

**Hearing on the Internal Revenue Service's Audit Selection Process and Internal
Controls Within the Tax Exempt and Government Entities Division**

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

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CONTENTS

[Advisory of July 23, 2015 announcing the hearing](#)

WITNESSES

Panel One

The Honorable John Koskinen

Commissioner, Internal Revenue Service

Witness Statement [[PDF](#)]

Jay McTigue

Director, Strategic Issues, Government Accountability Office

Witness Statement [[PDF](#)]

Panel Two

Michelle Easton

President, Clare Boothe Luce Policy Institute

Witness Statement [[PDF](#)]

Elizabeth J. Kingsley

Partner, Harmon, Curran, Spielberg & Eisenberg, LLP

Witness Statement [[PDF](#)]

Joseph R. Metzger

ice President of Finance, Leadership Institute

Witness Statement [[PDF](#)]

**Hearing on the Internal Revenue Service's Audit Selection Process and Internal Controls
Within the Tax Exempt and Government Entities Division**

U.S. House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:02 a.m., in Room 1100, Longworth House Office Building, Hon. Peter Roskam, [chairman of the subcommittee] presiding.

*Chairman Roskam. The Committee will come to order.

Welcome to the Ways and Means Oversight Subcommittee hearing on the Internal Revenue Service audit selection process. Today we are going to review a new report from the independent Government Accountability Office, or GAO, about how the IRS decides to audit tax exempt organizations.

Two years ago we learned that the IRS was targeting conservative organizations that were applying for tax exempt status. The Exempt Organizations Division under Lois Lerner's direction had a checklist to select certain groups for extra scrutiny.

That checklist included criteria such as whether an organization's application referred to conservative buzz words like Tea Party or Patriots or if the groups criticized how the country was being run.

Targeted groups were subjected to intrusive and burdensome questionnaires. For example, an Iowa pro-life group was outrageously instructed to tell the IRS about their prayers. Many of these groups had to wait for years to get an answer from the IRS on their applications, if they even got one at all.

We are here today because some of these groups, in addition to all of that scrutiny, also got audited. To date the IRS has tried to reassure this Committee and the American people that this will not happen again by simply saying Lois Lerner does not work here anymore, but after we learned about the targeting of not-for-profit applicants, this Committee asked GAO to review whether the problem was bigger than that attributable to a single individual's direction.

We asked: "Can the IRS target tax exempt organizations in the audit process?" GAO released that report today. It says, quote, "The controlled deficiencies GAO found increased the risk that the Exempt Organizations Unit could select organizations for examination in an unfair manner, for example, based on an organization's religious, educational, political or other views."

GAO found many examples where the IRS failed to follow its own internal controls or document audit selection decisions. Failure to document is a real problem because where there is no documentation, there is no way to know if an audit was commenced based on merit or bias. There is also no way to hold someone accountable for bad acts.

I am deeply concerned about how the IRS decides which organizations to audit in the first place. Many times when a nonprofit organization is audited, it is because the computer flags

problems at the outset with an organization's paperwork, and that is fine.

But about 20 percent of the audits are set in motion because the IRS gets a complaint about an organization. These so-called referrals come from an individual. They come from news media or even someone's political adversary.

When the IRS receives a complaint, an employee looks to see if there is a likely tax violation. There are only five IRS employees who serve as these gatekeepers of the audit process, and they each cover only one issue area. The gatekeeper reviewing political activity complaints has been there since 2009. That means that for the past six years one person in the entire IRS has been reviewing political activity referrals to decide if they should move on in the audit process.

If one of these gatekeepers decides that there is an audit potential, the complaint is sent to a referral committee with disturbingly relaxed standards, and what is worse, over 25 percent of audits GAO reviewed were started because of a complaint with no description of the allegation in the file. That is, one in four audits GAO looked at had no explanation of the reason for the audit. In some instances, GAO found that entire case files were missing.

This means that no one can go back and determine if the audit was to begin for a fair reason or an unfair reason, and it is stunning, in my view, that in response to these findings the IRS has said, quote, "Although the report states that a hypothetical risk exists that returns could be selected unfairly, the draft report did not find any evidence that this happened."

As we will show today, that is not true. The Inspector General tells this Committee that they have referred multiple cases of improper audit selection to the Justice Department for criminal prosecution in 2014 alone, and there is nothing hypothetical about that.

I remind my colleagues that in 2013, after the Inspector General concluded that the IRS unfairly targeted groups applying for nonprofit status, the IRS response was similar. They said, quote, "We have not found evidence of intentional wrongdoing by IRS personnel."

And to the contrary, this Committee uncovered evidence showing Lois Lerner acted in defiance of internal controls that were supposed to prevent anyone at the IRS from blocking a group's application or sending them to audit. Ms. Lerner was not only familiar with those internal controls, but these were policies she created and spoke of publicly as a way of commending the agency's impartiality.

The evidence shows that Ms. Lerner maliciously and intentionally bypassed these controls, reaching into her division and directing specific organizations be subjected to audit, something IRS rules said she could not do.

It is disappointing that over two years later it is still possible that the IRS can select groups for adverse treatment based on their personal, political, religious, and educational beliefs. There is not proper documentation of allegations or decisions to audit. There are a handful of gatekeepers with sweeping authority and broad discretion, and there is a very broken referral committee process.

The IRS has been entrusted with powerful authority to review and audit organizations, and with that comes a very serious responsibility to the American people. The IRS must acknowledge these problems and take concrete action to ensure a Lois Lerner 2.0 situation cannot happen.

This Committee will continue to work to reform this broken system and to ensure the IRS treats all Americans fairly and equally.

I would like to recognize Mr. Lewis for his opening statement.

*Mr. Lewis. Good morning. Thank you, Mr. Chairman, for holding today's hearing.

I would also like to thank the Commissioner and all the other witnesses for being here today.

This hearing is important. All Democrats agree that no organization should be targeted because of their political, educational or religious belief. It is important that the Internal Revenue Service operates with integrity and follows a fair process when selecting organizations to audit.

Charities and other exempt organizations are the fabric of our communities. They are our universities, our hospitals, our homeless shelters, and our food banks. These organizations care for the sick and feed the hungry. They educate our children and support the elderly. They give hope and help to those in need.

America is stronger because of these organizations. They help us fulfill our promise to care for the least among us, and they set a global example for our friends and neighbors, not just here in America, but around the world.

Today there are over 1.6 million tax exempt organizations in the United States. Overall, less than one percent are selected for audit. I am pleased to learn that the GAO did not find any evidence that IRS employees chose to examine organizations because of their political, educational or religious beliefs.

It is also encouraging, Mr. Chairman, to learn that GAO found that the IRS exempt organization employees equated fairness with reviewing organizations strictly by the law. In focus groups, the employees told GAO you should treat everyone alike. It does not matter who filed the information. It is what they filed.

In my estimation, this is the right way. It is the just and fair way.

Again, I thank all of the witnesses for being here today. I look forward to hearing more from the panel about the auditing process for organizations and how it can be improved.

Thank you, Mr. Chairman. I yield back.

*Chairman Roskam. Thank you, Mr. Lewis.

Today we will hear from two panels. The first panel will consist of Jay McTigue, Director of Strategic Issues at the U.S. Government Accountability Office, and Commissioner John Koskinen at the IRS.

The second panel will consist of three witnesses, Michelle Easton, President of the Clare Boothe Luce Policy Institute; Joseph Metzger, Vice President of Finance at the Leadership Institute; and Elizabeth Kingsley, partner at the law firm of Harmon, Curran, Spielberg & Eisenberg.

And for all of the witnesses, we thank you for your time today, and the committee has received your written statements, and they will be made part of the formal record. You each have five minutes to deliver your oral remarks. We have got a system of lights that is not complicated, red, yellow, green.

And, Mr. McTigue, we will begin with you.

STATEMENT OF JAY MCTIGUE, DIRECTOR, STRATEGY ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

*Mr. McTigue. Chairman Roskam, Ranking Member Lewis, and members of the subcommittee, I am pleased to be here to discuss our report that is being released today on IRS' selection of tax exempt organizations for examination.

Tax exempt organizations play a major role in our economy and provide a range of important services. There are an estimated 1.6 million exempt organizations in the United States that range

from small social service groups to large, nonprofit health systems and universities.

IRS' Exempt Organization Unit, or EO, within the Tax Exempt and Government Entities Division performs two key functions. First, it reviews applications from entities seeking tax exempt status to determine whether or not to grant status, and second, it oversees existing exempt organizations' compliance with the tax code.

One way that EO oversees compliance is through examinations which are reviews of an organization's activities and finances. EO uses various procedures to select cases for examination, including referrals from within and outside of IRS.

In fiscal year 2014, IRS closed about 8,000 examinations, or less than one percent of exempt organizations that file a return.

At the request of this Committee, we reviewed the adequacy of IRS' internal controls over the processes and procedures it uses to select exempt organizations for examination. In brief, Mr. Chairman, we found that EO has numerous controls intended to help ensure that it selects organizations for examination in a way that adheres to IRS' mission of applying the tax law with integrity and fairness.

While we found that some of EO's internal controls are adequate, the design and implementation of others are not, leaving IRS at risk for potentially unfair selection practices.

In terms of what is working well, we found, for example, that EO maintains well documented procedures for several, but not all, selection processes in the Internal Revenue Manual, which is IRS' official source of instructions to staff.

Furthermore, the IRM sets standards of conduct for treating taxpayers fairly without favoritism or discrimination. In focus groups we conducted with EO staff, they said that guidance documented in the IRM is valuable in helping them administer the tax code.

However, we also identified several areas where EO's controls could be improved, including weaknesses in documentation, management's monitoring of key procedures, and segregation of key duties.

For example, some EO processes, such as applying selection criteria to organizations under consideration for examination, are not included in the IRM as required by IRS policy and, therefore, are subject to fewer controls. This is significant because deviations from the IRM are only allowed with approval by executive management and with the appropriate communication to employees.

Reliance on procedures that are outside of the IRM creates the risk that EO staff could deviate from official procedures, potentially resulting in unfair selection of organizations for examination. Excluding these procedures from the IRM also reduces transparency since they otherwise would not be available to the public.

We also found that EO management does not consistently monitor the effectiveness of internal controls for some examinations and database files to ensure that selection decisions are documented and properly approved in order to help ensure fairness.

For example, we found that an estimated 22 percent of cases where EO initially selected an organization for examination but later the examiner decided not to perform the exam were missing required management approval. As a result, management does not have assurance that internal controls are being followed properly.

As a final example, we observed that certain types of referrals are reviewed by only one individual. EO has identified five types of sensitive referrals, such as political activity and high profile referrals and has one staff or classifier for each sensitive area who determines whether the case should be considered for examination.

The classifiers are not cross-trained to review other types of referrals. Internal control standards dictate that key duties, such as these, should be divided among different people. Spreading classification responsibilities for sensitive referrals to more than one classifier could help decrease the potential influence or bias of any one classifier and better ensure fair case selection.

In conclusion, EO is faced with the challenging task for overseeing a diverse population of organizations in enforcing their compliance with the tax code. EO's reliance on a variety of procedures and multiple steps to select organizations underscores the importance of having a robust internal control system to ensure selection fairness and integrity. Mr. Chairman, this concludes my prepared remarks. I'd be happy to answer any questions you or other members of the committee have.

*Chairman Roskam. Thank you, Mr. McTigue.
Commissioner.

STATEMENT OF THE HON. JOHN KOSKINEN, COMMISSIONER, INTERNAL REVENUE SERVICE

*Mr. Koskinen. Chairman Roskam, Ranking Member Lewis, and members of the subcommittee, thank you for the opportunity to discuss the recent GAO review of our audit selection criteria for exempt organizations.

Maintaining a fair and unbiased audit process is one of the fundamental principles upon which the IRS operates in the Exempt Organization, in particular, and throughout all of our compliance programs. We choose returns for audit based on information that is or should be in the returns and without regard for who is filing the return.

It is important for people to understand, for example, that which political party they belong to or how they voted in the last election has no bearing at all on our decision making process.

We continue to review our processes and procedures to ensure this fairness is maintained. For example, the IRS in 2013 asked its newly appointed Chief Risk Officer, who came from outside the agency, to conduct a service-wide review of audit selection criteria. He spent several months looking at the criteria used by more than 350 IRS compliance programs and found no evidence of bias in any of them.

I am pleased to note that the GAO's recent review of the exempt organizations area also found no instance where an organization was inappropriate selected for audit and no evidence of bias in our selection process.

As part of their reviews, both the IRS Chief Risk Officer and the GAO offered recommendations for improvements in our internal controls to further reduce any risk that exists for returns to be selected in an unfair manner.

The IRS has accepted all of these recommendations, and we have been working to implement them. For example, last week the Director of our Exempt Organization Division issued guidance designed to further strengthen oversight of the process by which we select cases for audit based on referrals that come to us from the public or from Congress.

