

113TH CONGRESS
2D SESSION

H. RES. 565

Calling on Attorney General Eric H. Holder, Jr., to appoint a special counsel to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2014

Mr. JORDAN (for himself, Mr. BOUSTANY, Mr. GOODLATTE, Mr. CAMP, Mr. ISSA, Mr. SENSENBRENNER, Mr. CHAFFETZ, and Mr. GOWDY) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Calling on Attorney General Eric H. Holder, Jr., to appoint a special counsel to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service.

Whereas in February of 2010, the Internal Revenue Service (“IRS”) began targeting conservative nonprofit groups for extra scrutiny in connection with applications for tax-exempt status;

Whereas on May 14, 2013, the Treasury Inspector General for Tax Administration (TIGTA) issued an audit report entitled, “Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review”;

Whereas the TIGTA audit report found that from 2010 until 2012 the IRS systematically subjected tax-exempt appli-

cants to extra scrutiny based on inappropriate criteria, including use of the phrases “Tea Party”, “Patriots”, and “9/12”;

Whereas the TIGTA audit report found that the groups selected for extra scrutiny based on inappropriate criteria were subjected to years-long delay without cause;

Whereas the TIGTA audit report found that the groups selected for extra scrutiny based on inappropriate criteria were subjected to inappropriate and burdensome information requests, including requests for information about donors and political beliefs;

Whereas on January 27, 2010, in his State of the Union Address, President Barack Obama criticized the Citizens United v. Federal Election Commission decision, saying: “With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests—including foreign corporations—to spend without limit in our elections”;

Whereas throughout 2010, President Barack Obama and congressional Democrats publicly criticized the Citizens United decision and conservative-oriented tax-exempt organizations;

Whereas the Exempt Organizations Division within the IRS’s Tax-Exempt and Government Entities Division has jurisdiction over the processing and determination of tax-exempt applications;

Whereas on September 15, 2010, Lois G. Lerner, Director of the Exempt Organizations Division, initiated a project to examine political activity of 501(c)(4) organizations, writ-

ing to her colleagues, “[w]e need to be cautious so it isn’t a per se political project”;

Whereas on October 19, 2010, Lois G. Lerner told an audience at Duke University’s Sanford School of Public Policy that “everybody” is “screaming” at the IRS “to fix the problem” posed by the Citizens United decision;

Whereas on February 1, 2011, Lois G. Lerner wrote that the “Tea Party matter [was] very dangerous,” explaining “This could be the vehicle to go to court on the issue of whether Citizen’s [sic] United overturning the ban on corporate spending applies to tax exempt rules”;

Whereas Lois G. Lerner ordered the Tea Party tax-exempt applications to proceed through a “multi-tier review” involving her senior technical advisor and the Chief Counsel’s office of the IRS;

Whereas Carter Hull, a 48-year veteran of the Federal Government, testified that the “multi-tier review” was unprecedented in his experience;

Whereas on June 1, 2011, Holly Paz, Director of Rulings and Agreements within the Exempt Organizations Division, requested the tax-exempt application filed by Crossroads Grassroots Policy Strategies for review by Lois G. Lerner’s senior technical advisor;

Whereas in June 2011, Lois G. Lerner ordered the Tea Party cases to be renamed because she viewed the term “Tea Party” to be “pejorative”;

Whereas on March 22, 2012, IRS Commissioner Douglas Shulman was specifically asked about the targeting of Tea Party groups applying for tax-exempt status during a hearing before the House Committee on Ways and

Means, to which he replied, “I can give you assurances . . . [t]here is absolutely no targeting.”;

Whereas on April 26, 2012, IRS Exempt Organizations Director Lois G. Lerner informed the House Committee on Oversight and Government Reform that information requests were done in “the ordinary course of the application process”;

Whereas on May 4, 2012, IRS Exempt Organizations Director Lois G. Lerner provided to the House Committee on Oversight and Government Reform specific justification for the IRS’s information requests;

Whereas prior to the November 2012 election, the IRS provided 31 applications for tax-exempt status to the investigative website ProPublica, all of which were from conservative groups and nine of which had not yet been approved by the IRS, and Federal law prohibits public disclosure of application materials until after the application has been approved;

Whereas the initial “test” cases developed by the IRS were applications filed by conservative-oriented Tea Party organizations;

Whereas the IRS determined, by way of informal, internal review, that 75 percent of the affected applications for 501(c)(4) status were filed by conservative-oriented organizations;

Whereas on January 24, 2013, Lois G. Lerner e-mailed colleagues about Organizing for Action, a tax-exempt organization formed as an offshoot of President Barack Obama’s election campaign, writing: “Maybe I can get the DC office job!”;

Whereas on May 8, 2013, Richard Pilger, Director of the Election Crimes Branch of the Department of Justice's Public Integrity Section, spoke to Lois G. Lerner about potential prosecution for false statements about political campaign intervention made by tax-exempt applicants;

Whereas on May 10, 2013, IRS Exempt Organizations Director Lois G. Lerner apologized for the IRS's targeting of conservative tax-exempt applicants during a speech at an event organized by the American Bar Association;

Whereas the Ways and Means Committee determined that, of the 298 applications delayed and set aside for extra scrutiny by the IRS, 83 percent were from right-leaning organizations;

Whereas the Ways and Means Committee also determined that, as of Lois G. Lerner's May 10, 2013 apology, only 45 percent of the right-leaning groups set aside for extra scrutiny had been approved, while 70 percent of left-leaning groups and 100 percent of the groups with "progressive" names had been approved;

