Congress. Lying to Congress is perjury. 18 U.S.C.

1 Section 1001 makes it a felony to lie to Congress, and I was
2 a little bit surprised that Commissioner Koskinen said today
3 he was "generally familiar" with that statute. I do not let
4 any client talk to any employee, agent of the Federal
5 Government or congressional appearance without reminding
6 them of their obligations under 18 U.S.C. 1001. 18 U.S.C.
7 Section 1621 is the general perjury statute, and both of
8 these statutes are applicable to communications to and false
9 testimony to the Congress of the United States.

10 IRS agents and employees have violated other Federal
11 laws. They have illegally released and inspected
12 confidential tax returns and return information of
13 taxpayers, violating laws that Congress enacted after
14 Watergate to ensure that that never happened again to
15 political enemies of a future administration.

16 The IRS routinely ignores Freedom of Information
17 requests from the public and other laws that Congress has
18 enacted to protect taxpayers and citizens from overreaching
19 regulatory agencies.

20 So now with the most politicized Department of Justice
21 in American history, there is no one to enforce the laws
22 when they are broken by IRS officials.

23 So we come to the second question posed by this
24 Committee for today's hearing: What can and should Congress
25 do?

1 I think the most important thing Congress should do is
2 remove John Koskinen from office. The House should impeach
3 him, and the Senate should convict him. Commissioner
4 Koskinen has lied to Congress more than once. There is
5 sufficient evidence of his false testimony to warrant
6 Articles of Impeachment, which should be passed by the
7 House, and a trial conducted in the Senate.

8 This is stout medicine, I realize, but the integrity of
9 Congress and its ability to properly investigate and oversee
10 Federal agencies is at stake. Mr. Koskinen has committed
11 perjury, and he has willfully disregarded his duties as the
12 Commissioner of the IRS.

13 Then I have included in my written testimony seven
14 statutory changes that would remedy some of the abuses that
15 have been uncovered and discovered during the House
16 investigation. I hope that Congress will take those
17 seriously and deal with those and pass those this year.

18 Mr. Chairman, the American people are ready for the
19 Congress to hold the IRS accountable. It is way past time
20 for something to be done to the people who brought about
21 this unwarranted, unconstitutional, and illegal abuse of the
22 American people.

23 Thank you.

24 [The prepared statement of Ms. Mitchell follows:]

1 Chairman Cruz. Thank you, Ms. Mitchell.

2 Mr. Spaulding?

1 STATEMENT OF STEPHEN SPAULDING, POLICY COUNSEL,
2 COMMON CAUSE, WASHINGTON, D.C.

3 Mr. Spaulding. Chairman Cruz, Senator Sessions,
4 distinguished members of the Committee, thank you for the
5 opportunity to testify this afternoon. I am Stephen
6 Spaulding, policy counsel with Common Cause, a nonpartisan,
7 nonprofit organization of 400,000 members committed to open,
8 honest, and accountable Government.

9 Let me be clear: It was wrong for the IRS to subject
10 some "social welfare" nonprofit applications to extra
11 scrutiny based solely on their names and identified
12 interests. We applaud Commissioner Koskinen's public
13 commitment to continuing a rulemaking that will prevent this
14 episode from repeating itself, and we urge the IRS to move
15 forward. The IRS must not be intimidated by partisan
16 political operatives on the right and the left who set up
17 phony social welfare groups that pump hundreds of millions
18 of dollars from secret sources into our elections. Those
19 groups deprive the American people of the information they
20 need about who is trying to influence their votes and to
21 whom their elected officials owe political favors.

22 The ongoing scandal stems from at least four factors:

23 One, a lack of bright-line standards about what
24 nonprofit (c) (4)s can do;

25 Two, the willingness of political consultants to

1 manipulate the rules and operate social welfare groups as de
2 facto political action committees;

3 Three, an underresourced agency that has thus far
4 failed to do its job fully to hold the largest offenders
5 accountable;

6 And, four, champions of gridlock who have blocked
7 Congress from passing disclosure legislation.

8 Congress never intended for social welfare groups to be
9 conduits for secret political spending. Citing public
10 reports about their political spending operations, some
11 campaign finance reform advocates have urged the IRS to
12 investigate groups on the left like Priorities USA and on
13 the right like the American Action Network. But there is no
14 example of this phenomenon more flagrant than Crossroads
15 GPS, a purported (c) (4) founded in 2010 by Karl Rove and
16 others, which has spent significant amounts of money
17 influencing campaigns. It is the sister organization of the
18 super PAC American Crossroads, which discloses its donors.
19 Crossroads GPS, however, does not.

20 American Crossroads' own political director said in
21 2010, "...some donors didn't want to be disclosed, and
22 therefore, a (c) (4) was created." The FEC General Counsel
23 concluded that Crossroads GPS' major purpose in 2010 was
24 Federal Committee activity and should have registered as a
25 political committee, but a gridlocked FEC split 3-3 on

1 whether to pursue an enforcement action.

2 Crossroads then went on to spend \$71 million in the
3 2012 races, making it the top secret money spender of the
4 cycle. Who funded all of these attack ads? Only Crossroads
5 GPS officials, the IRS, and perhaps the politicians who
6 benefited from the spending can answer that. It reported in
7 its public tax returns one single anonymous donation of
8 \$22.5 million, another for \$18 million, another for \$10
9 million. In total, 50 donations for \$1 million or more, and
10 Americans deserve to know, Senators. Americans deserve to
11 know who was making investments of this magnitude in
12 political races.

13 This trend shows no sign of stopping in 2016.
14 According to the New York Times, at least eight Republican
15 candidates have aligned with nonprofit groups, and according
16 to the paper, Secretary Clinton's supporters are considering
17 setting up a (c) (4) as well.

18 Congress has thus far failed to pass comprehensive
19 campaign finance disclosure reform that could have addressed
20 this problem. The IRS and Treasury Department took the
21 important step in 2013 of issuing proposed rules so that the
22 public and the Government would benefit from clearer
23 definitions of candidate-related political activity.

24 The IRS must move ahead in its rulemaking and
25 aggressively watchdog blatant efforts by partisan front

1 groups to pollute our elections with unlimited amounts of
2 secret money. The American people deserve better.

3 Thank you, Mr. Chairman.

4 [The prepared statement of Mr. Spaulding follows:]

1 Chairman Cruz. Thank you.

2 Mr. Greim?

1 STATEMENT OF EDWARD D. GREIM, PARTNER, GRAVES
2 GARRETT LLC, KANSAS CITY, MISSOURI

3 Mr. Greim. Chairman Cruz, Ranking Member Coons, and
4 Senator Sessions, thank you for inviting me here today. As
5 I will explain in a moment, we can already draw some lessons
6 from some of the ongoing civil litigation against the IRS.
7 Even though there is much more for us to learn in civil
8 discovery, it is not too soon to consider legislation.

9 Statutes can never sate the desire of Federal
10 bureaucrats to use their offices inappropriately. As our
11 Founders well knew, that is human nature. It goes with the
12 beast that we have built in Washington. But the reforms I
13 will proposed will ensure that the next targeting happens
14 involving either party, taxpayers will be able to protect
15 their rights immediately. They should not have to wait 2 or
16 3 years after evidence is lost and memories blur to learn
17 the truth. As a modest first step, I propose four
18 legislative fixes.

19 First, I will briefly explain my background in this
20 area. My firm is lead counsel for plaintiffs in the class
21 action case of NorCal v. Internal Revenue Service. It is
22 pending in the Southern District of Ohio because that is
23 where Cincinnati is, and that is where the IRS said the
24 targeting was confined to at first. Our motion for class
25 certification is due in just a couple of days.

1 We have had the opportunity in 2015 to conduct class
2 discovery. We have deposed several IRS employees and
3 executives in Cincinnati, here in Washington, and in other
4 parts of the country.

5 I would like to focus on two points today, one factual
6 and one legal. First, I want to show that the IRS still
7 remains ripe for political abuse. And, second, I will
8 briefly outline these legislative fixes.

9 The first observation is simply this: The IRS'
10 internal procedures promote uniform treatment of taxpayers.
11 That is a virtuous goal. But like every virtue, that goal
12 of uniform treatment can be perverted to accomplish
13 nefarious purposes, and we think that happened here.

14 Second, as the IRS' 30(b)(6) deposition confirmed, the
15 criteria for centralization and special treatment of cases
16 found in the Internal Revenue Manual are almost endlessly
17 flexible, and they were used here in this case. In fact,
18 Citizens United is important in our case because that may
19 well have been the reason that Lois Lerner decided that she
20 wanted to focus on the Tea Party movement. That is still
21 viewpoint discrimination, by the way.

22 Third, key officials are the IRS had a built-in
23 distrust of conservative-leaning organizations. In fact,
24 there is an important e-mail from 2011. Carter Hull, the
25 employee in Washington who was responsible for working a

1 handful of Tea Party test cases, made a telling observation.
2 He explained to a group of other officials that "[w]e noted
3 that the list contained organizations that appeared to be a
4 particular political ideology." No one on the e-mail chain
5 even responded to that remark.

6 Finally, vague standards for recognizing group status,
7 the much maligned facts and circumstances test, become a
8 talking point, but they are no excuse for the IRS' conduct.
9 When you go through and read the e-mails, no one is
10 agonizing over the vagueness of the test as the reason to
11 hold these groups up. That was not what was actually going
12 on in this case. My four legislative fixes are outlined in
13 my written testimony.

14 I just want to emphasize at the end of the day that I
15 think it is important to pass laws that let citizens
16 actually take charge of this matter themselves, that let
17 them file lawsuits if necessary. I do not think a criminal
18 fix is the only way to go because that depends on
19 prosecutorial discretion, and so that is what we have
20 focused on in our four criteria.

21 This is a step in the direction of restoring an
22 important virtue for a constitutional, democratic republic--
23 that is, citizen awareness and self-governance. That is
24 what we stand for, and I think that is what legislative
25 fixes should focus on.

1 Thank you.

2 [The prepared statement of Mr. Greim follows:]

1 Chairman Cruz. Thank you.

2 Professor Noble?

1 STATEMENT OF LAWRENCE NOBLE, PROFESSOR, GEORGE
2 WASHINGTON UNIVERSITY LAW SCHOOL, AND SENIOR
3 COUNSEL, CAMPAIGN LEGAL CENTER, WASHINGTON, D.C.

4 Mr. Noble. Thank you. Chairman Cruz, Ranking Member
5 Coons, and Senator Sessions, I appreciate the opportunity to
6 address the Subcommittee on the activities of the Internal
7 Revenue Service and the oversight of political activity of
8 tax-exempt organizations.