Beyond the scope of the audit process, we have taken actions to ensure fairness in all of our dealings with exempt organizations. We are continuing the work begun in 2013 to ensure that the management mistakes made in regard to the determination process for tax exempt status do not happen again.

As part of those efforts we have implemented all of the recommendations made by the Inspector General in his May 2013 report. The IG noted these efforts in a follow-up report issued in March of this year.

Let me reiterate my belief that the IRS must continue to do everything possible to make sure that all individuals and organizations can be confident that they will be treated fairly in their dealings with the agency.

Even with our constrained resources, we will audit over one million taxpayers this year. Some will be members of one party. Some will be members of another. Some will have voted for one candidate in the last election and some for another. Some will have attended one political rally or another, but none of that matters to us in our audit process.

The bottom line for all individuals and organizations is that when someone hears from the IRS regarding their tax return, it is only because of the information that is or should be in that return and not for other factors. And if someone else has the same issue on their return, they will hear from us as well within the limits of our budget resources.

Chairman Roskam, Ranking Member Lewis and members of the subcommittee, that concludes my statement, and I would be happy to answer your questions.

*Chairman Roskam. Thank you, Commissioner.

Mr. Kelly.

*Mr. Kelly. Thank you, Chairman, and thank you both for being here.

Commissioner, we have been together so many times now, and I want to thank you again for joining us on this tax exempt issue status and the IRS administration of the provision in the tax code.

Last night I looked up the 501(c)(3) statute of the tax code just to refresh my memory, and let me just read it. "To be considered tax exempt under Section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in 501(c)(3). A list of exempt organizations include:" -- and this is on page 2202 of the tax code -- "corporations and any community chest fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, except as otherwise provided in Subsection H, and which does not participate in or intervene in, including the publishing or distribution of statements, any political campaign on behalf of or in opposition to any candidate for public office."

Now, in the past we have discussed issues involving the IRS granting organizations 501(c)(3) a status or not. There was a great deal of concern about why were these people waiting so long.

Now, today we have turned our focus to issues involving maintaining an exempt status once the IRS selects a tax exempt organization for audit. So I want to focus our discussion on a recent issue involving a 501(c)(3) organization, and I like the idea of where the referrals come from.

It says referrals are complaints the IRS receives about organizations from third parties, including other units of the IRS, Members of Congress, and the general public.

About 18.2 percent of the audits closed in 2014 were selected based on referrals, and this comes down to the general public. I want to ask you a question because this has just come up the last couple days, and it really bothers me, and it bothers a lot of people in the Third District back

in Pennsylvania that I represent.

Planned Parenthood is a 501(c)(3). Now, it has been in the news recently that Planned Parenthood has been in the news for what appears to be commercial business activity, the sale of fetal tissue.

Now, you have seen the videos. I am assuming you have seen some of the videos. I have, and most of the people I represent have. Planned Parenthood operates a tax exempt entity for both 501(c)(3) as well as a 501(c)(4). According to Planned Parenthood's 990 Form filed in 2013, they had gross receipts of \$196,986,791. So as a nonprofit, they look rather profitable.

However, given the recent videos that have come to light, my question to you, from an outcry from the general public: does the IRS plan to audit or investigate Planned Parenthood for what looks to be a commercial activity?

I know we investigate people, and a lot of it is based on referrals. What kind of a referral would the IRS have to have to look into this?

*Mr. Koskinen. Obviously I cannot discuss any particular case. As a general matter, we rely on referrals across the board, from the public and the Congress, as you note, but we also as the GAO report notes in some detail have a process for regularly reviewing the operations of exempt organizations across the board and looking for areas that we think are important to review, important to examine, important to audit. One of them is unrelated business income tax.

If you are a 501(c) organization --

*Mr. Kelly. I do not want to get into the weeds on this. I am asking you. There is a general outcry right now throughout the United States of America. Whenever we can keep organizations from getting a tax exempt status, whenever we can go in and audit certain organizations because we think they are doing something outside of the 501(c)(3) guidelines, we have no problem looking at that.

But really what we are talking about today is restoring the faith and trust that the American people have to have in the IRS, and they look to us in Congress as their oversight, the ability to protect them at all costs.

You and I both work for the same people. I do not work for the Republican Party. I work for the people of Pennsylvania's Third District and, more importantly, the people of the United States the same as you.

I am looking at an organization right now, Planned Parenthood with a 501(c)(3) status and looking at the numbers and saying, "My God, do we really have a blind eye and a deaf ear to what is going on there? And are these people ever going to be audited?"

Have you ever audited Planned Parenthood?

*Mr. Koskinen. Let me make just one clarification. Any tax exempt organization can have unrelated business income. They have to pay tax on it. Universities, public organizations of --

*Mr. Kelly. I understand that, Commissioner.

*Mr. Koskinen. Pardon?

*Mr. Kelly. My question: when you read the definition of what qualifies for a 501(c)(3) and it very clearly states what it is they have to do, I would think at some point somebody somewhere should be hearing all the bells and whistles going off and the smell of sulfur in the room to say we had better look into what is going on here. There is something that has really gone off track.

I would say if referrals can come from the general public, I would think the people of America right now are asking the IRS to take a very good look into this organization as a 501(c)(3) exempt organization status. I am going to look into it. I want you to get back to me.

Have they ever been audited? Has anybody ever looked into the procedures that they have been conducting and said these people do not qualify as a 501(c)(3), the same as some of my friends in religious organizations have been targeted, the same way other organizations because of their political beliefs?

It has happened in the past. We know it. These people have retired and left your organization, but they were the people that drove this issue.

So I thank you. I am sorry my time is up, and I hate to go on like this, but this has just reached the point where the American people demand an answer. They no longer request it. They demand answers to these issues.

Thank you.

*Chairman Roskam. Mr. Lewis.

*Mr. Lewis. Thank you very much, Mr. Chairman.

Thank you, Mr. Director, Mr. Commissioner, for being here.

Everyone agrees that the IRS should not target organizations based on political, religious or other beliefs. I want the record to be perfectly clear on this point. So the question is for you two: have you seen any evidence that IRS targeted organizations for audit based on political, religious or other beliefs?

*Mr. McTigue. Congressman, we designed our study to test the internal controls that help safeguard the selection processes that EO uses to identify potential cases for examination. That said, we did not find or we did not observe any instances of unfair selection in cases that we reviewed.

But, again, our study was looking at the broader controls, and I would add that this is important because looking just at individual cases would only give us a snapshot in time of past selection decisions, whereas looking at internal controls broadly, that is the safeguard for preventing unfair selection now and over time into the future.

*Mr. Lewis. Mr. Commissioner?

*Mr. Koskinen. As I noted, we set up an Enterprise Risk Organization late in 2013. The new ERO Risk Manager we charged with the responsibility to look across the entire exam function, and he found no evidence of bias, no cases that he could find.

He did find as GAO did suggestions for improving our procedures, which we are following. We are delighted to have the GAO recommendations, but thus far we have no indications from any of those reviews nor have we been advised by the Inspector General in their reviews and audits of specific cases any indication that there has been bias in the selection of audits in the exempt area.

*Mr. Lewis. Thank you.

Mr. McTigue, as Director, I would like to understand generally how many organizations are audited each year. Your report stated that the overall audit rate for organizations was less than one percent in 2014.

In 2014, how many organizations were audited by the IRS?

*Mr. McTigue. According to data that we received from IRA, approximately 8,000.

*Mr. Lewis. In 2008, how many organizations were audited by the IRS?

*Mr. McTigue. I believe that number was a bit higher. I do not have the number with me, but I believe it was in the order of 11,500, a little bit higher.

*Mr. Lewis. Thank you, Mr. Director.

Mr. Commissioner, I understand that the Risk Officer for the IRS conducted its own review for the Examination Unit and 350 other compliance functions at the IRS. What did this Risk

Officer discover or find?

*Mr. Koskinen. He found that there was a low risk of any bias in any of those procedures. He reviewed them all. He came up with a handful of cases with additional procedural improvements along the line of some of the same kind of things GAO was finding, and we committed then and we commit now that we are going to make those improvements because we do think the point GAO makes is correct, that we need to make sure we have processes and procedures, which as GAO and our Risk Manager said we had a lot of. We need to make sure they are updated. We need to make sure they are monitored. We need to make sure they are effective.

Thus far, as I say, we are thankful that there have not been individual cases found where someone was inappropriately selected for exam, but that does not mean we do not need to continue to get better at it. We need to continue to monitor it.

It is why I have always been supportive of IGs and GAO and outside reviews, because they give you good suggestions and insights.

*Mr. Lewis. Mr. Commissioner and Mr. Director, thank you for being here and thank you for your service.

I yield back, Mr. Chairman.

*Chairman Roskam. Mr. Holding.

*Mr. Holding. Thank you.

Mr. Commission, your response to this report repeatedly notes that the GAO found no evidence of wrongdoing. So I want to be clear for everyone as to what GAO looked at and what it did not look at.

So, Mr. McTigue, the IRS closed 8,000 audits of tax exempt organizations in fiscal year 2014. Did you review all of those audits?

*Mr. McTigue. We reviewed a statistical sample of those audits.

*Mr. Holding. Okay. So you were looking at the processes and internal controls within the Exempt Organizations Examination Unit; that is correct?

*Mr. McTigue. That is correct.

*Mr. Holding. And then you looked at a statistical sample of cases to see how the processes work, whether employees were consistently following them, correct?

*Mr. McTigue. That is correct.

*Mr. Holding. So you cannot say with any certainty that of those 8,000 closed cases that none of them were improperly selected for audits, correct?

*Mr. McTigue. That is correct, sir.

*Mr. Holding. Thank you.

And many of the cases you did look at, there was documentation missing on how the IRS chose a group for audit, correct?

*Mr. McTigue. We looked at over 23 of the key procedures and processes that IRS uses. It is a very complex process overall with multiple steps, with multiple reviews of different people involved, and looking across those processes and procedures we did find some that were ineffective, some that --

*Mr. Holding. But in the individual cases that you did look at, you did find missing documentation in those cases?

*Mr. McTigue. We did find weaknesses in documentation and management monitoring and approvals.

*Mr. Holding. So when you would run across one of those cases with missing

documentation, you would not be able to tell whether that group was selected improperly because there is not enough information in the case to tell either way because of the missing documentation, correct?

*Mr. McTigue. For example, the type of documentation that we noted was missing involved summaries. For example --

*Mr. Holding. Sure. It is like I used to work in a prosecutor's office, and we would have to do prosecution memorandums and so forth whether we are going to go forward or we are not going to go forward.

*Mr. McTigue. Correct.

*Mr. Holding. And if you do not have those contemporaneous memorandums, you really cannot figure out exactly why the case was declined or accepted.

*Mr. McTigue. And that is an area where we did find some weakness. However, more broadly, when a file move forward, the entire case file moves forward. So the fact that the summary was missing, you know, is a deficiency in monitoring. However, the committee would still have the full case file and in that case file there would be --

*Mr. Holding. Sure. But without summaries and without a memorandum memorializing your conclusions and how you got there, you cannot make the determination as to whether they were improperly selected.

So essentially what the GAO found is that the IRS is not documenting its decision making process when it selects groups for audit, and that is a problem. I cannot imagine running a prosecutor's office, you know, without that process in place.

And essentially an IRS audit, it is an adversarial procedure. It mean, it is akin to a criminal prosecution investigation. So when you cannot tell why a group was audited, it makes it impossible to ensure that it was not selected based upon improper criteria, and that is a very big problem and undermines the confidence the American people would have in the IRS and the job that they are doing.

I do not think I have quite enough time to get to another question, Mr. Chairman. So I will yield back.

*Chairman Roskam. Mr. Rangel.

*Mr. Rangel. Thank you, Mr. Chairman.

I wish I could join in thanking you for this hearing, but it seems like I keep coming in on this movie and it never seems to end, but gentlemen, could you tell me how you interpret Congress' intent in allowing a tax exempt organization to participate, even if not its primary objective, in any political activity?

*Mr. Koskinen. Five, oh, three (c) by statute are, in effect, prohibited from --

*Mr. Rangel. Forget 503(c)'s. I am talking about 501(c)(4)'s.

*Mr. Koskinen. C(4)'s, the statute talks about they need to be exclusively social welfare organizations. Over the years that has been interpreted to mean they have to be primarily social welfare organization. The Congress has made it clear --

*Mr. Rangel. Let me try again. You have to interpret what the Congress meant. Obviously you have had to defend your country's laws. We make them, and just to make certain that you effectively enforce them for us, I am asking you: 501(c)(3), it is abundantly clearly, exclusively for public use. Now we have the other one. We know the language, and I do not know how to frame my question any better than you know there is a separation in (c)(4).

I am asking you if someone were to ask who is not a Member of Congress: why do you believe the United States Congress allows people to receive tax exemptions for doing political

activity, albeit not exclusively?

