

**FACT v. FICTION:**

**BASELESS CLAIMS AGAINST IRS COMMISSIONER**

<b>1.</b>	<b>Commissioner Koskinen Obstructed Investigation by Destroying Evidence</b>	<b>...</b>	<b>2</b>
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**Claim #1:     Commissioner Koskinen obstructed the investigation by destroying evidence.**

Republicans have alleged that the “malfeasance of Commissioner Koskinen extends beyond investigative lassitude into destruction of evidence.”<sup>1</sup>

**The Facts:     The Treasury Inspector General for Tax Administration and the Department of Justice found no indication of intentional evidence destruction by the IRS.**

- The Inspector General’s 2015 [report](#) included the following conclusions:
  - “No evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ or TIGTA.”
  - “[T]he investigation did not uncover evidence that the IRS and its employees purposely erased the tapes in order to conceal responsive e-mails from the Congress, the DOJ and TIGTA.”
  - “Interviews of IRS employees involved in the search for the tapes and hard drives as well as those involved in the decommissioning process for the NCFB Exchange 2003 Server provided no evidence that the IRS employees involved intended to destroy data on the tapes or the hard drives in order to keep this information from Congress, the DOJ or TIGTA.”<sup>2</sup>
- The Inspector General’s office interviewed 118 witnesses, and none of the employees responsible for degaussing backup tapes said they were asked to destroy media outside of the ordinary course, or that they were asked to misrepresent or conceal any information relating to the handling and processing of IRS media.<sup>3</sup>
- One witness interviewed by the Office of the Inspector General stated:

“Nobody in particular would have made the decision to destroy the tapes/hard drives, degaussing/destruction is just part of the process. Nobody specifically instructed [NAME REDACTED] to destroy the tapes/hard drives and nobody told him to do it because of the content on the tapes/hard drives. [NAME REDACTED] said he never knows the content of the tapes or hard drives the group destroys, to include this particular shipment.”<sup>4</sup>

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<sup>1</sup> Letter from Chairman Jason Chaffetz, House Committee on Oversight and Government Reform, to President Barack Obama (July 27, 2015) (online at <https://oversight.house.gov/wp-content/uploads/2015/07/2015-07-27-JC-to-Obama-WH-Koskinen-Resignation.pdf>).

<sup>2</sup> Treasury Inspector General for Tax Administration, *Report of Investigation: Exempt Organizations Data Loss* (June 30, 2015) (#54-1406-0008-I).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

- The Department of Justice also recently completed its criminal investigation into the matter, and found no sign of intentional evidence destruction by IRS officials. The Department’s findings were detailed in an [October 23, 2015 letter](#), which states:

“our investigation revealed no evidence that the IRS’s document collection and retention problems, Ms. Lerner’s hard drive crash, or the IRS’s delayed disclosure regarding these matters were caused by a deliberate attempt to conceal or destroy information.”<sup>5</sup>

- The letter further states: “We also found no evidence that any official involved in the handling of tax-exempt applications or IRS leadership attempted to obstruct justice.”<sup>6</sup>

- The Department added:

“We also carefully considered whether any IRS official attempted to obstruct justice with respect to their reporting function to Congress, the collection and production of documents demanded by the Department and Congress, the delayed disclosure of the consequences of Ms. Lerner’s hard drive crash, or the March 2014 erasure of electronic backup tapes. *See, e.g.*, 18 U.S.C. §§ 1503, 1512, 1515, 1519. At a minimum, these statutes would require us to prove a deliberate attempt to conceal or destroy information in order to improperly influence a criminal or Congressional investigation. We uncovered no evidence of such an intent by any official involved in the handling of tax - exempt applications or the IRS’s response to investigations of its conduct.”<sup>7</sup>

- Contrary to Republican allegations, the IRS, with the help of 250 employees and at a cost of approximately [\\$20 million](#),<sup>8</sup> produced 1.3 million pages of responsive documents from 88 IRS custodians, in response to over 80 separate document and information requests.<sup>9</sup> These 1.3 million pages included more than 147,000 emails, 78,000 of which included Ms. Lerner as a sender or recipient. Of those 78,000, more than 24,000 were from the period believed to be affected by Ms. Lerner’s hard drive crash.<sup>10</sup>

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<sup>5</sup> Letter from Peter J. Kadzik, Assistant Attorney General, Department of Justice, to Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 23, 2015) (online at <http://democrats.oversight.house.gov/news/press-releases/justice-department-finds-no-political-targeting-at-irs>).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Internal Revenue Service, *Written Testimony of Mary Howard, Director, Privacy, Governmental Liaison and Disclosure Division* (June 3, 2015).

<sup>9</sup> Letter from Commissioner John A. Koskinen, Internal Revenue Service, to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (Mar. 25, 2015).

<sup>10</sup> Letter from Commissioner John A. Koskinen, Internal Revenue Service, to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (June 11, 2015).