9 As Justice Kennedy wrote in Citizens United v. FEC:
10 "The First Amendment protects political speech; and
11 disclosure permits citizens and shareholders to react to the
12 speech of corporate entities in a proper way. This
13 transparency enables the electorate to make informed
14 decisions and give proper weight to different speakers and
15 messages."

16 However, as has been discussed, the IRS' failure to
17 enforce the laws governing political activity by 501(c)(4)
18 organizations, together with the FEC's failure to enforce
19 the campaign finance laws, has resulted in hundreds of
20 millions of tax-exempt dollars being used to elect
21 candidates with little or no transparency as to the sources
22 of these funds.

23 According to the Center for Responsive Politics, groups
24 claiming to be exempt from tax under 501(c)(4) reported
25 spending over \$257 million in the 2012 elections and over

1 \$118 million in the 2014 elections. Very few of these
2 politically active groups publicly disclose any of their
3 donors. So even if they report some of their election-
4 related activity, there is no real transparency. And these
5 figures do not include the spending of organizations who do
6 not report to the IRS or to the FEC.

7 Already in the 2016 election cycle, groups set up by
8 candidates run by people who have worked on behalf of the
9 candidates and financed through the candidates' fundraising
10 are using secret money to support their candidates'
11 elections. As this past Sunday's New York Times reported,
12 it appears that many Presidential hopefuls have been meeting
13 with donors, hiring staff, visiting New Hampshire and Iowa
14 since last year, but have had their travel and other
15 expenses paid for by their super PACs and their 501(c)(4)
16 organizations.

17 Some of these groups are now planning to use the same
18 secret money to finance activity that previously we expected
19 the campaigns to pay for, such as hiring people for
20 grassroots outreach, opposition research, and campaign
21 strategy. And we can also expect to see an increase in the
22 funding of 501(c)(4) organizations that are not directly
23 connected to a specific candidate, but who are supporting
24 specific candidates.

25 There is no question that the goal of these

1 organizations is to affect the outcome of our elections
2 while hiding the true source of their funds. This means we
3 have no way of knowing whether the campaign activity of
4 these groups is being funded by thousands of small donors,
5 several wealthy individuals, corporations, labor unions, or
6 even foreign nationals, foreign companies, or foreign
7 governments.

8 The use of these organizations as conduits for hundreds
9 of millions of dollars to elect candidates is possible
10 because of the way the IRS has defined "political activity."
11 And as has already been discussed, the law requires a
12 501(c)(4) to be devoted to the promotion of social welfare,
13 which does not include political activity. The IRS decided
14 that meant primarily devoted to social welfare, but they did
15 not describe what that meant. They did not describe what
16 "primarily" meant and how do they describe what a "political
17 activity" is beyond a facts and circumstances test. What
18 that has allowed are these groups and their lawyers to
19 decide that as long as we spend only up to 49 percent, we
20 are not primarily--we are still primarily doing social
21 activity, and also decide very narrowly what is political
22 activity.

23 Well, 49 percent of a \$100 million group is a lot of
24 money; 49 percent of a \$10 million group is a lot of money.

25 The problem here is that the IRS now is under a lot of

1 pressure not to do anything. They started a rulemaking, but
2 have been criticized by Members of Congress and the public
3 because of that rulemaking.

4 Now, as a public rulemaking, we may agree with part of
5 it, we may disagree with part of it, and that is the whole
6 point of it, to get comments and to come up with the best
7 rules as to what would be--what are the standards for a
8 501(c)(4) organization. But, instead, because of the
9 scandal--and I agree that if they targeted groups for their
10 political ideology, that was wrong. But because of the
11 scandal, they are now under pressure not to do anything. We
12 expect to see less enforcement of the laws, and they are
13 under pressure now not to do new rules.

14 This is wrong. This is not what Congress intended.
15 This defeats transparency, and it ultimately harms our
16 democracy.

17 Thank you.

18 [The prepared statement of Mr. Noble follows:]

1 Chairman Cruz. Thank you.

2 Ms. Walker?

1 STATEMENT OF TOBY MARIE WALKER, PRESIDENT, WACO
2 TEA PARTY, WACO, TEXAS

3 Ms. Walker. Thank you, Chairman Cruz, Senator Coons,
4 and members of the Committee, for inviting me to share my
5 story today. I am the president and founder of the Waco Tea
6 Party.

7 I am an optimistic person, most people can tell you. I
8 can see the light at the end of the tunnel, and I keep
9 going. But in this situation, the light at the end of the
10 tunnel turned out to be a train coming at me, and I had been
11 tied to the tracks by red tape with the IRS.

12 Dealing with the IRS targeting has been incredibly
13 difficult on me. It has impacted my health, so much so that
14 my heart doctor has pulled me aside and explained that
15 stress is a silent killer. When I laughed at him and said,
16 "Oh, I will be fine," he said, "You will not be fine. You
17 need to reduce your stress." He asked me what the problem
18 was, and I explained this, and it was the first time that I
19 had discussed it honestly with someone.

20 The impact the targeting has had on me and others is a
21 very personal effect on our families, our relationships, our
22 professions, our reputations, and our lives in general.
23 Nothing can ever be done to repair it.

24 The Waco Tea Party is a small organization. Our
25 operating budget is less than \$10,000 a year. We do not

1 have paid staff. We do not have offices. We do not have
2 consultants. We do it for love of country. We do not do it
3 for financial gain or for notoriety.

4 I have submitted testimony today outlining our ordeal
5 with the IRS. To sum it up, we believe that the IRS was not
6 looking for compliance with us. We believe that they were
7 intending to abuse the tax law to disparage, demoralize,
8 discourage, and ultimately disallow us participation in the
9 political process.

10 Why the IRS was so concerned about a tiny organization
11 in Waco, Texas, is beyond me. Why they targeted us--and
12 make no mistake, we were targeted. We may never know why
13 the IRS chose us. We may never know who put us on that
14 list. We do not know who they are protecting. But we do
15 know for certain that there were Senators encouraging them
16 to target us. We know that those shameful actions started a
17 domino effect throughout the IRS.

18 When the ruling class can treat the rest of us as pawns
19 in their corrupted game, we are no longer a free society.
20 When a Senator can use the IRS as a weapon against an
21 American citizen or organization or group of people, they
22 have too much power. When a letter to the right bureaucrat
23 in the IRS can cause the trust of the American people to be
24 shattered, it has lasting effects on a free society.

25 We won the Cold War to stop that kind of oppression

1 from being thrust upon us by foreign powers. We should not
2 have to tolerate it now just because it is homegrown
3 tyranny.

4 Senators, you need us, you need taxpayers. You need
5 our money, and you need to keep the Government going. You
6 forget that it is not yours. You did not earn it. You did
7 not build it. We did. You are not entitled to it. You
8 have no right to tax our speech. You have no right to tax
9 the way we assemble. You have no right to force the most
10 powerful agency in the Federal Government on us because
11 someone did not like a Supreme Court ruling.

12 Gentlemen, many people have forgotten that the basic
13 principle of our Government is supposed to be of the people,
14 by the people, and for the people, not against the people.

15 The very Government that I trusted to protect its
16 citizens engaged in a scheme to harass and intimidate me, my
17 organization, and many others across the country. The
18 American people deserve answers. They deserve to be
19 protected from public servants who would use their power and
20 influence to destroy lives. If we allow this to pass today,
21 it stands as a precedent for tomorrow. I do not want my
22 children and my grandchildren to grow up in a country like
23 this.

24 I will never stop fighting to keep it from becoming
25 that way. We need legislation that will protect the

1 taxpayers and their information, and it will also guarantee
2 that we get our records from the IRS when they abuse our
3 information.

4 We must have legislation that prohibits the misuse of
5 Government office to reward friends and punish enemies from
6 either side of the aisle. Any elected official or
7 Government employee who does engage in this should have a
8 separation of service. All I ask is that Congress acts,
9 that they do something and not bicker about it. It is time
10 that they are held responsible.

11 Thank you.

12 [The prepared statement of Ms. Walker follows:]

1 Chairman Cruz. Thank you, Ms. Walker.

2 Ms. Aviv?

1 STATEMENT OF DIANA L. AVIV, PRESIDENT AND CHIEF
2 EXECUTIVE OFFICER, INDEPENDENT SECTOR, WASHINGTON,
3 D.C.

4 Ms. Aviv. Chairman Cruz, Senator Coons, thank you so
5 much for the opportunity to share the perspective of
6 Independent Sector.

7 Charitable organizations understand that continued
8 support from Americans who give of their time and their
9 money depends upon a high level of public trust, and that
10 any erosion of that trust harms our ability to advance our
11 missions. We are, therefore, deeply committed to ensuring
12 that the charitable and philanthropic sector continuously
13 aspires to the highest standards of ethical conduct and
14 adheres to all rules governing our organizations.

15 Problems arise when laws and regulations are unclear,
16 inconsistent, and create confusion even for the most
17 responsible charitable organizations. In particular,
18 Independent Sector is concerned that there is great
19 confusion regarding the difference between permissible
20 nonpartisan activities undertaken by charitable
21 organizations to encourage civic participation and partisan
22 political activities aimed at influencing the outcome of
23 elections.

24 The public expects and supports the efforts to educate
25 policymakers about matters affecting their communities as

1 well as to ensure our citizens understand these issues and
2 participate in the electoral process. They draw a line,
3 however, between this engagement and efforts to ensure that
4 a particular candidate of political party prevails in an
5 election.

6 Unfortunately, there is great confusion about what
7 actually constitutes partisan political activity which is
8 permissible for certain tax organizations. The absence of
9 clear and consistent definitions of partisan political
10 campaign activity, coupled with vague limits on how much of
11 this activity is permitted, has left the door open for
12 individuals exclusively interested in influencing elections
13 to use 501(c)(4) social welfare organizations as their
14 primary vehicle. The result has been a massive influx of
15 money to these entities while allowing donors to hide behind
16 the same privacy protections extended to contributions that
17 support charitable causes. This has served to further
18 confuse the public on the role that the charitable community
19 plays in the political arena.

20 This lack of clarity about definitions and the
21 ambiguous so-called facts and circumstances test that the
22 IRS applies in making determinations about political
23 activity resulted in the improper handling of applications
24 for exempt status from both conservative and liberal
25 organizations.

1 We support the IRS' effort to provide greater clarity
2 on this issue rather than leaving it up to the broad
3 discretion of agents examining exempt applications and the
4 annual Form 990 information returns. A clear definition of
5 "candidate-related political activity" and a specific
6 threshold for permissible political activity applied across
7 all 501(c) organizations will provide regulators a clear,
8 unambiguous standard by which to review applications for
9 tax-exempt status and ensure transparency and consistent
10 application of regulations for tax-exempt organizations.