Whereas the Ways and Means Committee has also determined that, of the groups that were inappropriately subject to demands to divulge confidential donors, 89 percent were right-leaning;

Whereas on May 15, 2013, Attorney General Holder testified before the Judiciary Committee that the Department of Justice would conduct a "dispassionate" investigation into the IRS matter, and "[t]his will not be about parties . . . this will not be about ideological persuasions . . . anybody who has broken the law will be held accountable";

Whereas on May 15, 2013, President Barack Obama called the IRS's targeting "inexcusable" and promised that he would "not tolerate this kind of behavior in any agency, but especially in the IRS, given the power that it has and the reach that it has into all of our lives";

Whereas the Attorney General has stated that the Department of Justice's investigation involves components from the Civil Rights Division and the Public Integrity Section;

Whereas the Civil Rights Division of the Department of Justice has a history of politicization, as evident in the report by the Department of Justice Office of Inspector General entitled, "A Review of the Operations of the Voting Rights Section of the Civil Rights Division";

Whereas Barbara Bosserman, a trial attorney in the Civil Rights Division who in the past several years has contributed nearly \$7,000 to the Democratic National Committee and President Barack Obama's political campaigns, is playing a leading role in the Department of Justice's investigation;

Whereas the Public Integrity Section communicated with the IRS about the potential prosecution of tax-exempt applicants;

Whereas on December 5, 2013, President Barack Obama declared in a national television interview that the IRS's targeting of conservative tax-exempt applicants was caused by a "bureaucratic" "list" by employees in "an office in Cincinnati";

Whereas on April 9, 2014, the House Committee on Ways and Means referred Lois G. Lerner to the Department of Justice for criminal prosecution;

Whereas the House Committee on Ways and Means found that Lois G. Lerner used her position to improperly influence agency action against conservative tax-exempt organizations, denying these groups due process and equal protection rights as guaranteed by the United States Constitution, in apparent violation of section 242 of title 18, United States Code;

Whereas the House Committee on Ways and Means found that Lois G. Lerner targeted Crossroads Grassroots Policy Strategies while ignoring similar liberal-leaning tax-exempt applicants;

Whereas the House Committee on Ways and Means found that Lois G. Lerner impeded official investigations by knowingly providing misleading statements to the Treasury Inspector General for Tax Administration, in apparent violation of section 1001 of title 18, United States Code;

Whereas the House Committee on Ways and Means found that Lois G. Lerner may have disclosed confidential taxpayer information, in apparent violation of section 6103 of the Internal Revenue Code;

Whereas former Department of Justice officials have testified before a subcommittee of the House Committee on Oversight and Government Reform that the circumstances of the Administration's investigation of the IRS's targeting of conservative tax-exempt applicants warrant the appointment of a special counsel;

Whereas Department of Justice regulations counsel attorneys to avoid the "appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution";

Whereas since May 15, 2013, the Department of Justice and the Federal Bureau of Investigation have refused to cooperate with congressional oversight of the Administration's investigation of the IRS's targeting of conservative tax-exempt applicants;

Whereas on January 13, 2014, unnamed officials at the Department of Justice leaked to the media that no criminal charges would be appropriate for IRS officials who engaged in the targeting activity, which undermined the integrity of the Department of Justice's investigation;

Whereas on February 2, 2014, President Barack Obama stated publicly that there was "not even a smidgen of corruption" in connection with the IRS targeting activity;

Whereas on April 16, 2014, electronic mail communications between the Department of Justice and the IRS were released showing that the Department of Justice considered prosecuting conservative nonprofit groups for engaging in political activity that is legal under Federal law, which damaged the integrity of the Department and undermined its investigation; and

Whereas the Code of Federal Regulations requires the Attorney General to appoint a Special Counsel when he or she determines—

(1) that criminal investigation of a person or matter is warranted,

(2) that investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances, and

(3) that under the circumstances, it would be in the public interest to appoint an outside Special Counsel to

assume responsibility for the matter: Now, therefore, be it

1 *Resolved*, That it is the sense of the House of Rep-
2 representatives that—

3 (1) the statements and actions of the IRS, the
4 Department of Justice, and the Obama Administra-
5 tion in connection with this matter have served to
6 undermine the Department of Justice’s investiga-
7 tion;

8 (2) the Administration’s efforts to undermine
9 the investigation, and the appointment of a person
10 who has donated almost seven thousand dollars to
11 President Obama and the Democratic National
12 Committee in a lead investigative role, have created
13 a conflict of interest for the Department of Justice
14 that warrants removal of the investigation from the
15 normal processes of the Department of Justice;

16 (3) further investigation of the matter is war-
17 ranted due to the apparent criminal activity by Lois
18 G. Lerner, and the ongoing disclosure of internal
19 communications showing potentially unlawful con-
20 duct by Executive Branch personnel;

21 (4) given the Department’s conflict of interest,
22 as well as the strong public interest in ensuring that
23 public officials who inappropriately targeted Amer-
24 ican citizens for exercising their right to free expres-

1 sion are held accountable, appointment of a Special
2 Counsel would be in the public interest; and

3 (5) Attorney General Holder should appoint a
4 Special Counsel, without further delay, to investigate
5 the IRS's targeting of conservative nonprofit advo-
6 cacy groups.

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