



## Legislative Bulletin.....May 7, 2014

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### **H.Res. 565 – Calling on Attorney General Eric H. Holder, Jr., to appoint a special counsel to investigate the targeting of conservative non-profit groups by the Internal Revenue Service**

**Order of Business:** The resolution is scheduled to be considered on May 7, 2014, subject to a rule.

**Summary:** [H.Res. 565](#) calls on Attorney General Eric Holder to appoint a special counsel to investigate the targeting of conservative nonprofit groups by the Internal Revenue Service (IRS).

**Additional Information:** 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”. The report detailed systematic targeting of conservative groups for increased scrutiny in their applications for 501(c)(4) tax-exempt status from 2012-2012. Lois Lerner, the Director of the Exempt Organizations Division during the abuse, is subject to contempt proceedings in the House of Representatives for her role in this activity. The IRS subjected groups with the phrases “Tea Party”, “Patriots”, and “9/12” to levels of scrutiny that one IRS veteran testified that was unprecedented in his 48-year experience with the IRS. After the targeting was publicized, the IRS proposed a rule change for 501(c)(4) organizations that would stifle their free speech rights. More than 80 RSC Members submitted a [comment](#) to the IRS in opposition to the proposed rule change. The IRS received more than 169,000 public comments in regards to the proposed rule change.

- On April 9, 2014, the House Committee on Ways and Means referred Lois Lerner to the Department of Justice for investigation and criminal prosecution.
- The attorney that AG Holder appointed to investigate the IRS targeting has donated several thousand dollars to the Democratic National Committee and President Obama’s political campaigns, and the Administration has publically undermined the alleged DOJ investigation on multiple occasions.

- The Department of Justice has refused to cooperate with congressional oversight of the Administration's investigation of the IRS's targeting of conservative groups.
- More information can be found in a House Committee on the Judiciary press release [here](#).
- Additional information about the IRS targeting of conservative groups can be found in the Committee Report prepared by the House Committee on Oversight and Government Report [here](#).

**Committee Action:** On May 2, 2014, the resolution was introduced by Congressman Jordan. No further action was taken by the Committee.

**Administration Position:** No Statement of Administration Policy is available.

**Cost to Taxpayers:** No Congressional Budget Office cost estimate is available.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** House Rules do not require constitutional authority statements for resolutions.

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**H.Res. \_\_ - Resolution Recommending that the House of Representatives find  
Lois G. Lerner, Former Director, Exempt Organizations, Internal Revenue  
Service, in contempt of Congress for refusal to comply with a subpoena duly  
issued by the Committee on Oversight and Government Reform —  
(Issa-CA, R)**

**Order of Business:** H.Res. \_\_\_\_\_ is scheduled to be considered on May 7, 2014, under a closed [rule](#).

**Summary:** The [Report of the Committee on Oversight and Government Reform](#) includes the resolution recommending Lois Lerner, former Director, Exempt Organizations, Internal Revenue Service to be held for contempt of Congress since she it was determined she waived her Fifth Amendment privilege by offering an opening statement before the Committee on Oversight and Government Reform. After being informed of this, she continued to refuse to testify before the committee; therefore, she shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

The resolution, pursuant to 2 U.S.C. Sec. 192 and 194, calls upon the Speaker of the House to certify the report and take all appropriate action to enforce the subpoena.

**Additional Background:** Beginning in 2012 the Committee on Oversight and Government Reform (OGR) began to receive information alleging the Internal Revenue Service (IRS) was delaying the approval of tax-exempt status for conservative organizations. According to the Committee, Section 501(c)(4) of the Internal Revenue Code permits incorporation of organizations that meet certain criteria and focus on advancing “social welfare” goals.<sup>1</sup> With a 501(c)(4) designation, such organizations are not subject to federal income tax and donations to these organizations are not tax deductible.

Since 2012, the Committee has reviewed, “nearly 500,000 pages of documents obtained from (i) the Department of the Treasury, including particular component entities, the IRS, the Treasury Inspector General for Tax Administration (TIGTA), and the IRS Oversight Board, (ii) former and current IRS employees, and (iii) other sources. In addition, the Committee has conducted 33 transcribed interviews of current and former IRS officials, ranging from front-line employees in the IRS’s Cincinnati office to the former Commissioner of the IRS.”<sup>2</sup>

Lois Lerner served as Director of Exempt Organizations at the IRS from 2006 to 2013. In emails obtained by OGR, she wrote, “Tea Party Matter very dangerous” and instructed the Office of the Chief Counsel to get involved.<sup>3</sup> By 2011, the backlog of applications had ballooned to almost 170 applications and their treatment had garnered national attention. In addition, in early 2012 TIGTA began an audit of the IRS’s process for evaluating tax-exempt applications. According to their [report](#), “The IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention.”

On May 22, 2013, OGR held a [hearing](#) entitled, “The IRS: Targeting Americans for Their Political Beliefs.” Lois Lerner was present (pursuant to a subpoena issued by Chairman Issa), and offered an opening statement, but chose to invoke her Fifth Amendment right and declined all questions. On June 28, 2013, OGR [reconvened](#) to determine if Lois Lerner had waived her Fifth Amendment privilege by offering an opening statement. The Committee approved the resolution which found her opening statement waived her Fifth Amendment privilege by a vote of 22-17.

Lois Lerner was called to testify again before OGR on March, 5, 2014, at the [reconvening](#) of the May 22, 2013 hearing. Once again she continued to assert her Fifth Amendment privilege and refused to answer questions. It was at this hearing that Chairman Issa stated, “If Ms. Lerner continues to refuse to answer questions from our Members while she is under a subpoena, the Committee may proceed to consider whether she should be held in contempt.”<sup>4</sup>

Read the Committee Report [here](#).

Read a staff report from OGR [here](#).

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<sup>1</sup> I.R.C. § 501(c)(4)

<sup>2</sup> <http://beta.congress.gov/113/crpt/hrpt415/CRPT-113hrpt415.pdf>

<sup>3</sup> E-mail from Lois Lerner, Director, Exempt Orgs., IRS to Michael Seto, Manager, Exempt Orgs. Technical Unit, IRS (Feb. 1, 2011) [IRSR 161810].

<sup>4</sup> The IRS: Targeting Americans for Their Political Beliefs: Hearing before the H. Comm. on Oversight and Gov’t Reform, 113th Cong. (Mar. 5, 2014), Tr. at 5.

**Committee Action:** On April 10, 2014, the Committee on Oversight and Government Reform [met](#) in open session with a quorum present to consider a report of contempt against Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service, for failure to comply with a Congressional subpoena. The Committee approved the Report by a roll call vote of 21–12 and ordered the Report reported favorably to the House.

**Constitutional Authority:** The Committee finds the authority for this Report in article 1, section 1 of the Constitution.

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