*Mr. Koskinen. Well, Congress has made it clear in its statutory framework --

*Mr. Rangel. If it is that clear, I would not be asking you the question. If it is so clear, then answer it. Why are they doing this? Why do they not just say if you are in politics, you go the political route?

Now we are using tax exemption.

*Mr. Koskinen. Right. There is a Section 527 provision that Congress passed that after the (c)(3)'s and (c)(4)'s were passed, if you want to spend most of your money, if you want to be primarily a political organization, you can do that and be tax exempt. You simply have to file for that.

So I have made it clear we do not make a choice for you. The statutory provisions say you can be a (c)(3), (4) or a (7).

*Mr. Rangel. I only have five minutes. I am talking about 501(c)(4)'s.

*Mr. Koskinen. Right.

*Mr. Rangel. It has to be not exclusively, but primarily for the public good, right? And what is the other part of it? It can be used for other purposes, right?

*Mr. Koskinen. Right.

*Mr. Rangel. For political purposes.

*Mr. Koskinen. Correct.

*Mr. Rangel. If you were explaining this law to the general public and you didn't have the geniuses that we have on our committee who write these laws and they were asking you not just as a public citizen but someone who has the obligation to enforce the law: Commissioner, what was your opinion of the intent of Congress to allow people to make taxes and contributions for political purpose, albeit not entirely for political purposes?

*Mr. Koskinen. You do not get to take a deduction for a contribution to any (c) organization other than a (c)(3). So when you make a contribution that is deductible, it has to be to a (c)(3), and they cannot engage in any significant, almost any political activity.

If you make a contribution to a four or a 527 --

*Mr. Rangel. I wish we had a Chief Counsel here --

*Mr. Koskinen. -- you do not get to deduct it.

*Mr. Rangel. -- who could frame my question better than I am framing it, but I am going to take a last shot at this.

Can an organization, a 501(c)(4), in any way engage in any political activity at all?

*Mr. Koskinen. A 501(c)(4)?

*Mr. Rangel. Yes.

*Mr. Koskinen. A 501(c)(4) can engage in political activity.

*Mr. Rangel. Why? What would be in your opinion the legislative intent in doing this?

*Mr. Koskinen. The legislative intent would be to support the political process, to encourage people to participate in it, to allow the organizations that are the recipients of those --

*Mr. Rangel. Thank you.

And do you think this is a good idea to use the tax code to encourage people to participate politically?

*Mr. Koskinen. I have spent some time trying to reassure everyone that the IRS is a tax administration organization. Tax policy and issues of policy are the responsibility of the Administration and the Congress.

*Mr. Rangel. So you do not believe it is your responsibility to make recommendations to

us? I mean, you go through all of this. Mistakes have to be made because of the millions of people that you audit, and so you think it is out of place for us to say, "Do you think there is a better way to do this, Mr. Commissioner?"

You would say, "It is up to you to decide that"?

*Mr. Koskinen. I would be happy to talk to you about that without my IRS hat on, as a personal member of the public, but as far as the IRS goes --

*Mr. Rangel. I am concerned about we have oversight of the IRS. This is why you are subject to these types of intrusions in your personal live.

*Mr. Koskinen. Yes.

*Mr. Rangel. And when we do these things, we like to get an opinion from you. Is it working?

*Mr. Koskinen. My response is from a tax administration standpoint, the Congress has made the policy. Our goal is to enforce it fairly.

One of the concerns I have, that the IG had, was that the rules around the (c)(4) regulations are not clear, and my tax administration view is we should make them clearer. But in terms of the basic question you asked, which is a fair question, it is not a question on which the IRS has a position.

We do not take positions on policy questions as to whether there should be more or less of something. Our goal is simply to implement the intent of Congress in the legislation that has been passed.

*Chairman Roskam. Mr. Renacci.

*Mr. Renacci. Thank you, Mr. Chairman.

I want to thank the witnesses for being here. I want to also thank the Commissioner for your help with my staff on a number of issues we have come to you on, and we look forward to working together in the future on some other issues.

But I want to talk a little bit about internal controls. You know, as a CPA and business owner, I really understand the importance of internal controls. Checks and balances are essential for the health of a business. A fundamental element of any set of internal controls is a proper segregation of duties, and really segregation of duties reduces opportunities for errors and fraud.

Just as it is necessary for a business to implement and follow internal controls, it is essential for the IRS to implement and follow its internal controls to safeguard the integrity of the tax audit process. In other words, IRS internal controls are supposed to protect taxpayers and keep the process fair and unbiased.

The IRS should prevent any one person from being able to decide whether someone should be audited. I am going to go back to the past, and then I am going to really move to the future.

But in the past, we had an incident where Lois Lerner, somebody who has been before this Ways and Means Committee, had abused the internal controls. Crossroads was referred to audit twice. Both times it was dismissed and based on a vote of a three-person panel. Yet one person, Lois Lerner, writes in an email, "I need to think about whether to open an exam." And then she says, "I think yes."

To me that sounds like she could and did bypass internal controls. That was before your time, Commissioner. I understand. I want to look to the future and what we are doing as far as internal controls.

That being said, the GAO report shows that the IRS did not have sufficient internal controls in place which could lead to the abuse in the audit selection process. Commissioner, do you agree that these internal control deficiencies pose a risk that certain tax exempt organizations could be

selected or not be selected for audit based on inappropriate criteria?

*Mr. Koskinen. I think the controls we have had in place are detailed, complicated. The GAO spent pages explaining all of those, noting that a number of them were appropriate; suggested improvements, and we are supportive of those improvements, but at this point we do not think that looking backwards, that those controls as they operated resulted in anyone being improperly targeted.

But as I have said, and I agree with you, you need to continue to review your processes. You need to monitor them. You need to make sure that people are following them, and I think the recommendations that GAO makes are very helpful, and we are going to implement them all.

*Mr. Renacci. I appreciate that. I think it is important that the people that I represent and the people of the United States understand that there is a fair and balanced process, although, again, looking at this email that is on the board, I am not sure that Lois Lerner did not break the internal controls by being the only individual who made that decision, and that is what I want to avoid going forward.

I am hoping that the IRS continues to monitor these internal controls.

So what are you doing to address the problems that GAO found specifically with regard to the referral process?

*Mr. Koskinen. Yes. On both case, they have the suggestion on the classifiers, who simply classify cases. They do not make a selection themselves. They classify for the review panels. The classifiers should be cross-trained so that you do not have one classifier only dealing with one classification, and we have agreed to do that. We think that would be helpful.

They also said with regard to the review panel it is historically where people who volunteered who met criteria and would serve for a year and rotate off, as the resources declined and the work grew up, we did not get volunteers on a regular basis in the past. So the member of some of those review panels had been on those panels for a number of three or four years rather than a year or two.

So we have already announced, following the GAO recommendation, that we will actually randomly select, but on a regular basis, people for a two-year term on each of those panels, and they will rotate through. They will rotate off, and in both the classifier case and the people who are going to participate in the panels, we will make sure they get appropriate training and background information so they can perform effectively, and we think those will be improvements.

*Mr. Renacci. And I appreciate that.

Again, as a business owner, even though we set internal controls up and we had all of these process, are there checks and balances in place to make sure all of these internal controls stay in place?

*Mr. Koskinen. Yes. One of the things, as I said in my testimony, in addition to appointing a risk manager, I have spent the last year and a half trying to get employees from the front lines on up, and I have talked to about 14,000 IRS employees in person to understand that every IRS employee should view themselves as a risk manager.

Any IRS employee who feels there is a problem, is uncomfortable with something, thinks things are not working the way they are supposed to, has numerous lines of communication, including directly to me as well as to the Risk Manager, to raise that flag.

As the GAO noted in their interviews, all of the employees they talked to in focus groups place great emphasis on our ability to fairly deal with taxpayers. So in addition to all of our processes and procedures, I am trying to make sure that the employees understand that the

problems we cannot solve are the ones we do not know, and we need their help whenever they think there is a problem of any kind to raise their hand and raise that problem.

And we reward people who do that. We do not punish them.

*Mr. Renacci. Thank you.

Thank you, Mr. Chairman. I yield back.

*Chairman Roskam. Mr. Smith.

*Mr. Smith of Missouri. Thank you, Mr. Chairman.

Mr. Commissioner, in 2005 under the direction of Lois Lerner, the IRS created something called the "review of operations," or a compliance review. If an organization is put into this review, the IRS would monitor that organization without ever making contact. In other words, the IRS will put them under surveillance, potentially building a case for a future audit.

Taxpayers should not have to worry about the IRS spying on them. In fact, this is a huge potential for abuse. Would you agree with that?

*Mr. Koskinen. I am not familiar with that process, but what we do do is when we are looking at compliance possibilities, we do look at trends, and in many cases we do not audit anyone. We do not send them notices. We simply monitor questions.

A question was raised about unrelated business income taxes, and we will monitor across the board are people paying those taxes. Are they, in fact, engaged primarily in commercial enterprises and no longer in tax exempt enterprises? And we will actually monitor that without necessarily auditing anyone.

*Mr. Smith of Missouri. Okay. So you are telling me as the Commissioner of IRS you are not familiar with the review of operations process?

*Mr. Koskinen. The discussion you are talking about in 2005 I am not familiar with.

*Mr. Smith of Missouri. Okay. I understand you were not there, but I have an email right here. Actually Lois Lerner was definitely aware of it. In fact, it shows how she was aware of the surveillance program, and I would like to show her discussion.

As you can see up there, it says, "Lois would like to discuss our planned approach for dealing with these cases. We suspect we will have to approve the majority of the (c)(4) applications. We will also refer these organizations to the Review of Operations for follow-up," which is the spying program. "Even when the IRS approves organization, it can still subject them to increased scrutiny and surveillance."

Can IRS still make referrals to the Review of Operations currently?

*Mr. Koskinen. Yes. Actually, right now, for instance we have streamlined the (c)(3) application process for small organizations, and one way we are going to check up on that and audit it is after the fact, a year or two later, see if those organizations that went through the streamlined process are actually behaving as they said they were going to, or do we need to adjust the streamline process.

So when we have an influx of exempt organization applications in any particular area, we will, in fact, later on follow up to see how are they performing. Are they doing what they said they were going to do?

*Mr. Smith of Missouri. How do we make sure that this process is not being abused right now in the IRS?

*Mr. Koskinen. I am sorry. How do we what?

*Mr. Smith of Missouri. How do we assure that this process is not being abused, spying on the various (c)(4) organizations?

*Mr. Koskinen. Well, as noted, we do not reach outside the organization. I mean, we collect

the information they provide. We look at the 990s they provide. We simply monitor their activities. We are looking for are they paying employment taxes; are they engaged in unrelated business income areas; are there other areas that as a general matter look like there is a question.

We do not do, quote, spying on organizations as a matter. We simply periodically review information to see how are organizations providing. As noted --

*Mr. Smith of Missouri. Do they know that you are reviewing it?

*Mr. Koskinen. Pardon?

*Mr. Smith of Missouri. I mean, do you notify them and say, "Hey, we are reviewing these organizations"?

*Mr. Koskinen. Everyone who files a 990 with us understands we review those filings and we review them in order to make sure (a) you are filing them and (b) if there are significant changes from one year to another, we will monitor those.

I do not think anyone would be surprised that when they give us that information we are going to look at it.

*Mr. Smith of Missouri. It is just in this email in regards to referring to Lois Lerner, it talks about in the spying process that they will review their Web sites, monitor their Web sites. They will check for political activity, what political activity is being engaged in, check if they are registered with the FEC and the representational aspects.

So it looks a lot like you are keeping an eye on them.

*Mr. Koskinen. Right. That would have been her point. As noted, she thought that they were going to end up approving most of the (c)(4)'s, and in fact, most of the (c)(4) applications were approved, albeit as I have said in the past, in a process that was not right, delays should not have happened, the requests for voluminous information should not have been made, it was a management failure that should not happen again.

*Mr. Smith of Missouri. Thank you, Mr. Chairman.

*Chairman Roskam. Mrs. Black.

*Mrs. Black. I think it is on. It is not lighting up. My light is not on, but the microphone is hot.

Well, thank you, Mr. Chairman, for allowing me to be here.

Commissioner, this report identified a lot of serious problems with the IRS audit selection process, and the GAO also made ten recommendations to address these problems.

Do you agree with the recommendations?

*Mr. Koskinen. We do. We have announced we agree, and beyond that, we have started to implement and have implemented some of them and expect to implement all of them.

*Mrs. Black. Well, my understanding is that the problem is that they have not been implemented.

Mr. McTigue, how many of the recommendations that GAO has made to the IRS have not been implemented yet?

*Mr. McTigue. In this report, we made ten recommendations, and as the Commissioner stated, they announced yesterday the implementation of two of the ten recommendations.

More generally, more broadly, across IRS GAO has made hundreds of recommendations. Currently there are approximately 180 outstanding recommendations that have not been implemented, remain open. Many of those have to do with specific line items in the financial statement.