11 The permissible level should be insubstantial relative
12 to an organization's size and indexed for inflation, and the
13 rules should require the disclosure of donors whose
14 contributions are intended to be used to influence the
15 outcome of elections. Clarifying the rules will help both
16 501(c)(3) and 501(c)(4) organizations to better understand
17 what is permissible and enable IRS agents to make more
18 precise determinations regarding the granting of tax-exempt
19 status. It will also preserve the important advocacy role
20 and vital voice of exempt organizations in civic engagement
21 efforts that benefit and sustain the communities we serve
22 and strengthen our democratic society.

23 Thank you.

24 [The prepared statement of Ms. Aviv follows:]

1 Chairman Cruz. Thank you.

2 Ms. Martin?

1 STATEMENT OF JENNY BETH MARTIN, PRESIDENT AND CO-
2 FOUNDER, TEA PARTY PATRIOTS, INC., WOODSTOCK,
3 GEORGIA

4 Ms. Martin. Mr. Chairman, Senator Coons, members of
5 the Committee, thank you for inviting me to testify.

6 As Americans, we enjoy rights granted by our Creator,
7 rights guaranteed by our Constitution. I am exercising at
8 least two of those rights today: the right to free speech
9 and the right to petition my Government for redress of
10 grievances.

11 Now, about those grievances, what we have experienced
12 at Tea Party Patriots over the last 6 years and what we have
13 learned over the last 2-plus years leads me to the
14 following:

15 For years, the most feared, most threatening, most
16 coercive civil agency of the Federal leviathan--the Internal
17 Revenue Service--ran roughshod over the fundamental rights
18 of speech and association enshrined in the First Amendment,
19 and we are still waiting for someone in a position of
20 authority and responsibility to actually do something about
21 it.

22 Last week, on a comedy show, the President of the
23 United States joked, laughed, and denied that any deliberate
24 targeting happened. He shrugged off the suggestion that any
25 conspiracy had taken place--even though documents released

1 just a week earlier showed Lois Lerner had met with
2 attorneys from the Justice Department and a representative
3 of the FBI in 2010 to discuss bringing criminal charges
4 against conservative nonprofits.

5 Shame on you, Mr. President.

6 Were we hurt by the decision to target us? Of course.

7 Groups and individuals were affected from east to west,
8 north to south, and everywhere in between. I cannot count
9 the number of times after I gave a speech when supporters
10 came up to with tears in their eyes, fear in their voice,
11 and an envelope from the IRS in their hands, asking me how
12 to work to this out-of-control agency stop and how to bring
13 about constitutionally limited Government.

14 Know this: I sit here today for these Americans.

15 The targeting forced us at Tea Party Patriots to spend
16 time and money educating our supporters, educating the
17 press, researching information needed for various House and
18 Senate Committees investigating the matter, arranging town
19 hall meetings, coordinating and paying for travel for our
20 local coordinators to come to Washington to testify and to
21 talk to Members of Congress and committee staff. We filed
22 FOIA requests, and then we need to pay our smart attorneys
23 to help us understand the gibberish and the thousands of
24 redacted pages of paper we got in response. And, of course,
25 we had to spend precious time answering all those crazy

1 questionnaires from the IRS in the first place.

2 We estimate we spent at least 5,000 man-hours working
3 on IRS targeting-related issues. Think about that for a
4 minute: 5,000 man-hours. That is the equivalent of one
5 employee working 2-1/2 years full-time on this issue alone.

6 Some have asked us to put a price tag on what the IRS
7 targeting has cost us. But how do you put a price on free
8 speech? Whether it costs us \$1 or \$1 million, somewhere in
9 between or more, it does not matter. Free speech in America
10 should never be silenced, no matter what the dollar amount.

11 Were we stopped by this decision? Of course not. None
12 of these things were going to stop us, and let me tell you,
13 it has not been easy.

14 The Tea Party movement has been targeted by the White
15 House, the IRS, and their allies and maligned by the
16 Republican establishment. The opposition has done all they
17 can to destroy us, to crush us.

18 But they underestimated one thing: Our love of our
19 country, our freedom, and our future are more important to
20 us than any of them.

21 Tea Party Patriots is doing just fine, Mr. Chairman.
22 We have 665 active local groups whose local coordinators
23 meet with every single Sunday night. We have over 600,000
24 e-mail addresses and over 2 million people in our database
25 working every day for our principles and our mission.

1 No one--no one--from the President to the IRS
2 Commissioner or anyone else is going to trample on our
3 rights without a fight.

4 We have had everything thrown at us, including the
5 kitchen sink, but we are still here. We are not going away.
6 We are living proof that when a few good people are willing
7 to speak truth to power, we can change things, because we
8 are Americans and we are just getting started.

9 Thank you.

10 [The prepared statement of Ms. Martin follows:]

1 Chairman Cruz. Thank you, Ms. Martin.
2 Mr. Colvin?

1 STATEMENT OF GREGORY L. COLVIN, PRINCIPAL AND
2 CHAIR OF THE BOARD, ADLER & COLVIN, AND DRAFTING
3 COMMITTEE CHAIR, PUBLIC CITIZEN'S BRIGHT LINES
4 PROJECT, WASHINGTON, D.C.

5 Mr. Colvin. Chairman Cruz, Ranking Member Coons, and
6 distinguished members of the Subcommittee, I appreciate the
7 chance to come before you in support of giving the IRS a
8 green light to move ahead on its historic work to define
9 political intervention.

10 My law firm in San Francisco represents a broad range
11 of nonprofits. For almost 40 years, I have formed tax-
12 exempt corporations and advised them on their political
13 activities under IRS rules. I am appearing today on behalf
14 of the Bright Lines Project, supported by Public Citizen.

15 Why is the IRS in the business of enforcing political
16 rules? Because Congress, for more than 60 years, has placed
17 that duty upon them through the Internal Revenue Code.
18 Unless Congress were to remove that mandate, the IRS must
19 continue to exercise its judgment as to what is partisan and
20 what is nonpartisan election activity.

21 Why is this? Politics in America involves the raising
22 and spending of money. Every person, every entity, in the
23 country has a Federal tax existence. It must pay tax on its
24 income unless it is exempt. The determination of taxable
25 income throughout the Code depends on distinguishing

1 deductible from non-deductible expenses. Donations to
2 charities are tax deductible only if the organization does
3 not intervene in political campaigns.

4 Donations to political groups are not deductible. A
5 for-profit corporation cannot deduct a political payment as
6 a business expense. The Code is remarkably consistent on
7 this score. Politics must be paid for with after-tax
8 income. Thus, the IRS is not here to tell us what we may or
9 may not say politically but to determine whether such speech
10 should be subsidized by a Federal income tax deduction.

11 The main problem with political tax law enforcement is
12 this: It is vague, ambiguous, and unpredictable. What is
13 political intervention? The IRS has insisted on an open-
14 ended facts and circumstances approach rather than drawing
15 bright lines between partisan politics and truly nonpartisan
16 forms of voter education and engagement.

17 In September 2012, I asked Lois Lerner, then head of
18 Exempt Organizations, at a meeting of the ABA to reconcile
19 two different IRS rulings on so-called issue ads. She
20 declined. I wish I had asked her, "If you cannot explain to
21 us how you judge issue advocacy under these rulings, what do
22 you say to your own staff in Cincinnati?" I mention her not
23 as a personal critique, but because the reluctance to fix
24 the political tax rules has been systemic within the IRS--
25 until now.

1 In May 2013, the IRS' ability to rule on politically
2 active (c) (4) applications had collapsed. This created the
3 historic opportunity for Treasury and the IRS to commence
4 exactly the kind of new regulations project that we have
5 needed for decades.

6 The Drafting Committee of the Bright Lines Project
7 began work in 2008, 5 years before the IRS crisis erupted.
8 Our goal was to pressure the IRS in every possible way for
9 better guidance. Our proposals go right down the middle,
10 between preventing corruption and promoting free speech.

11 We all will be better served by clear, neutral,
12 objective standards that reduce the degree of discretion the
13 IRS may exercise. The rulemaking must continue. We look
14 forward to open public hearings where the American people
15 can join that conversation.

16 Some in Congress want to pull the plug on this IRS
17 process. Not only would that leave us in the Dark Ages with
18 the murky facts and circumstances approach, but it would
19 stifle the voices of thousands who are eager to see the next
20 version. There must be no turning back this time.

21 The Commissioner has said that no new IRS rules would
22 be put in place for the 2016 elections. Fair enough. They
23 could go into effect in 2017. But the process should be
24 completed before the change in administration while the
25 public is engaged and momentum for better rules remains

1 alive.

2 Let me leave you with this thought: We do not want bad
3 political rules that apply only to (c)(4)s, but good rules
4 for everybody.

5 Thank you.

6 [The prepared statement of Mr. Colvin follows:]

1 Chairman Cruz. Thank you.

2 Mr. Sekulow?

1 STATEMENT OF JAY ALAN SEKULOW, J.D., PH.D., CHIEF
2 COUNSEL, AMERICAN CENTER FOR LAW AND JUSTICE,
3 WASHINGTON, D.C.

4 Mr. Sekulow. Chairman Cruz, Ranking Member Coons,
5 Senator Sessions, thank you from allowing me to appear on
6 behalf of the American Center for Law and Justice and
7 185,000 of our members.

8 I would like to call the Committee's attention to a
9 statement that was made by the Commissioner, with due
10 respect. He made it several times. He said that there is
11 no evidence whatsoever of outside influence on any of the
12 matters involving the situation with the Internal Revenue
13 Service.

14 I call to the Committee's attention an e-mail from Lois
15 Lerner dated Wednesday, March 27, 2013. "As I mentioned
16 yesterday"--and this is a quote--"there are several groups
17 of folks from the FEC world that are pushing tax fraud
18 prosecution for (c) (4)s who report that they are not
19 conducting political activity when they are (or these folks
20 think they are). One is my ex-boss, Larry Noble"--who is
21 testifying today--"former General Counsel at the FEC, who is
22 now president of Americans for Campaign Reform. This is
23 their latest push to shut down these groups. One IRS
24 prosecution would make an impact, and they would not feel so
25 comfortable doing this stuff. So do not be fooled about how

1 this is being articulated. It is all about 501(c)(4)s orgs
2 and political activity." From Lois Lerner.

3 So this idea that there is no outside influence in this
4 is nonsense. I represent 38 groups that were targeted by
5 the Internal Revenue Service. That targeting, by the way,
6 has not resulted in an end of all the cases. I have got two
7 clients, one of which is waiting now for 6 years for a
8 determination from the Internal Revenue Service.

9 Let me also call, if I may--and, by the way, I am not
10 sure that this is in the record, so I would request of the
11 Committee that this e-mail be made part of the record.

