

**Senator Cruz Questions for the Record for**  
**Edward Greim, Partner at Graves Garrett LLC**  
**Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts**  
**Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options**  
**Wednesday, July 29, 2015**

**General Question**

**1. Are there any other points or issues that were not explored (or adequately explored) during the hearing that you would like to bring to our attention?**

Senator Cruz, thank you for providing me with this opportunity. I would like to emphasize that the threat of criminal prosecution, although a focus of the hearing, is not by itself sufficient to deter the conduct of individual bureaucrats in an organization like the Internal Revenue Service. We applaud efforts to bring wrongdoers to justice. However, prosecutorial discretion (among many other considerations) often results in a free pass even when publicly-available information suggests that a potential target's conduct would support an indictment.

In contrast, citizen actions for money damages or other relief do not depend on the peculiar sensitivities or predispositions of a prosecutor. Any aggrieved citizen may file such actions in our federal courts. The burden of proof for establishing liability is usually a preponderance of the evidence—not beyond a reasonable doubt. Civil discovery can yield a bounty of information, and even a stonewalling agency is subject to the orders of a federal judge or magistrate, as shown by recent events in the U.S. District Court for the District of Columbia.

Of course, civil causes of action can certainly be clarified, and civil litigation and discovery can be streamlined for citizens who choose to act as “private attorneys general.” This was the subject of my initial written testimony, which proposed four reforms: (1) notification requirements when tax exempt organizations are “grouped” by the IRS for any reason; (2) an explicit damages remedy for taxpayers harmed by viewpoint-based targeting; (3) a bar on the IRS's misuse of the return information statute (which was originally intended to protect taxpayers' confidential information) to “protect” itself from embarrassing disclosures; and (4) a waiver of the IRS's deliberative process privilege in Freedom of Information Act litigation and civil discovery. All of these reforms will make it more likely that an “Army of Davids,” through their own efforts, will be able to uncover documents like the attachment to this response. This is the email between Carter Hull and several other IRS officials in which Mr. Hull openly admits that all of the targeted groups “appeared to be a particular political ideology.”

In conclusion, we urge the Subcommittee to take up the cause of civil litigants who turn to the federal courts to vindicate their federal constitutional and statutory rights against rogue federal bureaucracies. Rather than waiting for a prosecutor who may never act (and who may be politically inclined or pressured not to act), these citizen-litigants are taking matters into their own hands. In a very real way, they are the last line of defense for holding the federal government accountable to the Constitution. It is time for the people's legislators—including this Subcommittee—to fortify and provision that line, for it may well be there that the decisive battles are finally fought and the tide is turned.

EDG

# **EXHIBIT V**



The email below from John Shafer, Screening Manager, outlines the criteria the screening group is using to identify cases as "tea party cases." This is criteria the screening group came up with based on cases they were seeing. If we don't want the screening group to include all of these type issues as "tea party cases," they would have no problem including or excluding certain cases. However, they need to be given the criteria to use. And, if we don't want certain cases included, then EOD still needs to know how the cases should be processed. I guess what I am trying to say is that it doesn't matter what the cases are called or how they are grouped, EOD needs guidance to ensure consistency.

Process: When the screening group starts seeing new type cases that have similar issues, they meet and come up with criteria to identify "emerging issue" and elevate information. "Emerging issue" cases are sent to Group 7822 (Steve Bowling's group) and we start coordinating with EOT to seek guidance.

Would you like for me to ask Bonnie Esrig, Steve Bowling, Group 7822 Manager, and Ron Bell, agent working "tea party cases" to participate in the briefing with Lois?

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**From:** Shafer John H  
**Sent:** Thursday, June 02, 2011 9:21 AM  
**To:** Thomas Cindy M  
**Cc:** Esrig Bonnie A; Bowling Steven F  
**Subject:** RE: Tea Party Cases - NEED CRITERIA

Cindy,

The following are issues that could indicate a case to be considered a potential "tea party" case and sent to Group 7822 for secondary screening.

1. "Tea Party", "Patriots" or "9/12 Project" is referenced in the case file.
2. Issues include government spending, government debt and taxes.
3. Educate the public through advocacy/legislative activities to make America a better place to live.
4. Statements in the case file that are critical of the how the country is being run.

**John Shafer**  
**Group Manager**  
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**From:** Thomas Cindy M  
**Sent:** Thursday, June 02, 2011 12:46 AM  
**To:** Shafer John H  
**Cc:** Esrig Bonnie A; Bowling Steven F  
**Subject:** Tea Party Cases - NEED CRITERIA  
**Importance:** High

John,

Could you send me an email that includes the criteria screeners use to label a case as a "tea party case?" BOLO spreadsheet includes the following:

Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).

Do the applications specify/state "tea party?" If not, how do we know applicant is involved with the tea party movement?

I need to forward to Holly per her request below. Thanks.

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**From:** Melahn Brenda  
**Sent:** Wednesday, June 01, 2011 3:08 PM  
**To:** Paz Holly O; Thomas Cindy M  
**Subject:** RE: group of cases

Holly - we will UPS a copy of the case in #1 below to your attention tomorrow. It should be there Monday. I'm sure Cindy will respond to #2.

Brenda

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**From:** Paz Holly O  
**Sent:** Wednesday, June 01, 2011 2:21 PM  
**To:** Thomas Cindy M  
**Cc:** Melahn Brenda  
**Subject:** group of cases

re: Tea Party cases

Two things re: these cases:

1. Can you please send me a copy of the (b)(3); 6103 (EIN (b)(3); 6103) application? Lois wants Judy to take a look at it so she can summarize the issues for Lois.
2. What criteria are being used to label a case a "Tea Party case"? We want to think about whether those criteria are resulting in over-inclusion.

Lois wants a briefing on these cases. We'll take the lead but would like you to participate. We're aiming for the week of 6/27.

Thanks!

Holly