*Mr. Koskinen. I would note that the GAO recommendations have only been available to us for the last two or three months. So obviously we could not do them all in that time frame, but

we have both committed to doing them, much as we did with the Inspector General's recommendations, and we have set that process in motion.

*Mrs. Black. Well, I also know that the Inspector General, TIGTA, has similar lists, and they had 171 unimplemented recommendations, too. So if you add all those together, it is about 350 recommendations altogether that have not been addressed by the IRS. So --

*Mr. Koskinen. I would be happy to get you the list of the thousands of recommendations that we have had over time that have been implemented, and we, in fact, track with both the IG and GAO the status of those recommendations and the progress we are making on them.

In some cases, and the IG has recognized that, the implementation depends upon more resources than we presently have. If it is not a resource question, we are committed to implementing the IG and GAO recommendations. If we disagree with them, we announce that up front, and obviously we do not implement the handful of recommendations that we do not agree with.

As a general matter, we have found with both the IG and GAO, we have agreed with the bulk and vast majority of those recommendations and are committed to implementing them.

*Mrs. Black. Well, I appreciate the fact that you are committed to implementing them because this is a big trust issue, and I know in my district, and I hear it everywhere I go, that people are continuing to be concerned that this whole issue of Lois Lerner and targeting has still really not been resolved and that there are still questions out there in people's minds about whether they can trust the IRS.

As a matter of fact, I have had some people that have had letters come from the IRS, and they question me, "Is this because perhaps I know you? Is this perhaps because I give to certain organizations?"

You know, I try as hard as I can to let people know that we are working here in Congress to restore that trust, but when I have a list of this many recommendations that still need to be done, it is awfully hard for me to tell the people in my district that, yes, you can trust the IRS.

So, Mr. Koskinen, I hope that we can hear back from you, and I know that the chairman will continue to follow this; we will hear back about what really has been implemented so we can restore the trust.

A year and a half later after this targeting, there are still questions out there, and I think it is imperative that these recommendations be put into place as soon as possible. As I read through them, I think there are some that seem to be fairly easy to put in place, and I think they should be clicked off fairly easily so that you can come back to this Committee and tell us that you have done the work and that over 350 recommendations between GAO and TIGTA have been addressed and that they have been resolved so that we can restore the trust of the IRS with the American public.

Thank you.

*Mr. Koskinen. We would be delighted to keep you updated about that, and these recommendations in particular. We would be delighted to advise you when they are all completely implemented. The IRMs, for instance, we expect to have all of that updating done by early next year, and we will keep you advised.

Because I agree with you totally. As I said earlier, we are going to audit a million people this year, and they need to be comfortable and confident it has nothing to do with who they are in terms of what political organization they belong to.

*Mrs. Black. If I may, if I may because my time is only ten seconds here, I would suggest that you would be sending this Committee reports on a regular basis about what you have done

on the recommendations here in adhering to those so that we do not have to wait until the next hearing.

Thank you, Mr. Chairman. I yield back.

*Chairman Roskam. Thank you.

You know, in his own inimitable fashion, Mr. Rangel posed an interesting and provocative question, as he usually does, and he said, "Look. When does the movie end? The movie never seems to end as it relates to the IRS."

Let me just relay an experience that I had, and it echoes a theme that he articulated, and it was brought to my attention by an IRS employee a few months ago. As the Commissioner knows, when I became chairman of the subcommittee I asked to have just a meeting with the Exempt Unit employees in Cincinnati, and I went down and just had kind of a town hall meeting discussion, no press, no big hoopla, but I went in and had a discussion, took one staff person with me. You know, the diplomats would call it a frank discussion, shall we say, but it was pretty forthright.

It was right after we had moved a big packet of legislation. You remember we all moved a bunch of IRS reform bills. There was a package of them that came out of the committee, unanimously, or were on the floor, and so forth.

One of the employees at the IRS in Cincinnati raised his hand and he asked Mr. Rangel's question, but it was phrased up a different way. He said, "When does it end? When is enough enough? I heard your statements on YouTube. I saw your comments, Congressman, on the floor of the House of Representatives. When does it end?"

I said look, "part of the charm of the American public, one of the things that is really a great feature of the United States and one of our characteristics that I find so endearing is we are quick to forgive."

The American public is quick to forgive. It is quick to give people a second chance, but the key to being forgiven is to ask for forgiveness and to acknowledge that there has been a problem, and I think that the weakness, the disconnect with this whole scene is this reluctance on the part of the Internal Revenue Service to acknowledge that targeting happened.

So there are still words like "alleged," and so forth. And it is like, hey, enough already. Just come clean and admit that it happened, and then we are able to turn the page.

So a more provocative question, I would say, is not when does the movie end, but really when did the movie start, and the movie started when the IRS targeted people based on their application, and then the second reel of the movie was put on when we learned through the work of this Committee that the IRS was manipulating, and it was Lois Lerner that was manipulating and Big Footing the processing. "I am going to decide who gets audited here."

Now the movie continues. We are on the third reel because the GAO at our request has said this has not gone away.

And so, Commissioner, my question to you is you asserted earlier that this is a hypothetical risk. So you have heard all of the members of the committee. We are of one mind in that nobody wants this to happen. Mr. Lewis said that in his opening statement. Mr. Rangel said that. The Republicans said that essentially. Nobody wants this to happen.

You asserted that this was a hypothetical risk, and yet we asked the Treasury Inspector General for Tax Administration about various complaints. So from 2013 to present, TIGTA has investigated 102 complaints from tax exempt organizations who believe that they were unfairly targeted. Of those 12 cases were referred to the Department of Justice for criminal investigation.

Keep in mind this does not mean that TIGTA did not find problems with the other 102 cases,

but it does mean that TIGTA said, "We find that a threshold," and a very high threshold as you know, "of criminality has been triggered here, and we are referring these to the Department of Justice".

Were you aware of that? Is this news to you? And can you give me your state of mind as to that information?

*Mr. Koskinen. Yes. Actually we meet regularly with the Inspector General at a high level to review what is going on. They have advised us of investigations. They regularly encourage the public, and we do, too. If you have a question, feel free to refer to the Inspector General.

They advised us and continue to advise us in those reviews they have found no evidence in any of the reviews thus far in the information we got from them that there was improper exam selection. They do not tell us if they refer for whatever other reasons there are cases to Justice for review, but as a general matter as we have reviewed things, they have brought no case to our attention where there has been unfair exam selection in the exempt organization area.

*Chairman Roskam. Well --

*Mr. Koskinen. They will have to speak for themselves.

*Chairman Roskam. Fair enough.

*Mr. Koskinen. That is what they have advised me, but they do not advise us, and it is not appropriate they would, about individual cases. We do not know the details of anyone and we do not know the details of what their referrals are to the Justice Department. That is what they need to have between them and the Justice Department. So we do not --

*Chairman Roskam. Okay, just to close the loop on this line of inquiry, but they have communicated to us that there is a criminal activity going on here. They have made a criminal referral a dozen times based on the audit process. So we have got to get to the bottom of that.

*Mr. Koskinen. The IG can tell you that. All I can tell you is we have been advised that in those cases, the 112, whatever number it is, and we get that at our regular meetings, they have not found that anyone improperly selected anyone for an audit.

*Chairman Roskam. You would acknowledge though if they did, then that would not be hypothetical.

*Mr. Koskinen. That is right. If they did that, but they have not told us that.

*Chairman Roskam. All right.

*Mr. Koskinen. My point about hypothetical is not to say we should not implement the procedures. Our point is to say it goes back to the point about reassuring the public. At this point we do not have indications that anyone improperly was selected for an exam. We have good recommendations from GAO on how to make sure that does not happen as we go forward, and we are delighted to implement those recommendations.

We can never be too good. We need to continue to review our processes, but I think it is important for the public to understand that in this review and in the review by the outside Risk Manager we brought in, there was no evidence of bias in the selection process.

*Chairman Roskam. So just to be clear and so that we have got the record clear, the TIGTA does an investigation when someone is complained against. So when someone comes and says, "Look. I think I am being unfairly targeted by the IRS. I am an exempt group." TIGTA does an investigation of that.

*Mr. Koskinen. They do an investigation for a variety of things. Somebody could complain that they have been threatened. Someone can complain they have been attempted to be extorted. There are a lot of complaints beyond simply I was improperly selected.

All of those complaints are reviewed. TIGTA does an excellent job of following

through. We think it is an important process, but they are not simply "I was selected. I am a tax exempt organization and I was badly selected."

There are a lot of claims taxpayers make, and they deserve to be investigated, and to the extent that there are criminal activities which can run the gamut from, you know, extortion, from bribery, from whatever else might be going on, improper use of information. TIGTA then refers those to the Justice Department for consideration, and we think that is appropriate.

*Chairman Roskam. So your conclusion is that the TIGTA referrals, the dozen criminal referrals are not for audit selection; therefore, another bad act; is that right?

*Mr. Koskinen. That is my understanding from the general information we get from TIGTA. They are careful not to give us details, and we are careful not to ask for details.

But as a general matter, they have said they have not found in those interviews and in those reviews any indication that people improperly were selecting or targeting audits for review.

*Chairman Roskam. Okay. We have got to get to the bottom of that.

Mr. Meehan.

*Mr. Meehan. Thank you, Mr. Chairman.

And thank you, Commissioner. It is always great to have you here, and I appreciate your candor before our committee, but this is walking into space. This discussion is perfect for one of the concerns that I have.

Your articulation was that there has been no indication and there is no evidence, and I am not suggesting that I know that there is something contrary, but I have great concerns because one of the reasons that there is no evidence is because the report has indicated that there has been a lack of appropriate documentation with respect to the discretion.

Let me tell you where I come from on this. I think we both realize the most important or one of the great things that you are talking about a million people is the unsettling nature of the fact that I am being audited by the IRS. There is an incredible tension associated with anybody, whether it be an organization or an individual.

And the great power that you and some other governmental agencies have is discretion, the ability to make those decisions and choices, the close calls, the not so clear calls.

One of the checks we have in this system is a mechanism by which there are ways to put checks on the discretion, and there is a series of things that are put in there, including the very manual that governs the organization that the IRS operates under, much like when I was in the Justice Department.

We had the manual that pretty much told you about everything that you needed to do in the course of your exercise of discretion. One of the things that has concerned me has been there are a number of procedural controls and implementations for the selection of decisions and approvals. It is up here on the map or the screen.

The report has found that as many as 25 percent of the cases that they looked at did not have an articulation describing the allegation that the audit decision was based on, and yet that is one of the requirements. This is not something that is just suggested and maybe we do it. In each case there are things like the red things. All questions on input forms should be answered and said that is being ineffectively done.

Imagine the taxpayer who decided that he was going to miss four or five of the different sections in filing their taxes. "I just did not feel like filling it out." If there is ever an agency that ought to be checking every box, it is the IRS.

But I go back to my concern that these things are not just suggestions. They are checks against the abuse of discretion, and when you have things like findings should be explained and

documented; lead sheets should be fully completed; classifiers sending cases to committees should have the description of the allegation; political referrals should have justification or priority level; all of these things were found to be concerning, minimally concerning, but they were found to be deficiencies in the way the conduct is done.

This is the way we have a check on abuses of discretion. How are we going to be sure moving forward that we have appropriate descriptions so when an agency comes back and questions the decision making that was done, there is appropriate documentation to assure?

And I guess I will close my commentary by saying: how do you know whether, in fact, there has been any ex parte communications, whether there has been any email traffic or other things outside the scope of your normal communications system, that people are not talking to themselves outside saying, "Hey, this is a religious organization and I do not have to document why I am choosing to do them. I would like you to look into it."

Do you have any ability to know whether there is any extracurricular communications that are taking place in your agency outside of the IRS database?

*Mr. Koskinen. First of all, no IRS employee is allowed to do any work, official work on their personal computers or outside of the system.

Secondly, all - -

*Mr. Meehan. That was Ms. Lerner.

*Mr. Koskinen. Her references outside were minimal.

*Mr. Meehan. We do not know what they are.

*Mr. Koskinen. We monitor that. The people know that is an important process.

We also have a requirement that referrals all go into the official process. As the GAO noted, the employees they met with all, to a person, felt strongly about their responsibility, about the importance of fairness.

But I take your point which is important that the procedures and the documentation are an important part of this, and that is why we have no disagreement. We, in fact, welcomed the GAO review when it started for just this reason, just as I say our own review found that there were additional ways we could improve and tighten down things.

We should do that, and then the point that I was trying to make as well is we should not assume that, therefore, it will self-execute forever. We need to continue to monitor to make sure it is done, continue, as I said, to support IG's and GAO reviews because it gives you a third party review of are you actually checking all the boxes. Are people actually paying attention to the details?