12 Chairman Cruz. Without objection.

13 Mr. Sekulow. Thank you, Mr. Chairman.

14 [The e-mail follows:]

15 / SUBCOMMITTEE INSERT

1 Mr. Sekulow. We sent a letter to the Department of
2 Justice on June 18, 2014, stating that we would no longer
3 participate in having our clients interviewed by the DOJ for
4 what I consider to be a full investigation.

5 And, by the way, the President of the United States
6 will go to television to state that there is not a smidgeon
7 of corruption--he said that a couple of years ago--or more
8 recently that there is absolutely no evidence of wrongdoing,
9 which is interesting because the Federal Bureau of
10 Investigation is allegedly still investigating this matter
11 and has not made a determination. So I do not know where
12 the President is not speaking to the Department of Justice,
13 but apparently that seems to be the situation.

14 But there is an e-mail. This e-mail is dated May 9,
15 2013. It is also from Lois Lerner--excuse me, May 8, 2013:
16 "I got a call today from Richard Pilger, Director, Elections
17 Crime Branch at DOJ. I know him from contacts from my days
18 there. He wanted to know who at IRS the DOJ folks could
19 talk to about Senator Whitehouse's idea at the hearing that
20 DOJ could"--these are her words again--"piece together false
21 claim cases about applicants who `lied' on their 1024s,
22 saying they were not planning on doing political activity
23 and then turning around and making large visible political
24 expenditures. DOJ is feeling like it needs to respond, but
25 wants to talk to the right folks at IRS to see whether there

1 are impediments from our side and what, if any, damage this
2 might do to IRS program. I told him that it sounded like we
3 need several folks from IRS."

4 The response from Nikole Flax was, "I think we also
5 need to include CI," which, of course, is the Criminal
6 Investigation Division.

7 So the Department of Justice was part of this from the
8 beginning. So this idea that the Department of Justice is
9 engaged in this independent inquiry is nonsense. And the
10 fact of the matter is, as the GAO said a few days ago,
11 "Unfortunately, the IRS has not taken sufficient steps to
12 prevent targeting Americans based on their personal
13 beliefs."

14 And let me close with this, if I may. During the oral
15 arguments in the Z Street case, Chief Judge Garland said the
16 following to the IRS attorneys, in this case, of course, the
17 Z Street case very similar to a targeting situation as we
18 have here: "I think if I were you"--this is what the judge
19 said--"I would go back and ask your superiors whether they
20 want us to represent that the Government's position in this
21 case is that the Government is free to unconstitutionally
22 discriminate against its citizens for 270 days. I would be
23 stunned if the current Attorney General agreed with that.
24 Or the last Attorney General. Or the one before that, or
25 the one before that. Or anyone. That cannot be the

1 position. Now, do you want to think about it again, whether
2 you really want that to be your position?"

3 The response from the DOJ lawyer was, "That is
4 basically our position." They did not move from that at
5 all.

6 I would just like to say, Senator, I appreciate you
7 holding these hearings, and I appreciate everyone's
8 participation. This is a really serious problem. We have
9 been litigating now for a couple of years, and there are
10 still clients that have not had redress.

11 Thank you.

12 [The prepared statement of Mr. Sekulow follows:]

1 Chairman Cruz. I would like to thank each of the
2 witnesses who has come forth for your powerful and
3 particularly for those who have been improperly targeted for
4 your political views. I would like to apologize on behalf
5 of the United States Government. No citizen should ever see
6 the Federal Government targeting them for expressing their
7 First amendment rights.

8 Ms. Mitchell, in your testimony, you called for the
9 impeachment of Mr. Koskinen. Each of you, I believe, heard
10 his testimony before this Subcommittee today. I would like
11 to ask you or anyone else if there was anything in his
12 testimony that you heard that is demonstrably false or that
13 might reach the level of perjury.

14 Ms. Mitchell. Well, Mr. Chairman, obviously I would
15 want to go back and review the transcript, but IRS
16 Commissioner Koskinen has an amazing way of deflecting and
17 not answering questions or misleading the Congress when he
18 responds to questions that are posed to him by Members of
19 normally the House. Actually, I think is only the second
20 hearing that the Senate has had on the IRS targeting since
21 May of 2013, the first hearing. I do not know of another
22 hearing. So I appreciate the fact that you are having a
23 hearing.

24 But a couple of things come immediately to mind. I do
25 not recall the TIGTA report concluding that there was no

1 willful destruction of evidence in terms of the destruction
2 of the Lois Lerner e-mails and the backup tapes. I do not
3 recall that the TIGTA report said that. I am going to have
4 to go back and look at exactly what they said. But he said
5 several times today that the TIGTA report concluded that the
6 IRS did not willfully destroy those tapes.

7 Well, there is a lot--the tapes were destroyed on
8 purpose, and I know that under legal prosecutions, if you
9 intend to do something and you do it, that is a willful act.
10 The fact that--one needs to put this in context in the time
11 frame. There was a--there was a preservation order issued
12 in May of 2013 for all records. There was a subpoena in
13 August of 2013 from the House Oversight Committee to
14 preserve all records and documents. There was another
15 subpoena in February of 2014 to preserve all documents.

16 Commissioner Koskinen took office I believe in late
17 2013 or early 2014. He appeared before the House Oversight
18 Committee in March of 2014, and they pressed him--because
19 now they have issued two subpoenas, and they had not yet
20 started to receive any of the Lois Lerner e-mails, and they
21 pressed him over and over about producing those e-mails:
22 "Will you produce to us all of Lois Lerner's e-mails and
23 documents?"

24 He knew at the time he testified in answer to that
25 question, he had been told, they knew, that there was a gap,

1 that e-mails were missing.

2 At the same time, during this same time frame, backup
3 tapes are destroyed, and yet he comes before the House--both
4 the House Ways and Means Committee and the House Oversight
5 Committee in June of 2014 and says, "We have done everything
6 we can. There is nothing we can do." And yet TIGTA
7 reported back to the Committee that, in fact, they drove to
8 West Virginia, got the backup tapes, and said nobody had
9 ever asked for them. So I think that this Committee should
10 look very carefully at what the TIGTA report actually said
11 and compare it to his testimony.

12 I will ask you to look at one other report. The GAO
13 report on the auditing that was issued last week that is
14 going to be officially issued in the next few days did not,
15 as I understand it, clear the IRS of any political targeting
16 of exempt organizations. I know it had nothing to do with
17 audits of individuals. It only addressed audits of exempt
18 organizations. And my understanding, my reading of it, is
19 that it said that they did not keep proper documentation.
20 They did not ask the questions about whether there was
21 political involvement in the targeting, selection of audit
22 targets. But what they did say, what is very clear when you
23 read it, is that they look at things other than the tax
24 return, which was the third thing that he said today that I
25 do not think is accurate. Commissioner Koskinen said today

1 that when you get audited, it is because of something that
2 is in your tax return or not. And yet in that GAO report,
3 what I found very disturbing is something I have been
4 concerned about for some time, which goes to your question
5 that you asked him, that they look at--that they go outside
6 the tax returns and they look at publicly available
7 information. I believe they look at publicly available
8 campaign finance reports, disclosure reports required by
9 law, as a basis for selecting targets for IRS audits. And
10 all these witnesses that talk about how we want to have
11 disclosure, we need political disclosure, I think it is
12 really important to have that discussion. If we are talking
13 about that information then being used to audit donors, I
14 think that is horrific. That someone exercising a protected
15 First Amendment right to make a campaign contribution or a
16 contribution to an organization would then be subject to an
17 IRS audit, I think that is pretty terrible, and we better do
18 something about it.

19 Chairman Cruz. I think that is a very good question
20 and certainly one that I intend to ask the Commissioner
21 whether the IRS is using campaign contributions.

22 I would like to ask one additional question, Mr.
23 Sekulow. As I understand it, it is contrary to Federal law
24 for the IRS to hand over confidential taxpayer information
25 to anyone else. If it turns out that the Department of

1 Justice was knowingly in receipt of confidential taxpayer
2 information, would that implicate them in a violation of the
3 law?

4 Mr. Sekulow. Absolutely, and I think, Senator, that is
5 the most significant problem with this idea that the
6 Department of Justice could create this investigation. The
7 fact is the e-mail chain establishes that the Department of
8 Justice was involved in the conversations, including the
9 targeting and possibly even piecing together criminal cases
10 against individuals.

11 And, by the way, "piecing together criminal cases,"
12 that is a pretty serious allegation to be piecing together.
13 My first job out of law school was actually Chief Counsel's
14 Office in the Internal Revenue Service. I was a trial
15 lawyer. And we took our criminal referrals cases very
16 seriously before we would do that.

17 So I think, yes, I think the Department of Justice
18 involvement here also should have disqualified them from
19 engaging in this investigation, and it should have been an
20 independent or special counsel.

21 Chairman Cruz. So if the Department of Justice was
22 involved in the criminal wrongdoing, it cannot be expected
23 to investigate itself; and any fair and impartial
24 investigation should occur by a special prosecutor.

25 Mr. Sekulow. That is correct, and that is why after

1 participating in the investigations for a period of time, we
2 decided and elected on behalf of our clients to no longer
3 participate in those investigations because of the e-mails
4 that came to light where DOJ was involved.

5 Chairman Cruz. Thank you.

6 Senator Coons?

7 Senator Coons. Thank you, Mr. Chairman.

8 If I might just start with Professor Noble, Mr. Sekulow
9 in his testimony stated there has been inappropriate
10 influence by outside groups, and then read an e-mail. I
11 would just give you an opportunity, if I might, to comment
12 on the appropriateness or inappropriateness of the nonprofit
13 you led seeking enforcement of the law. I would be
14 interested in your view on what happened.

15 Mr. Noble. Thank you. I think what I did and what our
16 organization did, what all these organizations do, is
17 totally appropriate. And it is a great example of how e-
18 mails--because this one, I know what she was talking about,
19 how e-mails are being taken out of context and being used
20 for purposes that they were not intended. What she was
21 reporting there is my group, myself and others--when she
22 talks about the FEC world, that means the campaign finance
23 world--were out there saying that the IRS should become more
24 active and should look at ways to stop these groups that are
25 using millions of dollars in undisclosed funds for political

1 activity. And one of the ideas that had been talked about--
2 and it has been talked about this hearing--has been the idea
3 that it is tax fraud, it is lying to the Government. If you
4 say on a (c) (4) application that you are not going to get
5 involved in political activity and you do, that is lying to
6 the Government. If you do get involved in political
7 activity, again, it is tax fraud. We were talking about
8 this publicly, and that is what she is reporting on.

