

113TH CONGRESS
2D SESSION

S. RES. 487

Expressing the sense of the Senate that Attorney General Eric H. Holder, Jr. should appoint a special counsel or prosecutor to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service.

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2014

Mr. CRUZ submitted the following resolution; which was referred to the
Committee on the Judiciary

RESOLUTION

Expressing the sense of the Senate that Attorney General Eric H. Holder, Jr. should appoint a special counsel or prosecutor to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service.

Whereas, in February 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 applicants 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 without cause to delays lasting years;

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

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

Whereas, on September 15, 2010, Lois G. Lerner, former Director of the Exempt Organizations Division, initiated a project to examine political activity of organizations described in section 501(c)(4) of the Internal Revenue Code of 1986, writing to her colleagues, “[w]e need to be cautious so it isn’t a per se political project”;

Whereas, on February 1, 2011, Lois Lerner wrote that the “Tea Party matter [was] very dangerous” and “[t]his 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 Lerner ordered the Tea Party tax-exempt applications to proceed through a “multi-tier review” involv-

ing her senior technical advisor and the IRS Office of Chief Counsel;

Whereas Carter Hull, an IRS lawyer and a 48-year veteran of the United States 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 Lerner’s senior technical advisor;

Whereas, on March 22, 2012, Commissioner of Internal Revenue Douglas Shulman was specifically asked about the targeting of Tea Party groups applying for tax-exempt status during a hearing before the Committee on Ways and Means of the House of Representatives, to which he replied, “I can give you assurances . . . [t]here is absolutely no targeting”;

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

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 9 of which had not yet been approved by the IRS, in spite of a prohibition under Federal law against public disclosure of application materials until after the application has been approved;

Whereas the IRS determined, by way of informal, internal review, that 75 percent of the applications for designation as an organization described in section 501(c)(4) of the

Internal Revenue Code of 1986 that were set aside for further review were filed by conservative-oriented organizations;

Whereas, on January 24, 2013, Lois Lerner wrote, in an e-mail to colleagues, regarding Organizing for Action, a tax-exempt organization formed as an offshoot of the election campaign of President Barack Obama: “Maybe I can get the DC office job!”;

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

Whereas, on May 10, 2013, in response to a pre-arranged question, Lois Lerner apologized for the targeting of conservative tax-exempt applicants by the IRS during a speech at an event organized by the American Bar Association;

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

Whereas the Committee on Ways and Means of the House of Representatives determined that, as of the May 10, 2013, apology from Lois Lerner, 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 Committee on Ways and Means of the House of Representatives 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 Eric H. Holder, Jr. testified before the Committee on the Judiciary of the House of Representatives 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 targeting of conservative tax-exempt applicants by the IRS “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 Barbara Bosserman, a trial attorney at the Department of Justice who in the past several years has contributed nearly \$7,000 to the Democratic National Committee and political campaigns of President Obama, is playing a leading role in the investigation by the Department of Justice;

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

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

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

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

Whereas the Committee on Ways and Means of the House of Representatives found that Lois Lerner impeded official investigations by knowingly providing misleading statements to TIGTA, in apparent violation of section 1001 of title 18, United States Code;

Whereas the Committee on Ways and Means of the House of Representatives found that Lois Lerner may have disclosed confidential taxpayer information, in apparent violation of section 6103 of the Internal Revenue Code of 1986;

Whereas former Department of Justice officials have testified before a subcommittee of the Committee on Oversight and Government Reform of the House of Representatives that the circumstances of the investigation by the administration of the targeting of conservative tax-exempt ap-

plicants by the IRS 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, on January 13, 2014, unnamed officials in 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 investigation by the Department of Justice;

Whereas, on January 29, 2014, Attorney General Holder told the Senate Committee on the Judiciary, “I don’t think that there is a basis for us to conclude on the information as it presently exists that there is any reason for the appointment of the independent counsel The notion that somehow this has caused a loss of faith in this Justice Department is inconsistent with the facts”;

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

Whereas, on April 16, 2014, e-mails 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 of Justice and undermined its investigation;

Whereas, on May 8, 2014, the IRS agreed to provide all of Lois Lerner’s e-mails to investigators of the Committee on Ways and Means of the House of Representatives;

Whereas, on May 14, 2014, e-mails obtained through a request under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”) by the nonprofit group Judicial Watch indicate that the Washington office of the IRS was examining applications for tax-exempt status by Tea Party organizations, which is contrary to claims that the cases were being handled by lower-level workers in Cincinnati;

Whereas, on June 11, 2014, James Comey, Director of the Federal Bureau of Investigation (FBI), testified to the Committee on the Judiciary of the House of Representatives that FBI investigators did not examine the IRS database with taxpayer information, which included private taxpayer information that is prohibited from being shared without an order from a judge, and only looked at the table of contents;

Whereas, on June 13, 2014, IRS Office of Legislative Affairs Director Leonard Ourlser informed the Committee on Finance of the Senate that the IRS could not produce e-mails from January 2009 through April 2011 from Lois Lerner due to a computer crash;

Whereas, on June 17, 2014, the IRS stated that it could not produce e-mails from 6 other IRS employees;

Whereas, on June 23, 2014, it was reported that Commissioner of Internal Revenue John Koskinen has contributed approximately \$100,000 to Democratic candidates and organizations, including \$7,300 to President Obama;

Whereas, on June 24, 2014, it was reported that the IRS agreed to pay \$50,000 in damages to one of the conservative groups, the National Organization for Marriage, as

a result of the unlawful release of confidential information to a political rival of that group;

Whereas, on June 25, 2014, according to the Committee on Ways and Means of the House of Representatives, Lois Lerner sought to have Senator Chuck Grassley, a sitting United States Senator and ranking Republican member of the Committee on the Judiciary of the Senate, referred for IRS examination; and

Whereas section 600.1 of title 28, Code of Federal Regulations, promulgated under section 515 of title 28, United States Code, requires the Attorney General to appoint a special counsel or prosecutor when it is determined that—

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

(2) 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) under the circumstances, it would be in the public interest to appoint an outside special counsel or prosecutor to assume responsibility for the matter: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that—

2 (1) the statements and actions of the Internal
3 Revenue Service (IRS), the Department of Justice,
4 and the administration of President Barack Obama
5 in connection with the targeting of conservative tax-

1 exempt applicants by the IRS have served to under-
2 mine the investigation by the Department of Justice;

3 (2) the efforts of the administration to under-
4 mine the investigation by the Department of Justice,
5 and the appointment of Barbara Bosserman, who
6 has donated almost \$7,000 to President Obama and
7 the Democratic National Committee, to a lead inves-
8 tigative role, have created a conflict of interest that
9 warrants removal of the investigation from the nor-
10 mal processes of the Department of Justice;

11 (3) further investigation of the matter is war-
12 ranted due to the apparent criminal activity by Lois
13 Lerner, former Director of the Exempt Organiza-
14 tions Division within the Tax-Exempt and Govern-
15 ment Entities Division of the IRS, and the ongoing
16 disclosure of internal communications showing po-
17 tentially unlawful conduct by executive branch per-
18 sonnel;

19 (4) appointment of a special counsel or pros-
20 ecutor would be in the public interest, given the con-
21 flict of interest for the Department of Justice and
22 the strong public interest in ensuring that public of-
23 ficials who inappropriately target individuals for ex-
24 ercising their right to free expression are held ac-
25 countable; and

1 (5) Attorney General Eric H. Holder, Jr.
2 should appoint a special counsel or prosecutor, with
3 meaningful independence, to investigate the tar-
4 geting of conservative nonprofit advocacy groups by
5 the IRS.

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