And that is important. We need to do whatever we can to continually reemphasize that. The one thing about the directives that is not in our IRM is those are interim changes in procedures and improvements that are part of the IRM, but until it gets officially done, they are outside of it, and so there is a concern of, well, for instance, you cannot make a decision on your own without management approval, which is key to the IRM.

*Mr. Meehan. Right.

*Mr. Koskinen. The directives do not repeat everything in the IRM, and the point is well taken. We should as quickly as we can officially update the IRM with those directives, and we had already started that, but we have committed that all of the voluminous IRM will be updated with all of those directives because, again, the point is well taken. Employees need to be reminded that as the directives come out, they are part of the IRM, and the other restrictions on the IRM apply.

So I agree with you exactly that we need to make the improvements. We continue to need to

be able to improve. We should never assume that it is perfect. And even when we make these improvements, it will be important for us, the IG, GAO, this Committee, to continue to say, "Okay. What have you done? What is the monitoring? How does it look a year later?"

*Mr. Meehan. Well, so long as there is not ex parte communication, that will be the record that will allow us to check against abuses.

I thank you for your answers, and, Mr. Chairman, I thank you, and I yield back

*Chairman Roskam. Mr. Doggett.

*Mr. Doggett. Thank you, Mr. Chairman, and thank both of you for your service to our country.

Commissioner, just to be clear again in your answers to Chairman Roskam, you have taken a look closely at this, and you have found no evidence of bias in the selection process.

*Mr. Koskinen. That is correct.

*Mr. Doggett. You have found no evidence that someone was improperly discriminated against in the selection process.

*Mr. Koskinen. We have found no evidence, and the reviewers that we have had look at it found no evidence.

*Mr. Doggett. And as I understand your written testimony, it is clear that IRS does have procedures in place to prevent employees from selecting organizations on the basis of politics or religion or any other inappropriate grounds.

*Mr. Koskinen. That is correct.

*Mr. Doggett. And the GAO has provided a number of helpful and important refinements to your procedures, and you are willing to see that every single one of those recommendations is fully implemented.

*Mr. Koskinen. We are. We think those are important recommendations, and we are committed to making sure that they get implemented.

And, Mr. McTigue, as I understand, you basically have suggested, recommended some refinements in the way the Internal Revenue Service has handled these matters.

*Mr. McTigue. That is correct. We have ten recommendations aimed at improving their policies, procedures and practices overseeing the control environment.

*Mr. Doggett. And if I understand correctly, the very first one of those is that the Internal Revenue Service basically takes some practices and procedures that it is following now and put them into the manual to ensure that they are consistently followed in the future.

*Mr. McTigue. That is correct. Putting all of the key procedures and practices in the IRM provides additional control.

*Mr. Doggett. And that sounds to me like a constructive idea. As best I can determine, some of them are very technical, hyper-technical, but anything we do to prevent taxpayers being unfairly singled out is a good thing to do. It just seems to me that there is the potential of a misimpression that IRS was not already trying to do this and had done a pretty good job of doing this.

I remember some of our first hearings on this, which sounded a little to me like Benghazi, that there was some White House plot of the President and his supporters to take on their political enemies and to use, misuse the Internal Revenue Service in much the same fashion that there was an attempt to misuse it previously in American history years back.

And we have now come to this, that what needs to be done is to take what IRS has been doing and put it into print in the employee manual. And I think that is a good thing to do, but it is a long way from where we started, and what we really learned after months of investigation and I

might say almost attempts to force and encourage IRS and particularly this division in Cincinnati to not do its job concerning dirty money and politics and the misuse of nonprofit organizations, but it is a long way from where we started because there was nowhere there.

And I appreciate your report. I hope that we can continue to make constructive improvements, and I appreciate, Commissioner, the attitude you bring to this, that even in addition to these recommendations, your job is one to see that perhaps one of our least popular government agencies is continuing to try to refine and improve and serve, despite the fact you have been starved of resources to do your job, but to try to do your job in the way that we expect any government official to be responsive, to be fair and honest in the way that the job is done.

And I thank you both.

I yield back.

*Chairman Roskam. Let us go to Mr. Smith for purposes of putting a document in the record.

*Mr. Smith of Missouri. Thank you, Mr. Chairman.

Mr. Chairman, based on my prior questioning with the Commissioner on the Review of Operations and Surveillance Program, I would like to submit to the record for the benefit of the committee members and also the Commissioner a memorandum that we received from the IRS in regards to the Review of Operations and Surveillance Program.

*Chairman Roskam. Without objection, so ordered.

*Mr. Smith of Missouri. Thank you.

[The information follows: [The Honorable Jason Smith](#)]

*Chairman Roskam. Mrs. Noem.

*Mrs. Noem. Well, thank you, Mr. Commissioner.

While the report identifies some problems with the IRS' audit process, I am concerned that you are not taking the report seriously. In fact, when you talked about the report, you called a lot of the claims in the report hypothetical.

You direct quote was, "Although the report states that a hypothetical risk exists that returns could be selected unfairly, the draft report did not find any evidence that this has happened."

But my colleagues here today have demonstrated real cases where the Exempt Organizations Unit has targeted people based on their beliefs, and those cases were not hypothetical.

This report shows that the IRS is not documenting its decisions, and how can we tell if the targeting is happening or not if there is no documentation recording those decisions? There is no information to help us decide how decisions are being made at the IRS.

In fact, just in fiscal year 2014, the GAO found that up to 34 percent of referral cases selected for audit were dismissed without a reason being documented. Is it not possible that those cases received preferential treatment if they were dismissed?

And 22 percent of the cases not selected for audit had no manager's signature approving the decision. So how do we know that those decisions were not biased if we have no record as to how they were reviewed?

So this is just over the course of one year, and only two years after the IRS has admitted to targeting organizations. So you are saying that there is no evidence of wrongdoing, but you are also missing so many records and documents throughout the process that you cannot prove that there was not any targeting being done.

The burden of proof is on you and is on the IRS. So, Mr. McTigue, do you agree that lack of documentation means that possible targeting could still occur, before the Commissioner speaks to some of what I have just talked about?

*Mr. McTigue. The lack of sufficient internal controls clearly opens the risk for potential abuses. I have said before an effective internal control system provides reasonable assurance that misdeeds will not happen, but no internal control system is possible to create that will assure absolute adherence to any policies and procedures.

*Mrs. Noem. Commissioner.

*Mr. Koskinen. I would just note that we take this report very seriously. I think that is a misrepresentation to say that we are not taking it seriously. What we --

*Mrs. Noem. Well, did you refer to the report as hypothetical?

*Mr. Koskinen. Hypothetical, yes. At that point there are risks, but the point was, to make it clear, that there has not been a case. After the reviews, nobody found existing bias or found cases. Much of the documentation, as Mr. McTigue said, was in a case file. There is a case file that was moved forward, and some of the documentation is that there were not sign-offs, and we need to make better procedures. We need to get better at this as we go.

So the point is not that we are not taking it seriously. The point is we need to implement these recommendations, and we need to as we go forward continue to monitor and make sure that there is no, as Congressman Meehan said, as minimal a risk as we can make. Nothing is guaranteed, but we need to make sure that the procedures work.

Again, I would stress when GAO interviewed employees involved in this process, across the board they found employees dedicated to, in fact, fairness, to making sure the system worked well and effectively, and that is my experience in the 14,000 employees I have met with. It is a dedicated workforce doing its best to deliver on the mission and providing taxpayer service and enforcing the tax code fairly.

*Mrs. Noem. But two years after the targeting scandal occurred, the burden of proof is on the IRS to show that they are not targeting organization, and that is what disturbs me about the actions of the IRS since those two years have occurred, is that there are no processes in place to do that.

I feel as though we are late coming to the party because for two years now the focus has been on the IRS, and it appears that you are not taking it seriously because no documentation processes have been put in place.

*Mr. Koskinen. The full report has several pages describing the existing protocols, procedures and protections. So it is, again, not fair to say there are no rules, no procedures, no way to protect it, no documentation.

The report's findings are important, but part of those findings are that there is a significant process in place with detailed procedure and protocol.

*Mrs. Noem. Including documentation --

*Mr. Koskinen. Pardon?

*Mrs. Noem. -- that shows how decisions are made.

*Mr. Koskinen. And in the majority of the cases, the vast majority, there is the appropriate documentation. Where, as Congress Meehan said, you have not checked the boxes; you have not provided the summaries, as the Congressman said; you have got to do that, and we need to do better at it. So I am not saying it is a perfect process. All I am --

*Mrs. Noem. But specifically, when auditing decisions are made, who gets audited, who does not get audited, how those decisions are made, manager's signatures, that has not been done, and will that be done in the future?

*Mr. Koskinen. Yes. I am saying we have already implemented some of these recommendations. We will implement all of them, but even beyond that, it is important for us

here and a lot of places not to then rest on our laurels, as it were. We need to continue to be vigilant.

We need to, in fact, and I am delighted to have GAO on a regular basis as they do and the Inspector General review all of this because it is important for the public to feel that not only do we think we are doing a good job, but outside reviewers coming in have found that, in fact, we are performing as we have said we were going to perform.

So quite to the contrary, we take all of this as an important part of the process. It is why, as I have said, I have been trying to encourage every employee if ever they have a concern that there is something they feel uncomfortable about, something is not going the way it ought to, there are lines of communication outside of their immediate manager that they should use. They should view themselves as risk managers.

And we will, therefore, whenever there is a problem, my commitment is not that we will not have them. My commitment is we will find them as quickly as we can. We will be transparent about it, and we will fix them quickly.

*Mrs. Noem. I would say, and I know I am over my time, Mr. Chairman, but transparent would mean documenting how the decisions are made because you are accountable not just to Congress and to this Committee, but you are accountable to the taxpayers that you are choosing to audit as well.

*Mr. Koskinen. I think that is exactly right.

*Mrs. Noem. And I yield back.

*Mr. Koskinen. We owe it to the taxpayers to be fair and to be clear, and taxpayers have a right if they have a question to ask us about it. If they are concerned, they can go to the Taxpayer Advocate. They can go to the Inspector General if they think that they are somehow being selected for an audit improperly.

As I said, we are going to do a lot of audits. They are going to cover the entire political spectrum. They are going to cover people who go to church, people who do not go to church, people who went to political rallies, people who never do. And the issues taxpayers have to be comfortable with is we are talking to them because of something in their return or something that should have been in their return, and that is the only reason.

*Chairman Roskam. Commissioner, the President gave an interesting interview where the IRS and the targeting and so forth came up, and it was within the past couple of days, and essentially he said Congress passed a crummy law, and the IRS administered it poorly and stupidly.

The crummy law argument seems weak to me in that the statute is 102 years old, and the regulations have been in place interpreting the statute since 1959. So it is not as if this is all new stuff.

Do you want to comment on the characterization of the IRS employees as poorly and stupidly administering something?

*Mr. Koskinen. Well, one of the findings and recommendations of the Inspector General in his May 2013 report was that we should provide greater clarity in terms of the definition of what counts as political activity. Right now our regulations, which we are using, basically say you judge it by the facts and circumstances, and almost by definition facts and circumstances is a somewhat unclear definition of what is political and what is not.

So one of the things we have been looking at before I was confirmed, a draft regulation went out that managed to aggravate everybody because a particular determination included everything, including Get Out the Vote Campaign, voter registration, candidate forums, and as we have been

reviewing 160,000 comments we have gotten, most of which had suggestions about how to improve that draft, it is clear that there are ways to make it clearer, easier for the people running the organizations or wanting to set one up and easier for the IRS to make determinations with less political oversight, less political involvement by the IRS.

We ought not to be the political monitors of the country. We ought to be actually implementing a statute as clearly as we can.

Obviously the primary standard and the facts and circumstances worked in the 1940s, 1950s, 1960s -- it was put in in 1959 -- without a lot of controversy because there were not a lot of organizations involved in political activity. Right now there are about 1,500 (c)(4)'s. The vast majority of them are Kiwanis Clubs, local garden clubs. The number of organizations has grown significant in the last four or five years, but even then there are still less than ten percent.

So I do think that we could provide clearer guidance, and we should provide clearer guidance. I understand that people think, well, you know, we are going to somehow try to influence the process. Our goal is not to influence the process. That is not our job. Our goal, as one of the people working on this with me said, our goal is not to change the strike zone. It is to dust off home plate and make it clearer what is in and what is out.

*Chairman Roskam. What we found though at the committee level in terms of our inquiry, the investigation, the staff work, and so forth, is that it is a false claim to say that there was ambiguity. We did not get that from the interviews that we did.

In fact, we found the targeting took place when Washington came in and Big-Footed the Cincinnati office and said, "Put a stop on those. Put a hold on those." It was not Cincinnati that was having a problem of figuring out how to call the balls and strikes. It was Washington that came in and said, "No, no, no, no, no. We are going to do this differently."

So in your view, you know, to get to Mr. Rangel's question and to get to the question that came up at my meeting in Cincinnati where the IRS employee says, "Enough is enough," in your view what caused the targeting to begin with?