9 The other e-mail I know something about--and Senator
10 Whitehouse is here--the hearing where Senator Whitehouse
11 asked DOJ about other activity that could be done, what
12 DOJ's role was. And the e-mail that they are referring to I
13 am amused by because I was General Counsel to the Federal
14 Election Commission for 13 years, and when a Senator at a
15 hearing asks the agency if it can do something about it, and
16 if the agency went back and did not do anything about it, or
17 if I had gone back and did not do anything about getting an
18 answer, not necessarily following up and doing what the
19 Senator may be suggesting, but getting an answer, I would
20 have been in a lot of trouble.

21 What that e-mail seems to reflect--and I have no
22 personal knowledge of it other than being at the hearing--
23 was she was going back and saying--that DOJ came to us and
24 said they got this question, we need to sit down and talk
25 about what the response is. It does not say they did

1 anything about it. It does not say that they decided to go
2 along with anything that was suggested. It was merely a
3 statement.

4 But in terms of back to the criticism that we are
5 taking, the e-mail that Ms. Lerner referred to me, she was
6 absolutely right. We were pushing her. We had no idea of
7 what they were doing, and, in fact, I was probably as
8 surprised as anybody when the whole issue broke because our
9 understanding is they were not doing anything.

10 Senator Coons. Thank you, Professor.

11 Now, Ms. Aviv, if I might, the inappropriate triage of
12 501(c)(4) applications for further processing that took
13 place in Cincinnati some would argue is a predictable
14 consequence of the real lack of clarity in the rules. The
15 rules are simply not reasonably administrable in a way that
16 is consistent, clear, and fair; and, further, due in part to
17 dozens of congressional hearings just like this one, the
18 unfortunate result is the IRS has been cowed into barely
19 enforcing these rules at all.

20 How does the lack of meaningful enforcement in this
21 area affect your members, which, if I understand correctly,
22 include thousands of nonprofits?

23 Ms. Aviv. I have hundreds of thousands of nonprofits.
24 If you had to give out our members' affiliates, we are
25 talking about hundreds of thousands, and the charitable

1 sector itself, 501(c)(3)s and (c)(4)s, are well over a
2 million organizations.

3 One of the problems is that if you do not have clarity
4 of what is allowed, and 501(c)(3) organizations are not
5 allowed to engage in partisan political activity at all, and
6 (c)(4) organizations can only engage in an insubstantial
7 percentage of their time, and "insubstantial" is not
8 explained and described what it is, it leaves it up to the
9 discretion of the IRS officials to decide what that is, but
10 if they do not know what the activities include, then there
11 is a very good chance that lots of organizations will not
12 engage in activities that they are perfectly legally
13 entitled to engage in. That is part of their civic
14 responsibility. That is part of their right as citizens of
15 the United States, to petition Government for the redress of
16 grievances and to participate in the public space.

17 So for some, it means that they have pulled back and
18 they have cowed themselves, and for others, they may engage
19 in activities, because they do not know that they can or
20 they cannot, that is probably improper.

21 So I think that for our organizations, clarity on
22 defining what is political activity, how much (c)(4)
23 organizations can engage in, would enable these
24 organizations to do what is proper and to enable them to
25 fulfill their missions more effectively.

1 Senator, one last thing that I just want to make a
2 point about, because we have been asked often about the
3 difference between (c)(3) organizations and (c)(4)
4 organizations, and why do we need (c)(4) organizations if
5 you have got 527s, if people intend to engage in partisan
6 political activity, just go in that direction.

7 But there is a great value in having organizations that
8 can do both. They do not have the benefit of allowing
9 donors to get a charitable deduction, but at the same time,
10 they have at their disposal the full range of activities
11 that are involved in public policy activity all the way up
12 to and including electoral activity. So we think there is
13 still great value in those organizations.

14 Senator Coons. Professor Noble, if I might, just
15 looking at the campaign side of the equation we were just
16 discussing, what is the consequence of allowing
17 organizations that are effectively campaign advocacy
18 organizations to shield themselves under the 501(c)(4)
19 label?

20 Mr. Noble. It has a tremendous effect, and part of the
21 problem is due to the ineffectiveness of the FEC and now the
22 IRS. But what you have is a campaign finance system that is
23 based on disclosure, transparency, which the Supreme Court
24 has said is critical; it also has contribution limits and
25 prohibitions, and the prohibitions run anything from

1 corporations or unions giving directly to candidates, to
2 foreign nationals giving in any election.

3 If you allow (c) (4) organizations that do not disclose
4 to get involved in this political activity and they are not
5 held accountable for that, then you have no way of knowing
6 if the contribution limits are being followed, if there is
7 any coordination going on, if foreign nationals are involved
8 in the process, and you have totally undermined disclosure.
9 We do not know who is supporting the candidates. And the
10 Supreme Court has said over and over again--again, in
11 Citizens United, in the recent McCutcheon case, the Supreme
12 Court said that transparency is critical. And they assume,
13 the Supreme Court's decision assumes that what is happening
14 is all this information, all this money being spent on
15 politics, whether by independent groups or groups affiliated
16 with candidates, is being disclosed. And if you let the
17 (c) (4)s do this without disclosing, whether they are
18 Republican or Democratic, Tea Party groups or liberal
19 groups, you have undermined the campaign finance laws.

20 Senator Coons. Thank you.

21 Thank you, Mr. Chairman.

22 Chairman Cruz. Senator Sessions.

23 Senator Sessions. Ms. Martin, thank you for your
24 testimony and the courage that you have taken to advance the
25 base that you care about. How do you feel about the person

1 in charge of establishing your tax situation to have stated
2 that the Tea Party is dangerous?

3 Ms. Martin. Senator, I cannot describe to you how
4 disgusted that makes me feel. The people who got involved
5 in this Tea Party movement are just like Toby Marie Walker.
6 They are people who love our country, that want to make our
7 country better, and they want to hold our elected officials
8 accountable. And to be called--or someone to go so far as
9 to say that we are dangerous or that we are terrorists, when
10 all we are trying to do is work within the system to hold
11 our Government accountable is one of the most disgusting
12 aspects of this.

13 Senator Sessions. And that is the person who is
14 delaying your progress in getting your status. Ms. Walker
15 said it was designed to demoralize and delay their efforts.
16 Do you agree with that?

17 Ms. Martin. I think that they intended to delay our
18 efforts. They certainly tied us up with a lot of red tape
19 and a lot of time and energy. But we care too much about
20 this country to let them stop us. They are not going to
21 stop us.

22 Senator Sessions. You are not going to be demoralized.

23 Ms. Martin. You know, we have a choice in how we
24 respond to this and the attitude that we have, and at Tea
25 Party Patriots, we are taking the attitude that we are happy

1 warriors. We are going to continue to fight. We are going
2 to remember that this country is founded on freedom and that
3 that is what we are standing for, and it is worth every bit
4 of the effort.

5 Senator Sessions. Mr. Sekulow, is it still true that
6 the attorney in the Department of Justice who has been given
7 assignment of this case contributed \$6,000 to the
8 President's reelection?

9 Mr. Sekulow. It is correct, Senator Sessions, and in
10 our letter to the IRS--excuse me, to the Department of
11 Justice we noted that, and we noted that in meetings how
12 inappropriate that was.

13 And there is another aspect of this, Senator, that I
14 just find amazing. These rules and the regulations have
15 been around since the 1960s, and all of a sudden, it took
16 until 2011 for there to be confusion and problems? What
17 happened the preceding 40 or 50 years?

18 And, by the way, this whole idea about transparency is
19 very interesting, except for one thing everyone tends to
20 forget. Some organizations, especially (c)(3)s, do not have
21 to give their donor lists. You know, they tried that
22 against the NAACP, and the Supreme Court said you do not get
23 to do that, you do not get to ask for that.

24 So I think they are conflating the principles here that
25 we have to be very, very cautious of in making general

1 statements. So I am just--I raise that, just the rules and
2 the reg rulings have been around for decades. And now all
3 of a sudden it is a problem.

4 Senator Sessions. I understand that Ms. Lois Lerner
5 has refused to testify before the House. Is that correct?

6 Mr. Sekulow. Yes. She invoked her Fifth Amendment
7 privilege.

8 Senator Sessions. Well--

9 Mr. Sekulow. Kind of.

10 Senator Sessions. This is what I wonder: To me--I
11 spent 15 years in the Department of Justice. I do not think
12 any of--I am not aware of anybody that gave \$6,000 to the
13 reelection of any President that I am aware of. I think
14 that is very unusual, number one.

15 Number two, it seems to me that an investigation as it
16 would normally proceed would be to question whether or not
17 there was political influence here. And the obvious next
18 step would be to ask who Ms. Lerner talked to in the White
19 House, every one of them, and then find out from every one
20 of them what they talked about, and whether they talked
21 about these kind of issues. Do you agree?

22 Mr. Sekulow. I do, Senator, and I find--

23 Senator Sessions. Has anything of that nature to your
24 knowledge been done?

25 Mr. Sekulow. No, there has not, and I would like to

1 know why the Department of Justice, as far as we can tell,
2 and the testimony that we have heard in other hearings in
3 the House, why did they not ask who crafted the questions
4 that ask who you prayed with, who your membership lists are,
5 who is on your membership list, who your donors are, what
6 members of a legislative body have you talked with. Who
7 crafted those questions? That is something I still--no one
8 has given us an answer on that. Where did those questions
9 come from? I do not believe they came from a revenue agent
10 in Cincinnati.

11 Senator Sessions. I could not agree more.

12 Ms. Mitchell, don't you think that the appropriate step
13 for a real investigation would be to find out if there are
14 any White House staffers or other people in the White House,
15 however high it goes, whether or not they coordinated with
16 this idea and sought to punish, demoralize, or delay
17 legitimate rights of people who did not agree with some of
18 their views?

19 Ms. Mitchell. Well, yes, Senator, and I think one of
20 the things we have to focus on--and this has been written
21 about by Kimberly Strassel at the Wall Street Journal. The
22 President of the United States was going around the country
23 demanding that the IRS take action. There were, excuse me,
24 but members of this body who were sending letters demanding
25 that the IRS take action.

1 Now, the difference between Watergate and the IRS
2 scandal in the Obama administration is that during the
3 Watergate scandal, the IRS refused to act at the political
4 urging of whether the President--the President of the United
5 States. In this case, the IRS took very seriously the
6 directives from partisans with whom I disagree. And I do
7 not want the IRS to decide that they are going to take your
8 view or your view instead of my view. They should not be
9 taking sides in a political dispute. We have very real
10 policy differences, and the IRS under Lois Lerner clearly
11 took sides, and that to me is the most frightening part of
12 this, that they took sides.

13 Senator Sessions. Well, thank you. I share that view,
14 and I think we have to be eternally vigilant that the
15 persons who can extract money from American citizens are
16 never using their power to direct--or to be hostile to one
17 voice or another voice.