*Mr. Koskinen. First of all, as I have said and I have tried to make clear from the time I started, it was a situation, a management failure that should never have happened. Selecting organizations for further review just by the name of the organization is just the wrong way to go.

*Chairman Roskam. But you acknowledge it was a bad motive, right? I mean, it was clearly an agenda on the part of Lois Lerner to come in and to say, and you have seen the emails; I mean, you are familiar with all this?

A commonsense reading of these things and the sequence of them says there was an agenda here, and the agenda was to target people based on a particular philosophy. You agree with that, do you not?

*Mr. Koskinen. I have said from the start there were six investigations undergoing when I started. GAO and the IG have added another. So we have had eight investigations. I said at the start we are limited and, in fact, prohibited in many ways from doing our own investigations. So it is one of the reasons I hope that we would get the reports out and get the results out.

My understanding by what I just read in the newspapers as much as anything is that the issue initially was raised in Cincinnati of we have got this new influx of organizations. What should we do with them? And they asked Washington for guidance.

Washington took too long to respond, and then the guidance back was as they designed --

*Chairman Roskam. But they took too long to respond --

*Mr. Koskinen. My point about it is it is not my role to have done the investigation. I am delighted to have the findings that I understand the Senate Finance Committee in the next two or

three weeks is going to issue its report with its findings.

My position has been our goal is not to do the investigation. There have been enough of those. Our goal is to listen to what the investigators find and, most importantly, listen to what their recommendations are.

We have adopted the recommendations of the IG.

*Chairman Roskam. I understand.

*Mr. Koskinen. And if there are more recommendations, we will review those and adopt the ones we can.

*Chairman Roskam. Mr. Rangel is begging for mercy. He wants the movie to stop, and you can stop the movie. You can be the one that says, "Hey, it is all over. We acknowledge that there was targeting that took place," which is a huge acknowledgement, which the IRS has never done up until this point.

In the subsequent meeting that I had with the leadership in Cincinnati, they were using the word "alleged, alleged, alleged," and I just think that is part of the subtext here. It is like enough already.

So it was late February 2010 a screener in Cincinnati began to flag Tea Party applications for a superior's attention because of possible media interest. So it was not an element of confusion.

But my point is if we want the movie to stop, if we want to move on to the next thing, it is incredibly helpful to acknowledge that there was targeting that took place and the targeting was based on a bad motive, and there was an agenda behind it, and I think that it would just be incredibly helpful for that to be acknowledged.

Would you be willing to acknowledge that today?

*Mr. Koskinen. We have had this discussion before. We have acknowledged and apologized for the fact that the process as it unfolded took place. Those organizations, first of all, (c)(4)'s do not need a determination. They can go and set up business any time they want, but to the extent they want a determination so that it ratifies what they say they are going to do as being acceptable under (c)(4), they deserve a much prompter answer. They deserve not to be harassed with voluminous questions.

It was a process that was a mistake, and we have apologized for that mistake. The characterization and the determination of whether there was a, quote, motive is a determination that we are not in a position to make. There is no evidence that I have; certainly the IRS was not motivated in that regard.

So we have apologized. I have said that situation should never happen again, but it is not in my realm of information that I have to determine that, well, it was, quote, targeting or not.

And the reason, if you talk to the employees who were there, the reason they talk about it as alleged is they do not in their own mind think they were targeting anybody. They were simply trying.

The mistake was a serious and significant one. Organizations should not be selected by the nature of their name, the nature of their political views, the nature of the activities they want to be engaging in.

We have a million and a half tax exempt organizations. They are, as Congressman Lewis said, providing significant public support and activities across a wide range of activities. There are issue advocacy groups out there advocating on positions for and against all sorts of issues and political issues. We should not be involved in that determination.

*Chairman Roskam. When it comes down to it though, let me just make one other point, and then I have got some other questions. I think the disconnect is you are basically saying,

"Look. Someone was treated poorly and a process was bad."

What we are saying is someone was treated poorly and a process was bad and it was manipulated by somebody with a motive to cause injury, and it is a classic abuse of power.

So your reluctance to use the word "targeting" and simply act as if, well, look. "These were just people that happened to end up on the wrong end of a bureaucratic stick," it is more than that. They are not just people that ended up, waiting too long, in a line or treated rudely or something at a counter.

These are people and organizations that were asserting a First Amendment right that senior officials at the Internal Revenue Service said, "We are going to manipulate this process to deny you the right to participate in the public square." And that is the scandal of it.

And to Mr. Rangel's point, the reason he is begging for mercy is because he says when is enough enough. He is asking the same question, and what I am suggesting is you are the key to being enough is enough.

*Mr. Koskinen. I would disagree. The key to that is there were six investigations investigating just that point, and those investigations have spent innumerable amount of time. We spent \$20 million giving people information about it. We expect the Finance Committee, which has indicated it is going to be bipartisan, will issue a report, and they will make a determination about that based on a review of 1,500,000 pages of documents that I have not reviewed.

It is not my position to preempt them as to whether this was targeting or not, whether it was manipulation, whether it was politically motivated or not. We will hear from people writing those reports.

The Permanent Subcommittee on Investigation issued its report last year, not a bipartisan report, in which the majority said they did not find that there was targeting, and it was politically motivated. The minority said they thought it was.

We will see what the Finance Committee does. I have always felt it is not my role to preempt those investigations and conclude one way or the other. What we can conclude is that the process itself however it was started was a bad process. It should not have happened. People should not have been treated that way. People should be treated fairly no matter who they are. We are committed to that.

We have apologized to the extent that people were not treated that way. Whatever the motivation was, we are committed that it will not happen again.

*Chairman Roskam. Let us move on. Just a couple other questions. Since this discussion is on the idea of this being a hypothetical risk, let me pose a hypothetical situation.

Let us say that the person who is the gatekeeper at the IRS who reviews complaints, for example, about faith based organizations is pro life and opposes groups that support abortion. If that person at the IRS wanted to make it more difficult for pro-choice groups, could the employee not recommend that those groups be audited?

*Mr. Koskinen. Any single employee cannot, as you know, and the process is known, by themselves recommend an audit, and if they are going to recommend an audit, someone in the classifiers or in our process of where are the issues, they have to justify and document why they are recommending that audit.

In any high profile issue where it is an issue of advocacy of one kind or another, that would go by definition to a three-party review group that itself would make a determination whether there is a course and a reason for an exam and a basis for that.

*Chairman Roskam. Okay. Let us break that down. So based on your response, the first

thing is they would be able to make a recommendation for an audit to the audit committee. So my original question --

*Mr. Koskinen. And it goes back to -- that was a hypothetical. They could do that.

*Chairman Roskam. And the answer would be --

*Mr. Koskinen. The GAO talked to over 40 people and found all of them committed to fairness in the process. So none of those people would fit that hypothetical.

*Chairman Roskam. Look. If you are being interviewed by the GAO of course you are going to say, "I am committed to fairness in the process."

So my original question was: could that person make a referral to the audit committee? And the answer is yes.

*Mr. Koskinen. An individual could make a referral across the board with a memorandum and a justification as to why there is an audit issue.

*Chairman Roskam. So to follow up on Mr. Meehan's inquiry though on the documentation side, up until now with not enough documentation, they can just make a referral under current practice. They could not write down why they have made that referral, and then it is before the audit committee; is that right?

*Mr. Koskinen. The audit committee, and the audit committee gets a full file as the GAO said, and the fact that there is a summary or not a summary would be noted, and it would be up to the three-part independent group randomly selected now to determine whether there is a basis for an audit.

*Chairman Roskam. So we are clear, this obviously cuts both ways. So if you are somebody that had a liberal agenda and you are the gatekeeper, you would have the ability to have an influence if somebody has an issue as it relates to gas tax or climate change or this or that. That gatekeeper that is determinative for the audit committee, that is a key person; is that not right?

*Mr. Koskinen. That is a classifier, I know, and a high profile is one that classifies the thing and refers them for audit selection.

*Chairman Roskam. I just want to pop up this Lerner email just very quickly. So if we can put that back up, where Lois Lerner says, "I think I need to think about whether to open an exam. I think yes. Let me cogitate on it a bit."

I mean, any fair reading of that is that is an attempt to come in over the top and influence the process.

*Mr. Koskinen. There is no way in the process she could open an exam. There is no way in the process today anyone by themselves can in that situation open an exam.

*Chairman Roskam. But her state of mind obviously was that she thought she could.

*Mr. Koskinen. That could be, but anyway, the process is that no single individual could not, particularly in a high profile case, open an exam.

*Chairman Roskam. Let me just turn your attention then to one other subject briefly, and that is the hearing that we had on civil forfeiture. You recall that we, as a subcommittee were like-minded, and you testified about the IRS' activity in the past as it relates to civil forfeitures from seizing of assets from businesses that did not have an underlying illegal activity.

*Mr. Koskinen. Other than the --

*Chairman Roskam. The structuring itself.

*Mr. Koskinen. Other than the structuring, which itself is illegal.

*Chairman Roskam. Yes. What I thought I said was underlying, but I take your correction.

One of the witnesses was Randy Sowers, and he is currently petitioning the government to return \$29,500 he forfeited to the government in order to get the IRS out of his life.

I wanted to call it to your attention because the Department of Treasury has discretion to return those funds, and I just want to communicate that it is my hope and my expectation that Treasury returns those funds that the IRS seized and also any funds connected to cases that are similarly situated that we had discussed.

*Mr. Koskinen. I would just make a technical point that when cases are in seizure, the seizure goes through the courts. Once they are in the courts, it is a Department of Justice decision, not an IRS or Treasury decision. So in cases recently where there has been publicity about refunds being made, those are determinations made by the Department of Justice, not the IRS.

*Chairman Roskam. I take your point. Would you be willing to, to the extent that you have got the ability to, to support the petition for the release of those funds?

*Mr. Koskinen. As I say, as you know, we have changed our policy last year. We no longer seize those funds. To the extent that they were seized and not representing underlying issues, we think that if we would not seize them now, that we do not see any reason you would not return those funds.

*Chairman Roskam. So moving forward, would you be willing to communicate to the Secretary of the Treasury that you are like-minded on that and you would support the return of those funds?

*Mr. Koskinen. Again, it is not the Secretary of Treasury who controls this. It is the Department of Justice and the prosecutors who determine what is to be done in those cases.

*Chairman Roskam. I mean it is a technical point. Does Treasury not have control over them? You are saying it is DOJ?

*Mr. Koskinen. No, DOJ. Once it goes into the court system, it is a DOJ, U.S. Attorneys and the people prosecuting that case negotiate with the defendants and make those decisions.

*Chairman Roskam. Okay. Would you be willing to support or reach out to the Attorney General on that basis?

*Mr. Koskinen. Again, we do not know the details of each of those cases, but as a general matter, our position has been that at this point even though it is a violation of the law to structure your deposits, we are not seizing and it is our policy no longer to seize those assets unless the underlying funds are derived from criminal activities, whether it is drug running or forfeiture.

*Chairman Roskam. I understand. Thank you both for your testimony and your time today. I appreciate it.

*Mr. Koskinen. Thank you, and thank the members of the committee.

*Chairman Roskam. Let us invite up our next witnesses.

We will welcome our second panel of three witnesses:

Michelle Easton, President of the Clare Boothe Luce Policy Institute;

Joseph Metzger, Vice President of Finance at the Leadership Institute; and

Elizabeth Kingsley, partner at the law firm of Harmon, Curran, Spielberg & Eisenberg.

You have each got five minutes. We have your written statements, and they will be included in the record, and, Ms. Easton, let us start with you.

STATEMENT OF MICHELLE EASTON, PRESIDENT, CLARE BOOTHE LUCE POLICY INSTITUTE

*Ms. Easton. Chairman Roskam, Mr. Lewis, gentlemen and gentlelady, I want to thank you so much for asking me to appear this morning to talk about the IRS audit of the Clare Boothe

Luce Policy Institute.

I am the president of the Clare Boothe Luce Policy Institute, a nonprofit, educational, 501(c)(3), tax exempt organization that I founded 22 years ago. Our mission is to promote and prepare conservative women leaders.

I was also a Federal Government official myself for 12 years, winning Senate confirmation from a Democratic controlled U.S. Senate, and then I served four years as a State official in Virginia.

So I know the responsibility of government first hand and that there is a proper role for investigations and audits. I also know it is possible for the government to act inappropriately.

I am also an attorney. I worked my way through law school at night here in town at American University, and we take these continuing legal education courses as attorneys. I did a number of them at Georgetown, nonprofit tax seminars featuring often Lois Lerner, and the IRS and Lois Lerner in these seminars always preached transparency as a part of good nonprofit management.

But in my opinion, transparency is not practiced at the IRS. I have been extraordinarily careful as president of the institute and as an attorney to follow the IRS rules for exempt organizations, and I have been confident over the years that I have done everything I was supposed to do with great care.