18 Thank you, Mr. Chairman.

19 Chairman Cruz. Thank you, Senator Sessions.

20 Senator Whitehouse?

21 Senator Whitehouse. Thank you, Chairman.

22 Ms. Mitchell, do you represent an organization called
23 "True the Vote"?

24 Ms. Mitchell. I do.

25 Senator Whitehouse. Is True the Vote a 501(c)(3)

1 approved entity?

2 Ms. Mitchell. After we received the IRS--yes, on the
3 day the Government was to answer, after 3-1/2 years, they
4 said, "Oh, you"--"We are going to grant you your tax-exempt
5 status today."

6 Senator Whitehouse. Is there a district court action
7 in the District of Columbia that has True the Vote's
8 application to the IRS in it as a public record?

9 Ms. Mitchell. Yes, I believe--well, I do not know
10 that--I think the whole application is in there. I am not
11 sure of that. I do not remember the exhibit. That case is
12 now on appeal at the D.C. Circuit.

13 Senator Whitehouse. But you do represent True the
14 Vote, it is a 501(c)(3).

15 Ms. Mitchell. It is.

16 Senator Whitehouse. Its application, because of this
17 case, is a public record. Did--

18 Ms. Mitchell. Part of it.

19 Senator Whitehouse. Did True the Vote, in answering
20 Part 8, Question 1--and let me quote the question: "Do you
21 support or oppose candidates in political campaigns in any
22 way? If yes, explain." That is the question. Are you
23 familiar with the question? Have I read it correctly?

24 Ms. Mitchell. Well, I do not have it in front of me,
25 but I presume the answer to that question is no, because

1 they do not support or oppose candidates in elections.

2 Senator Whitehouse. In any way?

3 Ms. Mitchell. In any way.

4 Senator Whitehouse. So the \$5,000 that the
5 organization gave to something called the "Republican State
6 Leadership Committee" was not intended to support or oppose
7 political candidates in any way?

8 Ms. Mitchell. That contribution was incorrectly made
9 from the (c) (3). When the president, Catherine Engelbrecht,
10 learned about it--it was done by a consultant fundraiser,
11 and when she learned about it, that was refunded, and a
12 contribution from a different permissible source was given.

13 Senator Whitehouse. And the reason is because the
14 Republican State Leadership Committee defines itself, and I
15 quote, "The RSLC is the largest caucus of Republican State
16 leaders and the only national organization whose mission is
17 to elect down-ballot, State-level Republican office
18 holders." Correct?

19 Ms. Mitchell. That is right, and that is why it was a
20 mistake, and it was refunded, and that--because once the
21 president found out and she called me, I said, "Well, that
22 is illegal, so you are going to have to get that money
23 back." And they did.

24 Senator Whitehouse. And True the Vote engaged in the
25 2012 Wisconsin recall effort on behalf of Governor Scott

1 Walker?

2 Ms. Mitchell. No. What they did was that they went to
3 Wisconsin to validate petitions of signers of the recall
4 petitions against voter lists to make certain that the
5 integrity of the process was appropriate and had been
6 followed. That is the mission of True the Vote, to help
7 protect the integrity of elections. And what they
8 volunteered to do was to provide volunteer assistance to the
9 Government Accountability Board of Wisconsin to ensure that
10 the petitions were valid and were signed by only those who
11 were registered to vote in Wisconsin and eligible to sign
12 the petition, so that any structure ensuing recall election
13 would be properly called.

14 Senator Whitehouse. So your view is that defending
15 Governor Scott Walker against the 2012 Wisconsin recall
16 effort was not supporting or opposing him in political
17 campaigns in any way?

18 Ms. Mitchell. I believe that supporting the integrity
19 of elections is something that both Republicans and
20 Democrats ought to be for, and that supporting things such
21 as voter identification and other measures that ensure the
22 integrity of our elections, that those are appropriate
23 activities for a 501(c)(3) organization, yes.

24 Senator Whitehouse. Did the president of True the Vote
25 appear at a conservative political action conference in 2012

1 and state that she absolutely was working to replace the
2 Obama administration?

3 Ms. Mitchell. Well, I do not know that she said that.
4 Do you have a video or a transcript of that?

5 Senator Whitehouse. I have a quote, and I can get it
6 to you.

7 Ms. Mitchell. Well, I would find that hard to believe.
8 I would find that hard to believe.

9 Senator Whitehouse. Because--

10 Ms. Mitchell. But I think that it is true--

11 Senator Whitehouse. Why would you find that hard to
12 believe?

13 Ms. Mitchell. Well, because I think that Catherine
14 knows the difference between what is appropriate and not
15 appropriate for appearances in her capacity as president of
16 True the Vote. But I will tell you that if--that I have
17 never seen anyone--and this is another part of this scandal.
18 Once she established that 501(c)(3) and a companion
19 501(c)(4), she was suddenly visited over the course of the
20 next year by the FBI, the IRS, seven times from the FBI,
21 three times by the IRS, OSHA, the Bureau of Alcohol,
22 Tobacco, and Firearms. She was subjected to letters from
23 the White House Counsel and to demands by members--
24 Democratic Members of Congress to travel to Washington to
25 present herself and defend herself.

1 So, honestly, I can imagine that she might have said
2 something along those lines about the Obama administration,
3 because I think she felt pretty put upon.

4 Senator Whitehouse. Turning to a 501(c)(4), Ms.
5 Martin, you represent Tea Party Patriots here?

6 Ms. Martin. Yes, sir.

7 Senator Whitehouse. That is a 501(c)(4) organization?

8 Ms. Martin. Yes. We were notified, our attorneys were
9 called by the IRS the day before I testified last year
10 before the House.

11 Senator Whitehouse. On the 501(c)(4) application,
12 there is a Question 15: Has the organization spent or does
13 it plan to spend any money attempting to influence the
14 selection, nomination, election, or appointment of any
15 person to any Federal, State, or local public office? If
16 yes, explain in detail.

17 Do you know if your organization answered that question
18 yes or no?

19 Ms. Martin. I believe that we answered the question
20 no. I do not have the application in front of me.

21 Senator Whitehouse. Assuming that you answered the
22 question no, a column in Forbes Magazine ascribes the
23 following e-mail language to your organization, and I will
24 quote it: "I am being told by my staff that we are probably
25 going to have to let some leftist like Bruce Braley in Iowa

1 or Kay Hagan in North Carolina win because we cannot afford
2 to fight back in every important State. Your gift today
3 will be sent immediately to the front lines to enable our
4 grassroots volunteers and staffers to contact these voters
5 and move them to the polls to fire Harry Reid. If we
6 succeed this year"--oh, where did the rest of that page go?--
7 --"we will shock the political world."

8 So it strikes me that an effort to fight back against
9 Bruce Braley in Iowa and Kay Hagan in North Carolina, who,
10 for the record, were candidates on the ballot at the time,
11 and to take money solicited in response to that e-mail and
12 give it to grassroots volunteers and staffers to contact
13 voters and move them to the polls, that does seem a bit like
14 an attempt to influence the election of any person to a
15 Federal, State, or local public office, does it not?

16 Ms. Martin. Senator--

17 Chairman Cruz. Ms. Martin, you can answer this
18 question, but I would note the Senator's time has long
19 expired, so keep your answer brief, please.

20 Ms. Martin. We also, after the 2012 election, because
21 we could not even say the word "Obamacare" because of the
22 targeting and our attorneys advised us not even to use the
23 term "Obamacare" and to only refer to it as "the President's
24 health care law," we decided that it would be--so that we
25 could exercise our First Amendment rights, we needed to

1 start a 527 super PAC so that we could actually mention the
2 name of the President and other elected officials, and we
3 did that. I do not know what you are referring to precisely
4 from a Forbes article. I would have to look at the e-mail
5 that was sent. It is highly likely that the e-mail was sent
6 from the 527 super PAC, which is Tea Party Patriots Citizens
7 Fund, not the 501(c)(4) Tea Party Patriots.

8 Senator Whitehouse. I apologize for going over my
9 time, Chairman. I thought that had become the tradition in
10 this particular hearing.

11 Chairman Cruz. We are endeavoring to be generous, but
12 it was over 5 minutes over. We are endeavoring to be
13 generous on both sides of the aisle, with considerable
14 leeway, and then that will continue to be the standard.

15 Ms. Mitchell, Senator Whitehouse just a moment ago
16 suggested that True the Vote's effort to protect the
17 integrity of the ballot somehow was beneficial to the
18 political prospects of Governor Scott Walker. Now, if I am
19 understanding the argument that the Senator from Rhode
20 Island made, the necessary premise of that is that voter
21 fraud, fraudulent election activity, disproportionately
22 benefited the Democratic opponents of Governor Walker. Is
23 that correct, that that is the necessary premise of that
24 argument?

25 Ms. Mitchell. Well, it seems to be. This is an issue

1 which I have been very involved in, not just as counsel to
2 True the Vote but in other capacities. And I do not
3 understand why voter integrity and combating voter fraud,
4 which is an actual problem in America, I do not understand
5 why that is a partisan issue.

6 Chairman Cruz. The only way it could be is if there
7 was more fraud on one side of the aisle than the other. If
8 you are ensuring that voter laws are complied with, that
9 ought to be, by definition, nonpartisan unless members of
10 this panel know of some large concentration of voter fraud
11 that benefits one party or another.

12 Ms. Mitchell. That would certainly be the inference.

13 Chairman Cruz. Mr. Sekulow, you mentioned that you
14 represent Z Street. I would ask you to share with this
15 panel briefly just the facts of the Z Street matter.

16 Mr. Sekulow. I did not, and I wanted to clarify. We
17 do not represent Z Street. It is separate litigation. They
18 have separate counsel. But we have been involved in the
19 process.

20 Z Street involved an application for a pro-Israel
21 organization to form as a tax-exempt organization. The
22 agent that was subject to assign the case for review stated
23 to the lawyer that was representing Z Street--we actually
24 met with the original plaintiffs in that case in Jerusalem a
25 couple years before the litigation started because they were

1 already having problems and we were at a conference. But
2 the end result was that the agent stated to the lawyer that,
3 in fact, there was a special Israel unit inside of the
4 Internal Revenue Service that was reviewing applications,
5 and if the application information--some of the statements
6 that Senator Whitehouse was talking about, where they have
7 the general information section describing your activities,
8 if the position of the organization was in opposition to the
9 position of the administration regarding the Middle East or
10 with Israel, it was handled differently. That case--

11 Chairman Cruz. By the way, quickly, Mr. Sekulow, are
12 you aware of any other nation on the face of the globe that
13 is somehow targeted or singled out that if an organization
14 defends that particular nation they get special scrutiny?