But in January 2011, Happy New Year, I got a call from the IRS saying that we had been selected for an audit, and of course, I asked right away, "Well, why? Can you tell me why or how did this happen?"

"No, no, that is private," she said.

Now, 2008 was the year they selected for the audit of the institute. It was a year where after many years of working in the tax exempt doing nothing political we had a candidate for Vice President who I admired tremendously. So I worked closely with our corporate counsel. I followed all the rules. I resigned as president. I went off the payroll. I had nothing to do with the institute during the weeks I was working volunteering to work for Sarah Palin for Vice President.

Every precaution was taken to protect the institute while still allowing me to exercise my First Amendment rights to do something like this.

I never believed the IRS selected the institute randomly, but I have never been given access to the information as to how or why they decided to audit the institute for that 2008 year. Neither the public nor the Congress is privy to all of Mrs. Lerner's emails. So we may never know what was said about the Clare Boothe Luce Policy Institute.

Well, the day the audit started, the two agents arrived at the headquarters, and they were polite. They sat me down. They interviewed me. They asked a series of probing questions like, "What does the Clare Boothe Luce Policy Institute do?"

Then they asked for a tour of the headquarters, and as they walked around my office, the gentleman agent looked into my office and saw a big picture of me and President Reagan, for whom I had the honor of working for eight year, and his eyes widened and his jaw dropped in dismay, and I wondered why would an IRS agent be so shocked at dismayed to see a picture of me and a President.

We had seven massive requests for documents, unbelievable stacks and stacks of paper and Xeroxing, and in the first request they asked for all of our donors, all of our supporters at the institute.

I vigorously objected. We did object to releasing that information. Our donors are

tremendous, patriotic Americans, and I knew it was worth the effort to preserve their privacy. We were especially glad afterwards that we did that and we won that point because we know the IRS has leaked information about conservative organization donors, like the National Organization for Marriage, to left-wing advocates who then use it to write slash-and-burn articles about them.

So there were seven massive requests, and you know, the year they did it, 2011, I have heard in this first panel the gentleman saying, oh, you know, no targeting. Well, you tried on that, but you just have to wonder. The year before a national election because it kept us from doing what we do educationally, which is prepare and promote conservative women leaders, and you wonder what other groups that educate people on conservative ideas were randomly selected in 2011.

It is all a secret. It is all a secret. That is part of the problem, the secretiveness of it. It makes a thoughtful person skeptical.

So thousands of dollars later, so much lost opportunity to work on our mission to prepare and promote conservative women leaders, we were cleared, and in fact, I was right. I had done everything that I should have done properly and correctly.

You know, when Mrs. Lerner made the one admission in May of 2013, she did say their actions with the Tea Party groups was absolutely inappropriate.

And I know that many people want to keep their audits secret, and I understand it. I understand it because here you have supported these nonprofits. You are spending my money to fight the IRS. I understand that, but if I leave you with no other thought, please let it be this. If the great majority of IRS audits are random, as I believe they say they are, the IRS should publish on January 1st a list of all the groups and individuals they plan to do these random audits on. Then it is just, oh, bad luck. You know, you got selected.

But you know, the stigma, the secretiveness of it, the way people are so embarrassed about it, hey, it was just random. Now, this does not talk about the referrals where somebody sees something in a newspaper and sends it in. I mean, that is almost an invitation, is it not, for somebody that disagrees with you?

Oh, here is Michelle Easton. Oh, look. She is taking time to work for Sarah Palin. Oh, let's send this in and suggest she be audited.

Maybe that is what happened. I do not know. I do not know, but I know that citizens lose confidence in government and they are reluctant to cooperate with government enforcement when they see this kind of lack of transparency in governmental agencies.

*Chairman Roskam. Ms. Easton, we just need to move on to Mr. Metzger, and then we will come back and we will be able to hear more from you as we are able to inquire.

*Chairman Roskam. Okay.

*Chairman Roskam. Mr. Metzger.

STATEMENT OF JOSEPH R. METZGER, VICE PRESIDENT OF FINANCE, LEADERSHIP INSTITUTE

*Mr. Metzger. Thank you, Chairman Roskam and members of the committee.

My name is Joe Metzger. I am the Vice President of Finance of the Leadership Institute, and I am here because in 2011, the Leadership Institute was attacked by the IRS with an audit that consumed \$50,000, countless staff hours, investigated whether or not our free speech was permissible and, worst yet, could have been politically motivated.

By way of background, the Leadership Institute is a 501(c)(3), not-for-profit organization. It was founded in 1979 by Morton Blackwell with a mission to increase the number and effectiveness of conservative activists.

The 2011 audit investigated primarily whether or not our use of the term "conservative" meant Republican. The two terms are, of course, not interchangeable. Conservatism is a philosophy free of partisanship, whereas Republican means partisanship free of philosophy, and the former is permissible under 501(c)(3) regulations, whereas the latter is not.

The Leadership Institute is a conservatively oriented organization, but all training programs have open admissions, and we welcome everybody regardless of party affiliation, and in fact, we would be delighted to have every member of this Committee attend our training programs regardless of which side of the aisle you sit on. We would even put your photographs on the wall as notable graduates, and we would definitely welcome that.

Unfortunately though the question of philosophy versus partisanship is one of the most serious ones a nonprofit group can be asked. An adverse ruling on that point can result in loss of tax status, which is effectively a death sentence, and with that kind of a stake involved, we made sure that every single request for documents or answers from the IRS was scrutinized by our attorneys first.

Everything was reviewed, analyzed, researched at great expense. Because the only thing worse than enduring this kind of an audit would be to lose our tax status because of a typographic error.

Responding to the questions and demands from the IRS cumulatively required the production of over 23,000 pages of documents and \$50,000, hundreds of staff hours or perhaps even more, along with salaries that were spent on activities no donor intended.

These resources were diverted away from training and programmatic activities, the money and time and effort was instead thrown down a rat hole that produced nothing whatsoever of any value except that the organization was not destroyed.

This is not what our donors intended with their contributions, and sadly, we will never know what programmatic activities could have been accomplished consistent with donor intent.

But this was not the worst cost. The worst one was that the audit imposed sheer terror, and what I mean by that is unlike a tax liability audit, which is simply a financial question, this one investigated whether or not our free speech was permissible.

It is a very scary prospect indeed for anybody who values liberty if someone could determine that something you said or wrote would lead to your utter annihilation. Under this veil of terror organizations become very risk averse, much as you would drive slower with a police car behind you even if you are already obeying the speed limit. An organization investigated by the IRS, being scrutinized about everything that they say and do, is going to be very careful about everything it says and does in the future and may limit its future programmatic activities simply out of fear.

In the end after 13 months under a cloud of uncertainty, the institute received a one page no change letter. The letter essentially said everything was fine. You're doing everything correctly, except that we should have notified them when the board of directors changed the date of the annual meeting from December to February. That was the worst offense that they could come up with.

But everything was not fine. The Leadership Institute lost time. It lost money. It lost potential programs. We never had a chance to challenge whether or not an audit was even justifiable. There was no due process. There was no opportunity to confront our accusers.

This audit, incidentally, was triggered by a referral from some unknown source, and in fact, we would have had more rights to defend ourselves against a \$25 parking ticket than against a \$50,000 audit.

This was bad enough even under the best of circumstances when such an audit could be justified, but it is intolerable if an organization is audited and subject to these kinds of expenses for political purposes.

The IRS must be absolutely beyond reproach when it comes to selecting targets for audit. Even a hint of abuse with this devastating tool undermines the credibility the IRS must maintain to enforce a system of voluntary tax compliance.

To clear the air and restore respect for the IRS, the possibility that the Leadership Institute and others may have been abused for political purposes must be thoroughly investigated. Learning that it was possible today is definitely a step in the right direction, but we need to know for certain whether or not abuse took place. Anything short of that would be a miscarriage of justice, and anyone who is responsible for political abuse must be fined, fired or jailed.

Thank you very much.

*Chairman Roskam. Thank you.

Ms. Kingsley.

STATEMENT OF ELIZABETH J. KINGSLEY, PARTNER; HARMON, CURRAN,
SPIELBERG & EISENBERG, LLP

*Ms. Kingsley. Thank you, Mr. Chairman and members of the subcommittee. I thank you for the opportunity to appear here today.

My name is Beth Kingsley, and I am an attorney at a law firm that primarily represents nonprofit organizations.

While many of our clients are not politically active and some are consciously non or bipartisan, the politically engaged groups we work with are predominantly progressive. Over the years we have seen variation in the emphasis the IRS Exempt Organizations Division places on the various functions of education and guidance, on the one hand, and enforcement, on the other.

In my two decades of practice, I have seen that pendulum move back and forth several times. For instance, earlier this century the IRS Political Activity Compliance Initiatives systematically handled allegations of charities violating the prohibition on intervention in political campaigns. This project generated a noticeable level of audit activity, but then it stopped.

From roughly 2009 to mid-2012, there was little evidence that organizations were being audited even for blatant violations of the campaign intervention prohibition or for other reasons.

At meetings of the ABA Tax Section, colleagues would regularly ask the attendees whether anyone was handling audits regarding improper political activity, and for several years the answer was no. In late 2012 or early 2013, we started to see a change.

At my firm we have handled more audits in the past five years than in the preceding 15. Our colleagues at the ABA meetings reported a similar increase in audit activity. In the past few years our firm has seen at least nine audits of organizations that would be considered progressive. These have included both 501(c)(3) and (c)(4) groups ranging from very small to midsized.

The groups selected for audit have included those that lobby, some that advocate for or against political candidates, some that support civic engagement and leadership development at the grassroots level, and others that conduct data intensive research on technical policy issues.

Some audits have grown out of complaints from ideological opponents, and some have just been selected randomly. I would like to illustrate how this process can play out by telling you about the experience of my client Project Vote.

Project Vote's mission is to build an electorate that accurately represents the diversity of this Nation's citizenry and ensure that every eligible citizen can register, vote, and cast a ballot that counts. Although Project Vote's activities are scrupulously nonpartisan because it seeks to engage historically disenfranchised populations in our Nation's civic life it is often considered politically progressive.

In April 2012, Project Vote received notice that the IRS was going to audit it for the year 2010. We learned that the basis for the audit was not random, but that it was triggered by a complaint filed by a disgruntled former employee. The first set of documents request in this audit ran to six pages and generated over one gigabyte of data. That is more than 3,000 pages.

This was followed in August 2012 by another request for eight different types of information. Although the audit was for 2010, in the process Project Vote was asked to agree to extend the statute of limitations for 2008 while the examiner decided whether or not to open an audit of that year as well.

The audit cost Project Vote over \$20,000 in legal and accounting fees, plus untold hours of staff time diverted to handle the matter. It was open for more than two years, eventually closing with a letter indicating the organization's exempt status continued, and it was not subject to any excise taxes or other tax liabilities.

Even for the most confident nonprofit, an IRS audit is disruptive and alarming. In contrast to audits of businesses, an examination of a tax exempt organization can be especially intrusive. Financial records are only part of the picture. The auditor must scrutinize the organization's operations to assess whether it still qualifies for exemption.

In my written submission, I provided representative sample of the kind of detailed document requests that are typical for this purpose.

Even the simplest audit will generate thousands of dollars in legal and accounting fees, and that can easily run to tens of thousands of dollars, even when the whole thing goes perfectly smoothly. From beginning to end, the audit will take months and it can takes years.

No one enjoys being audited by the IRS, but I can assure you it is not just conservative groups that have been audited in recent years.

Thank you very much.

*Chairman Roskam. Mr. Chairman.

Mr. Kelly.

*Mr. Kelly. Thank you, Chairman, and thank you all for being here.

All of you echo the same issue, and I think this is the important thing, and as the Commissioner just left again, it has always been these alleged happenings. Although it is not alleged for any of you, you actually went through the process, and I loved the way you describe it because I think the American people feel the same way. It is sheer terror when these people come after you.

Now, Ms. Kingsley, I wanted to ask you real quickly. So as you go through these audits and you find out that, no, you are fine; there is no problem; we are going to clear it off; do the people

that have to go through all of these hours of agony and spend thousands and thousands of dollars ever get reimbursed for those costs if they are found not to be guilty?

*Ms. Kingsley. No, certainly not the routine costs of an audit, no more than any taxpayer. You know, if I get audited individually, I am probably going to pay my accountant to help me out on that, and the IRS does not reimburse those costs.

*Mr. Kelly. So this is a loss of not just the end of innocence, but it is a loss of confidence and faith and trust in your own government or, more importantly, a branch of your government because there is no other branch that strikes more terror in the hearts of American taxpayers than the IRS.

And I think this is the thing that we keep coming back to and the reason that I think the chairman keeps asking Mr. Koskinen. Can you not at least apologize for what you did?