15 Mr. Sekulow. Absolutely no. In fact, the unit was
16 called the "Israel Special Policy Unit."

17 Chairman Cruz. So it is almost as if the
18 administration has some particular hostility to any entity
19 that is defending the nation of Israel.

20 Mr. Sekulow. This was precisely--and it is similar in
21 our cases in the sense that the allegations in Z Street were
22 based not on the granting of the tax exemption but the
23 process upon which the application--

24 Chairman Cruz. And I want to be clear. I understand.
25 Is there an Iran unit?

1 Mr. Sekulow. No, there is not an Iran unit that I know
2 of.

3 Chairman Cruz. Is there a North Korea unit?

4 Mr. Sekulow. Not that I am aware of.

5 Chairman Cruz. Is there an ISIS unit?

6 Mr. Sekulow. Not that I am aware of.

7 Chairman Cruz. So apparently Israel gets more scrutiny
8 than radical Islamic terrorists who are seeking to murder
9 Americans. Is that correct?

10 Mr. Sekulow. That apparently is the position of the
11 Internal Revenue Service. At least it was until the
12 district court's opinion. The district court, by the way,
13 denied the Government's request for a motion to dismiss
14 under 12(b)(6). It was appealed to the D.C. Circuit. The
15 D.C. Circuit ruled, in fact, that political viewpoint cannot
16 be the basis upon which applications are moved forward or
17 not, which is precisely what we are talking about here
18 today. And this type of internal investigation is
19 problematic from the start. The idea that your viewpoint is
20 the basis upon which your exemption is either granted or
21 denied is problematic. And that is what the district court-
22 -the court of appeals said as well.

23 Chairman Cruz. Ms. Walker, as I understand it, you
24 received a questionnaire and letter from the IRS. Can you
25 give an example of a question that was difficult or even

1 impossible to answer?

2 Ms. Walker. There were several. One of the questions
3 they wanted was every news article that ever been written
4 about us, whether we engaged in the interview or not. They
5 wanted a copy of it. When we googled our name to see how
6 many hits were on the Internet, we came up with over 400,000
7 at that time. There was no way that a group of five or six
8 volunteers was going to be able to go through 400,000 news
9 articles and ascertain whether they really were about us, if
10 we were mentioned, print it, then send it to the IRS,
11 because we were not allowed to do anything electronically.
12 It had to be printed. It would have taken hordes of U-Haul
13 trucks just to figure it out. We could not even pay for
14 that.

15 They also asked us for every relationship we have ever
16 had with every candidate or would have. They asked us to
17 give them transcript--we have an Internet radio show, and at
18 that time we also had one on a local radio. So we had
19 anywhere from 4 to 6 hours of programming a week. They
20 wanted transcripts of every time a candidate was on the air.
21 And when we asked what a candidate was, they could not
22 explain that to us either, because if you are an incumbent
23 and you are going to run for reelection and you are talking
24 about policy, are you a candidate? Could not answer it.

25 They asked us--they told us those things were

1 subjective, tell us everybody that we knew and everybody--
2 and what the relationship was.

3 Chairman Cruz. But, Ms. Walker, you are a citizen, a
4 wife, a mother. How does it feel to be targeted by the
5 Federal Government for expressing your First Amendment
6 rights?

7 Ms. Walker. It feels like I do not live in America
8 anymore. This is something that I grew up--I grew up in the
9 Cold War. I grew up under Reagan. This is what I saw on TV
10 in other countries, not in the United States, where it is
11 celebrated to have a diverse opinion. It is okay to have
12 diverse sexual orientations, but it is not okay to have a
13 diverse political orientation in this country anymore. If
14 you are conservative, if you are a Tea Party, you are
15 vilified.

16 Chairman Cruz. Okay. Let me ask one final question.
17 Ms. Walker, Ms. Martin, and I will ask this also of Ms.
18 Mitchell and Mr. Sekulow for your clients, we have been told
19 for some 800-plus days--806 days since this scandal first
20 broke--since the Treasury Department Inspector General
21 report came out, it has been 806 days. We have been told
22 that there is an investigation, albeit led by a major
23 Democratic donor. That investigation has produced zero
24 indictments despite the fact that President Obama said the
25 American people should be angry, and he claimed he was

1 angry--until he started going on comedy shows making fun of
2 targeting American citizens.

3 My question to each of you is: In the course of this
4 ostensible investigation--that I believe at this point has
5 become more of a coverup--have each of you been interviewed
6 by the FBI to determine whether and to what extent the IRS
7 wrongfully targeted you because of your political views?

8 Ms. Walker. I would like to defer to my attorney to
9 answer that question.

10 Ms. Martin. I have not.

11 Mr. Sekulow. I would be happy to answer because I am
12 Ms. Walker's attorney. So the initial investigation with
13 the FBI, I did include an interview with Ms. Walker. The
14 problem became--and it is two-fold, Senator. Once the
15 information about the head of the Department of Justice or
16 the person that was assigned to lead the investigation
17 became public, and we had the e-mail exchange between the
18 IRS and the Department of Justice about piecing together
19 these criminal cases, and in light of all of that, we made
20 the determination at that point, although she had already
21 been interviewed, to no longer participate in that, and we
22 notified the Department of Justice.

23 And I might add also on the question, just to clarify
24 it for the sake of my client here, one of the questions
25 asked, Question 17 of the application or the request that

1 came in from the IRS, Do you have a close relationship with
2 any candidate for public office or political party? If so,
3 describe fully the nature of that relationship. That was
4 just one of--whatever "close relationship" means. We
5 notified the IRS on behalf of Ms. Walker and others that
6 much of what the IRS was asking was outside the scope of
7 legitimate inquiry, and after months and months and months,
8 they started narrowing down the scope of their questions.
9 But this took a process of years to engage in.

10 But to answer the question about the investigation, Ms.
11 Walker did speak--was interviewed by the Department of
12 Justice, and there was never any follow-up after that.

13 Chairman Cruz. And, Ms. Mitchell? And I am now, like
14 Senator Whitehouse, well over my time, so if you would
15 briefly answer that.

16 Ms. Mitchell. Well, I was asked--

17 Senator Whitehouse. I think you have even topped me
18 here, Mr. Chairman.

19 Chairman Cruz. I try every time.

20 Ms. Mitchell. The day I--I must tell you this story.
21 I was testifying before the House Oversight Committee in
22 February of last year, and I filed my testimony in the
23 morning, and in it I said that the DOJ investigation was a
24 sham. At 2 o'clock that afternoon, I started getting phone
25 calls from the Department of Justice saying that they wanted

1 to talk to me, and I talked to them for the first time on
2 the Friday following my testimony. They wanted to interview
3 Catherine Engelbrecht. However, our litigation team, as
4 Senator Whitehouse pointed out, we had pending litigation
5 against the IRS which was being defended by the Department
6 of Justice. So our litigation team made a decision that
7 they would let them talk to me initially since I represented
8 a number of people who had gone through this situation. We
9 are still going through it.

10 So I talked with them and described all the different
11 experiences of all of my clients, including the
12 conversation--the conference call that was organized by Ms.
13 Walker after all of those letters went out to groups all
14 over the country. There were more than 80 people, I think,
15 on that phone call, that conference call, with accountants
16 and people saying, "I have never seen anything like this."
17 And the only question that Barbara Bosserman, the head of
18 the Department of Justice investigation, the only thing she
19 said during the entire 2 hours in which I was talking to
20 them was she asked were there any progressive groups on that
21 call, which I thought--I just looked at her in disbelief.

22 Following that, they wanted to interview Catherine
23 Engelbrecht, and Catherine, in addition to having the
24 lawsuit that True the Vote had filed in the district court,
25 she was also seeking on behalf of True the Vote to intervene

1 in a voter ID case in Texas, a Federal voter ID case, which
2 the Department of Justice has objected to and had made some
3 fairly unflattering comments about True the Vote. So Ms.
4 Engelbrecht made the decision that--she said, "I would be
5 happy to interview with the FBI and with the DOJ as long as
6 I do not have anyone from the Civil Rights Division
7 present." And, of course, Ms. Bosserman was the head of
8 that. And they refused to meet with her because they said
9 that they could not let a witness make demands. I said,
10 "She is not a witness. She is a victim."

11 Chairman Cruz. Thank you, Ms. Mitchell.

12 Senator Coons?

13 Senator Coons. Thank you, Mr. Chairman.

14 Mr. Spaulding, if I might, just to follow up on a
15 question I asked previously of Professor Noble, he suggested
16 that there are some consequences to allowing organizations
17 that are effectively campaign advocacy organizations to
18 shield themselves under 501(c)(4) labels and cited Supreme
19 Court cases, I think McCutcheon and Citizens, that
20 highlighted the value and the importance of disclosure. Is
21 there any evidence that the consequences that Professor
22 Noble warned about are actually occurring? And why is this
23 of concern to the roughly 400,000 members of Common Cause?

24 Mr. Spaulding. Thank you, Senator Coons. It is
25 absolutely important. In the 2012 elections, over \$300

1 million came from undisclosed sources. The vast majority of
2 that money went through 501(c)(4) organizations, and, by the
3 way, I am talking about 501(c)(4) organizations like
4 Crossroads GPS that spent \$70 million. These are the
5 powerful, politically connected organizations that are
6 manipulating the rules, and in so doing, voters are left
7 without much information when they go to the polls.

8 Ms. Martin talked about our country being founded on
9 the values of freedom. I would add equality, and we are
10 getting more and more perfect in that regard. We have a
11 long way to go. But freedom and equality frankly do not
12 mean that much if you do not have an informed electorate,
13 and that is why the Supreme Court has said repeatedly,
14 emphatically, 8-1, in Citizens United that disclosure
15 advances First Amendment values so that voters know who is
16 speaking to them, so that voters can hold elected officials
17 accountable, and so that our laws can be enforced.

18 Even Justice Scalia said, in Doe v. Reed, "Requiring
19 people to stand up in public for their political acts
20 fosters civic courage, without which democracy is doomed."

21 That is what is at stake, Senator Coons.

22 Senator Coons. Thank you, Mr. Spaulding.

23 Mr. Colvin, if I might, I just want to commend the work
24 that you and your colleagues at Bright Lines Project have
25 done to attempt to bring some clarity to what I think has

1 long been a murky area here--not in statute but in the
2 regulations and the rules.

3 One of the challenges here is bringing clarity to what
4 qualifies as political activity under the Tax Code. But
5 defining "political activity" is only part of the problem.
6 Do you believe that 501(c)(3) and (c)(4) organizations ought
7 to be able to engage in campaign activity? And if so, how
8 much? And how do you measure appropriately the level of
9 political activity of an organization? And if you might, in
10 closing, since I am going to keep mine short this time, what
11 has happened in the past when the IRS has attempted to
12 enforce its demonstrably unclear rules against high-profile
13 groups or individuals that violate it?