And now as I listen to you, you spent thousands of hours, thousands of dollars, lost night's sleep, not able to work on what it is that you worked on, Ms. Easton, and it all comes down to because there was an alleged violation, something wrong. We just have to look into it. We have to get under this to really find out what is going on.

You do not recover that. First of all, you will never feel the way you did about our government because of the way you were violated, and I think for all of us once we are violated, we do not go back and say, "You know what? They just made a mistake. I think everything is going to be okay," because it is never okay. It is just never okay.

I cannot image what you went through. Your whole life has been dedicated to serving the people and working with the American people in their best interest. Then to go through this process, Ms. Kingsley, this is what bothers me. There is no reimbursement. This is the type of Lotto that you do not want to win. This is a poker game that you know you are never going to be able to ante up and sooner or later you are going to have to cash in and say, "Too expensive for me. I'm out of here. Whatever you have to do, do. Maybe we can work some side agreement."

But I think this is the tragedy of this whole thing, and I think this is the problem, as I see you sit there, Ms. Easton and Mr. Metzger, and as you talk about the terror it strikes through you. This is the whole problem.

My friends can say anything they want about how we are on a wild goose chase, and sure, you can look at the emails, but only the emails that I had in my government account, but my personal ones that I happened to use for the same issue, and it was not just used by the IRS. Other people at different levels of government have also used their own personal ways of communicating on government issued business and then said, "Well, it was mine. I will determine what you get back."

I cannot imagine how you feel right now, sitting before this Committee. You must feel that at least you have an opportunity to air what you went through so that the rest of the world can know. You are very brave to do this, by the way.

I know my son still runs our business back home. He said, "My God, Dad, whatever you do, make sure you stay elected because they are going to come after us some day."

I do not say that laughingly. I say that is the way the American people feel, and I think that is the problem, regaining that faith and trust that the IRS has to have.

Listen. We have to have an agency that collects revenue. We know that, but do they have to be so heavy-handed?

Tell me. Because it is your life, what you have done, will you ever feel the same way again?

*Ms. Easton. You do not trust them. You do not trust them, and when they will not give you any details about it and why did this happen and how, it is the lack of transparency that makes

you very, very uncomfortable with it.

No, your life is never the same, and even coming here to speak to you, you think, "Well, what happens next?"

*Mr. Kelly. Well, that is what we are here for, and I am talking about all members, both sides of the aisle. We work for the American people. We are never supposed to work for our government. Our government is supposed to work for us.

Mr. Metzger, really, as I listened to you, I read your testimony, and then as I watched you go through it, again, these are things that will keep you up for years to come, and every time you do something in the future, you are still going to have this haunting memory of how you were targeted and looked at, and nobody can tell you why.

You do not know who your accuser is. You do not know why it is, and they said it was just random. It was not just random.

*Mr. Metzger. The Leadership Institute, in fact, filed a Freedom of Information Act request with the IRS to try to find out what those referrals were, and the documents they produced were substantially just things that we gave them and they gave us copies back saying this is what is in our file.

There was no evidence whatsoever of what the initial referral was that triggered things, and that leaves all sorts of questions out there about exactly what it was that we did wrong or who it was that complained that triggered this in the first place.

*Mr. Kelly. Yes, and I think, Ms. Kingsley, that maybe you would agree that it is the ambiguity of all this that makes us wonder, as the chairman says, when is the movie going to end? When we finally find out who wrote the script and why they wrote it. That is when it ends, when we really find out what the plot was.

And the fact that they keep saying, no, this is all a fiction, this is not fiction. This is real life drama, and it is lived out in the hearts and souls of the American people when they get a letter or communication from the IRS.

I do really understand what you are saying because I have been on the other side of it. Do you not wish that you could be as careless as they are with the way they handle their operation? I guarantee you your feet are held to the fire on everything. Theirs are not. They always say, "Hey, our bad. We will try to improve."

But I really thank you for being here and thank you for standing up and speaking out and letting the rest of America know that you have a voice. Your voice will be heard, and this is the House for it to be heard, and this is truly the people's House. That is who we represent.

Thank you.

*Chairman Roskam. Mr. Doggett.

*Mr. Doggett. Thank you, Mr. Chairman, and thanks to all of our witnesses for your testimony.

Ms. Kingsley, I gather that the groups that you represent in the main would be viewed as progressive or liberal in their political viewpoint.

*Ms. Kingsley. That is correct, yes.

*Mr. Doggett. Can you give us an example of some of those?

*Ms. Kingsley. I am sorry. I did not hear.

*Mr. Doggett. What is an example of the type of groups?

*Ms. Kingsley. So some of them advocate for women's reproductive rights. Some of them are environmental organizations, just as an example.

*Mr. Doggett. And as I read your testimony, you have seen a steady increase before all of

this flap over the way Ms. Lerner did and the misconduct associated with her and the investigation of it. You saw a steady increase in audits of your progressive groups before any of this ever happened?

*Ms. Kingsley. That is right. I think it started about mid-2012 we started seeing the beginning of the uptick.

*Mr. Doggett. And you are active with the American Bar Association section of lawyers who represent people of all political points of view, and generally the reports you are getting back about the audit activity in contrast with the way it occurred in prior years.

*Ms. Kingsley. So during the years that PACI was in effect, the Political Activities Compliance Initiative, we had a lot of conversations, and I co-chair a breakfast meeting on political and lobbying activities of that Exempt Organizations Committee. So we had a lot of conversations about the activity people were seeing, and then for several years it just sort of faded away. We did not see much coming out of the 2008 cycle and up until about 2012 regularly all of the government speakers would announce at these events that they were auditing. We were not seeing evidence of it.

And so I do not know what was happening, but we just were not hearing from our colleagues in the field on both sides of the aisle until, again, late 2012. People started to say, "Yeah, I am seeing some audits now."

*Mr. Doggett. And from your work there as a member of that part of the Bar did you find evidence that these audits were directed more at one political point of view than another?

*Ms. Kingsley. No, we did not. There was no evidence. I mean nothing that we heard about or saw directly indicated that.

*Mr. Doggett. And when one of these audits occur, as my colleague was just saying, it can be expensive, intensive, and a little bit scary for the client.

*Ms. Kingsley. As with any IRS audit, absolutely.

*Mr. Doggett. Yes.

*Ms. Kingsley. There is no question.

*Mr. Doggett. And I want to ask you also about your work on the Bright Lines Project because, as I indicated in an earlier question, while it is important to protect the rights of each taxpayer whether it is in this area or another, whether it is a person that shares my political point of view or another, it is also important to see that the IRS enforces the law, and I think we have seen a significant increase in the pollution of our political process with unlimited amounts of secret corporate money that are being poured through nonprofit organizations.

Unfortunately, I read, for example, in the time headline "IRS Expected to Stand Aside as Nonprofits Increase Role in 2016 Race." So apparently where there might have been thousands or millions of dollars in the past, we are going to see even more significant amounts of money poured through nonprofits, and if one side is doing it, perhaps the other side decides to do the same thing.

Either way, I believe that it is a perversion of the nonprofit process to do this. Can you tell us a little about the Bright Lines Project and anything that you see that can be done to get clearer lines, brighter lines on the misuse of nonprofit, social welfare organizations for purely political purposes?

*Ms. Kingsley. Sure. The Bright Lines Project, the drafting committee is a group of practitioners who do the kind of work I do representing nonprofits, and we felt a need for better guidance on what is political under the tax code for all organizations, in fact, not just (c)(4)'s, but (c)(3)'s in particular for whom it can be a death sentence if they cross that line by mistake.

And we rolled up our sleeves and came up with a proposal for what we thought was a clear, practical definition that could be implemented that was modeled on the lobbying rules that are in effect for 501(c)(3)'s that have been very effective and very livable.

We do not as a project have a position on how much political activity a (c)(4) should be allowed to engage in either as a matter of the reading of current law or as a policy matter because coming up with the definition of what the rule is was hard enough work for us as it was, but I think it is an important step toward getting fairness because when there are uncertain rules, when it is all the facts and circumstances, that opens the gate for bias, for even unintentional bias. Where there is a clear rule that can be applied across the board, it is just much more likely to be a fair process.

*Mr. Doggett. Thank you very much.

Thank you, Mr. Chairman.

*Chairman Roskam. Thank you.

Mr. Metzger, in your written testimony you relay an experience of the pressure from the main office down to the agent that was interacting with you. Could you just take a minute to give some insight as to how that worked out?

Do you follow my question?

*Mr. Metzger. Yes, certainly, yes. The agent who was in charge of our audit was a very easy to work with, intelligent and, I think, impartial, fair individual. She was the one sending us questions, reviewing documents, going over the sorts of information that she needed, and we went through several steps of document requests.

At a certain point she indicated that there would be additional document requests, and of course, considering how thorough and careful we need to be on each of those, every document request dramatically increases the cost of complying with the audit.

Her supervisor and the IRS counsel were the ones it turned out who were putting pressure on her to send in those additional requests. These are things that we know both because she told that to our attorneys and also because one thing we got from the Freedom of Information Act request was a case chronology that listed on there where the IRS counsel was preparing additional questions for her to send to us, again, which would create a dramatic compliance cost, very high, very time consuming.

The agent involved though demonstrated her impartiality and was very helpful in that she resisted the pressure from her supervisor and from the counsel to send those extra questions. She told them that additional requests would produce more of the same, which is to say more evidence that the Leadership Institute is in compliance with all tax laws, and there was no point in pursuing that further.

So I applaud her efforts standing up to something that probably did not help her career, but which did definitely protect us as a taxpayer from further injury.

*Chairman Roskam. Ms. Kingsley, your perspective really helps round out the picture. You know, Ms. Easton and Mr. Metzger are making a claim that resonates with me that they were targeted based on a political philosophy. Your experience is different though. You know, sort of you would not characterize targeting in your experience. You would say though a level of unfair scrutiny based on a false claim from a disgruntled employee.

So question for you: how did you come to know or how did Project Vote come to know that it was a disgruntled employee? Did the IRS disclose that to you or did you come to know it sort of intuitively?

*Ms. Kingsley. My memory is that the IRS typically it has been my experience that where

there is a referral, a complaint that is the basis, they tell us that, just that it is a referral based audit.

*Chairman Roskam. Okay.

*Ms. Kingsley. And I believe that actually the fact that it was submitted has been publicized, and so we knew that.

*Chairman Roskam. What do you mean?

*Ms. Kingsley. Also some of the questions asked made it clear that the concerns were those that had been part of the complaint that was --

*Chairman Roskam. Oh, I see. Just common sense told you that you knew the source of this, and it was an obvious thing.

*Ms. Kingsley. Yes.

*Chairman Roskam. And so for all three of you, just so I'm clear, you all three got a no change letter on the Project Vote, Leadership Institute and Clare Boothe Luce?

*Mr. Metzger. That is right.

*Ms. Easton. Initially the finding was that we were a list rental company, and we had to pay tax on list rental. It was just a bizarre, absurd charge. They said you keep your exemption, but here, we found this problem.

We appealed that. That was thousands more in lawyer fees, and then they said, "Oh, no, you are not a list rental company."

So, yes, in the end it was clean, but there was an initial finding that we had to pay taxes on list rentals.

*Chairman Roskam. Let me just conclude by making one final point. The GAO in its study asserted that one out of five audits are the result prompted from somewhere else, from a referral essentially outside, which is really a daunting thing if you think about the level of vulnerability and the level of exposure, the reputational risk to your point earlier, Ms. Easton, and the chilling effect and the restraining influence that that has.

So we have had a wide ranging discussion today, but it has been very much the caliber of the discussion, and the insight the committee is able to gain has been greatly enhanced by you three being willing to participate.

And, Ms. Easton, I sense that you are itching to say something.

*Ms. Kingsley. Yes. Is there no way that we can get a list of the (c)(3)'s that were audited during these years in question? So it is not like, "Oh, trust us, you know, Lois would not have done that."

Can we not just look at a list? Can you not do that even if we do not get to do it?

*Chairman Roskam. So in answer to your question, it is an area of real consternation, and so these things are shrouded in secrecy, and at one level, look, you want a level of confidentiality around this process, which makes sense inherently where this has become a bizarre Catch-22 though is that you are not able to know who it is who made the complaint against you. You are not able to know. Do you know what I mean? You are very, very isolated.

And so there is an interest in trying to revisit some of these things. It is not as easy as I am making it sound. There are a lot of subtleties to it, and it needs to be well debated and well vetted and carefully navigated through, the tension between disclosure and confidentiality.

And my sense is that we are just beginning to get around the edges of this, but the more I am learning about this issue under the taxpayer protections, confidentiality, the irony is that Section 6203, Confidentiality, does not only protect the taxpayer. It protects the bad actor at the IRS, which is so twisted and so messed up I think Charlie Rangel should write that script.

And with that, we will conclude our time today, and I thank you very much.
[Whereupon, at 12:17 p.m., the subcommittee was adjourned.]

[Submissions for the Record](#)

[Questions for the Record](#)