14 Mr. Colvin. Well, first of all, with respect to
15 501(c)(3) charitable organizations, the rule has been for 60
16 years that they are absolutely prohibited from political
17 intervention, and I think that should continue to be the
18 case. And that would be political intervention of any kind,
19 whether it involved the expenditure of money or making of
20 statements or other activities by volunteers, by staff, that
21 might support or oppose political candidates.

22 With respect to (c)(4)s, as we know, 501(c)(4)s do not
23 have the benefit of tax-deductible donations, so they have
24 greater latitude. Certainly they can lobby on legislation
25 without limit. They also have an allowance for political

1 campaign activity, which makes sense if you consider groups
2 like the Sierra Club or the National Rifle Association that
3 have a need to put out voter guides, let people know where
4 the candidates stand on issues.

5 The quantitative limit of less than primary has never
6 been stated, and should be, in dollars of annual
7 expenditures, by a percentage. There has been a sort of
8 folk wisdom that the percentage is 49 percent. The IRS has
9 an expedited process for (c)(4) organizations to declare
10 they will not spend more than 40 percent of money or staff
11 time on political activity. And there are many who would
12 like to see that be lowered to an insubstantial level of 5
13 or 10 percent.

14 The Bright Lines Project does not take a position on
15 the exact percentage, but does believe that it should be
16 solely measured by annual expenditures.

17 Senator Coons. And what would be the benefit of having
18 a brighter line? What would be the benefit to organizations
19 that seek to have a predictable path forward, to have
20 clarity that their First Amendment rights are going to be
21 protected? Why would that be positive or beneficial?

22 Mr. Colvin. Well, it would be positive because the
23 501(c)(3) and (c)(4) and, for that matter, unions that are
24 (c)(5)s, trade associations that are (c)(6)s, could engage
25 in nonpartisan voter turnout. We have terribly low voter

1 turnout in the United States, and we need to use social
2 welfare and charitable and other organizations to increase
3 that, without being partisan to do so. So that is the
4 positive effect you would look for for activities that
5 should be encouraged under the IRS line drawing.

6 Also, if it is the policy certainly of campaign finance
7 laws and also of the IRS and its enforcement of Section 527
8 to have disclosure of money that is used for influencing
9 political campaign, then one would hope that a better
10 definition and a clear limit for 501(c)(4)s, (5)s, and (6)s
11 would push those who wish to have political activity
12 transpire into the 527 category.

13 My California license plate says C3C4527.

14 [Laughter.]

15 Mr. Colvin. And I believe that that is the most
16 effective way for an organization, whatever its cause, to
17 influence the Government. The question is: How do you
18 arrange your expenditures and activities between those three
19 categories?

20 Senator Coons. Thank you, Mr. Colvin, and I would like
21 to thank all the members of this panel who, at great
22 personal investment and effort and difficulty, have come and
23 testified before us today. This is an important issue, and
24 one I suspect we will not resolve with just this hearing,
25 but I just want to express my gratitude to everyone who has

1 testified today. Thank you.

2 Thank you, Mr. Chairman.

3 Chairman Cruz. Thank you. And I will note, Mr.
4 Colvin, I hope that the IRS does not audit you for your
5 expression of free speech on your license plate.

6 [Laughter.]

7 Chairman Cruz. Senator Sessions.

8 Senator Sessions. Well, thank you. A little jingle I
9 created one time was, "Oh, what a tangled web we create/When
10 we first start to regulate." It is just very difficult to
11 close all the loopholes.

12 Mr. Sekulow--or let me ask Ms. Mitchell--I asked him,
13 but I want to pursue this idea that, well, we have an idea
14 about how this interpretation of the law for exempt
15 organizations should be handled, and I believe Mr. Spaulding
16 correctly said, however it is interpreted, it ought to be
17 fair across the board.

18 Do you feel like it is being fairly applied across the
19 board? And has the Tax Division targeted individuals based
20 on their ideas?

21 Ms. Mitchell. Absolutely, and I think that the
22 evidence shows that. The Inspector General wrote a letter
23 to the House Ways and Means Committee in June of 2014 in
24 which--excuse me, June of 2013, in which he outlined that
25 just the sheer numbers of the conservative and Tea Party,

1 pro-life, pro-Israel groups, and how they had been treated
2 compared to groups who had the word "progressive" in their
3 name. And I compare it to when you go fishing. It is one
4 thing to catch the fish and put it in the boat and keep it,
5 which is what happened to the conservative groups. What
6 happened to the progressive groups, it was catch and
7 release. They caught it, looked at it a little bit--
8 Progress Texas, good example. It was on the list in
9 September of 2010. That was leaked to USA Today. There
10 were, I think, 80--I do not even--112 groups on that list.
11 There were a few progressive groups. One was Progress
12 Texas. One was Tea Party Patriots. Tea Party Patriots, and
13 the comments out by the side said, "Appears to be engaging
14 in anti-Obama propaganda." That is what it said about Tea
15 Party Patriots.

16 But you go back a few pages, there is Progress Texas:
17 "Appears to be engaging in anti-Rick Perry propaganda."

18 Now here is the difference: In September of 2011, or
19 2010, whenever it was, September of that year, Progress
20 Texas got its tax-exempt status in just a few months. Tea
21 Party Patriots waited another several years and had to go
22 through multiple rounds of IRS "development letters."

23 Senator Sessions. Well, I think this is not over.

24 Ms. Mitchell. No, it is not.

25 Senator Sessions. This is not right.

1 Ms. Mitchell. It is not right.

2 Senator Sessions. And the IRS cannot be used in this
3 fashion, and I want to get to the bottom of it, and I want
4 to find out if there was political direction from the White
5 House, because the people who run the IRS are appointed by
6 the White House.

7 Let me ask you, Mr. Sekulow, are you aware that today,
8 apparently today--I was just handed this--Judge Emmet
9 Sullivan threatened to hold the IRS Commissioner in contempt
10 at a Judicial Watch--

11 Mr. Sekulow. For the failure to produce FOIA
12 information.

13 Senator Sessions. Yes. Are you familiar--

14 Mr. Sekulow. I know about the case. I did not know
15 that--I have been here attending the hearing, so I did not
16 know that the order came out. But this has been an--we
17 actually have FOIA litigation going on as well, and the
18 courts in that particular case--the IRS has not been
19 forthcoming with the documents, or if they do supply
20 documents, they are so redacted, you do not even--it is not
21 even clear what the documents respond to.

22 But I think in that particular case, I think the IRS
23 just made the determination they were not responding. I do
24 not know the context of the order.

25 Senator Sessions. Well, so you would say that the

1 administrator who testified earlier, when he said they are
2 fully cooperating, in your view as a practicing lawyer with
3 many years of experience with discovery, in your view they
4 are not fully cooperating?

5 Mr. Sekulow. Absolutely. Not fully cooperating, and
6 the fact of the matter is--and the President can have his
7 own opinion, but he does not get to create his own facts,
8 and that is just not a fact. The IRS has not been
9 cooperative.

10 Does it not seem bizarre, just bizarre, that there is a
11 gap for the years in question in Lois Lerner's e-mails? And
12 I will say this, Senator, with due respect to the Committee,
13 and I appreciate the time here. My colleagues in the Office
14 of Chief Counsel when I served, in 1979, were notified that
15 there was a breach of Federal personnel records, including
16 personnel records in our office, and my colleagues from that
17 year, 1979, a long time ago, were notified that their
18 records may have been compromised in that. That record was
19 available from 1979. Lois Lerner's e-mails from the years
20 in questions vanish.

21 Senator Sessions. Well, this is what the Judicial
22 Watch statement today says the judge is saying: "I will
23 haul into court the IRS Commissioner to hold him personally
24 in contempt." Then it goes on: "In a status hearing today,
25 Judge Sullivan warned that the failure to follow his order

1 was serious and the IRS and Justice Department's excuses for
2 not following his July 1 order were `indefensible,
3 ridiculous, and absurd.'"

4 So I would say that what I have seen throughout this is
5 a foot dragging, a lack of full and open cooperation, and
6 what the IRS should have done from the very beginning was to
7 say, "We are going to restore the integrity of the Internal
8 Revenue Service, and we are going to go to the bottom of it.
9 We are going to find out every fact, and if anybody did
10 wrong, they are going to be fired and/or prosecuted. And if
11 anybody at a higher level directed them politically to
12 target people that they did not like, we are going to
13 investigate them; and if they violate the law, they go to
14 jail."

15 Now, that is what should be done here. I sense no
16 commitment of this kind on behalf of the Obama
17 administration, and I think it has placed at jeopardy the
18 integrity of the IRS, and I am very disappointed about it.

19 Chairman Cruz. Thank you, Senator Sessions.

20 Senator Whitehouse?

21 Senator Whitehouse. Mr. Chairman, just two things for
22 the record.

23 One, with respect to your exchange with Ms. Mitchell,
24 the matter in question was a recall petition. It was not an
25 election. So every signature that could be struck was

1 necessarily to the benefit of Governor Walker. And your
2 point that this in some way might reflect on the
3 disproportionately Democratic nature of voter fraud is
4 simply not germane in a circumstance in which--there was no
5 accompanying petition not to recall. This was a petition to
6 recall. And I wanted to make sure that point was clear.

7 The second is, with respect to Ms. Martin, I owe her
8 the courtesy of giving her the source, which was a Forbes
9 Magazine column, November 3, 2014, written by a man named
10 Peter Reilly. And to be precise about quoting it, "On
11 September 1 I got an e-mail from Jenny Beth Martin"--and
12 here is what he says--"in her capacity as Co-founder and
13 National Coordinator of TPP Inc (the social welfare
14 organization) that indicated: `Your gift today will be sent
15 immediately to the front lines to enable our grassroots
16 volunteers and staffers to contact these voters," et cetera.
17 So at least it was Mr. Reilly's belief that he received this
18 e-mail in Ms. Martin's capacity as co-founder and national
19 coordinator of TPP Inc., the social welfare organization,
20 which was the one that answered the question, "Do you plan
21 to spend any money attempting to influence the selection,
22 nomination, election, or appointment of any person?" "No."

23 Thank you.

24 Chairman Cruz. Thank you, and I would like to thank
25 each of the witnesses, a number of whom traveled a long

1 distance to be here. Thank you for your time. This has
2 been an extended hearing, but I think a very important one,
3 and I appreciate the diligence with which you have provided
4 your testimony.

5 We will keep the hearing record open for an additional
6 5 business days, which means the record will be closed at
7 the end of the business day on Wednesday, August 5, 2015.

8 And, with that, this hearing is now adjourned.

9 [Whereupon, at 5:38 p.m., the Subcommittee was
10 adjourned.]

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