**Claim #2: Commissioner Koskinen obstructed investigation by lying to Congress.**

Republicans have alleged that Commissioner Koskinen “offered under oath a series of false statements so utterly lacking in honesty and integrity that he is guilty of high crimes and misdemeanors.”<sup>11</sup> Former Chairman Darrell Issa told Commissioner Koskinen: “You testified under oath in March that you would produce all of Lois Lerner’s e-mails subpoenaed by this committee. ... Mr. Commissioner, at a minimum, you did not tell the whole truth that you knew on that day.”<sup>12</sup>

**The Facts: There is no evidence that Commissioner Koskinen was aware in March 2014 that all of Ms. Lerner’s emails were unrecoverable.**

- On July 23, 2014, Commissioner Koskinen [testified](#) before the Oversight Committee about when he learned that Ms. Lerner’s emails were unrecoverable:

KOSKINEN: I didn’t know that there were emails lost. **I personally didn’t know, and that is what I was testifying about, until the middle of April.** When I testified, and I have said this before in several hearings, **when I testified on March 26th, I did not know that her emails were not recoverable.**

JORDAN: But this is your testimony right here. I am reading. This is John Koskinen's testimony.

KOSKINEN: Right.

JORDAN: In the mid-March 2014 time frame, we learned the data stored on her computer hard drive was determined to be unrecoverable. So that is certainly before the March 26th hearing and the April 8th hearing in front of the Senate Finance Committee. So you had two opportunities where you already know it is unrecoverable. That means you are not going to get what is there.

KOSKINEN: No, I am sorry. I take, and I go to the earlier, I take responsibility for the agency. When I said, in that, trying to report to people what we knew, that is what **the IRS knew**. When you ask me specifically what did I know, I knew and didn’t know until April. If you told me now that Tom Cain said he knew in February, I would henceforth say, we,

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<sup>11</sup> House Committee on Oversight and Government Reform, *Republican Staff Report on Impeachment Resolution* (Oct. 2015) (online at <https://oversight.house.gov/wp-content/uploads/2015/10/1027-Impeachment-Resolution.pdf>).

<sup>12</sup> House Committee on Oversight and Government Reform, *Hearing: IRS Obstruction*, 113th Cong. (June 23, 2014).

**as the IRS, knew in February.” I myself, personally, did not know. When I testify, I tell you what I know.<sup>13</sup>**

- Thomas Kane, Deputy Associate Chief Counsel in the IRS’s Office of Chief Counsel, informed Committee staff during a transcribed interview that the IRS did not know, in March 2014, that Ms. Lerner’s emails were unrecoverable:

Q: Now, when you learned in early February [2014] that in 2011, IRS IT professionals determined that certain data on Ms. Lerner’s hard drive was unrecoverable, did you believe that to mean that the IRS would never be able to locate and produce that data?

A: No.

Q: Why did you believe that the IRS might be able to locate and produce the information on Ms. Lerner's hard drive?

A: To the extent that the information on her hard drive consisted of emails that she either sent or received, we, we wanted to know whether or not those emails could be recovered from other individuals who were part and parcel of any communication she may have had, and so while there was the decision of the IT professionals that we couldn't at that point in time recover anything from her hard drive, it was possible that those emails existed with other people who were engaging in the email communications with Lois, particularly on the (c)(4) determinations issues.

Q: So you stated at this time, in early February, that despite learning that IT professionals thought Ms. Lerner’s—or indicated that Ms. Lerner's data was unrecoverable, that you believe that the IRS could still find the information, correct?

A: I can’t say that we believed that we could, but we believed that we might be able to and wanted to undertake the ability to figure that out.

...

Q: And as of March 2014, you were not aware that the IRS would be unable to recover all of Ms. Lerner's documents?

A: That’s correct.<sup>14</sup>

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<sup>13</sup> House Committee on Oversight and Government Reform, *Hearing: Update on the IRS Response to Its Targeting Scandal*, 113th Cong. (July 23, 2014) (emphasis added).

<sup>14</sup> House Committee on Oversight and Government Reform, Interview of Thomas Kane (July 17, 2014).

- Mr. Kane informed Committee staff that the IRS was still determining whether Ms. Lerner’s emails were recoverable when Commissioner Koskinen testified before the Committee:

Q: Are you aware that on March 26 of 2014, IRS Commissioner Koskinen testified before this committee related to the committee's ongoing investigation into the findings of the May 13, 2014, TIGTA report?

A: I am aware.

Q: And I believe you mentioned this earlier, but is it your understanding that on March 26 of 2014, the IRS was still in the process of determining whether Lois Lerner's documents and emails could be recovered?

A: We were still in that process.<sup>15</sup>

- The Inspector General’s report also contains information about when Commissioner Koskinen became aware that Ms. Lerner’s emails were unrecoverable. The report states: “Mr. KOSKINEN said he was not aware that 422 backup tapes that most likely contained missing LERNER e-mails had been erased on March 4, 2014.”<sup>16</sup>
- According to the Inspector General report’s Memorandum of Interview of Commissioner Koskinen, “Mr. KOSKINEN also did not know that 422 backup tapes from the 2011 Microsoft Exchange Server architecture were degaussed in March 2014.”<sup>17</sup>
- The Memorandum of Interview for Commissioner Koskinen further noted:  
  
“When specifically asked if he was aware of the fact that these backup tapes had been degaussed when he testified before the House Committee on Oversight and Government Reform on March 26, 2014, Mr. KOSKINEN stated he was not aware.”<sup>18</sup>
- The Memorandum of Interview continued: “Mr. KOSKINEN was first told about LERNER’s hard drive failure in **April 2014** by DUVAL, but was advised that a hard drive failure did not necessarily mean a loss of data.”<sup>19</sup>
- When asked if he had any reason to believe that the Commissioner testified untruthfully on March 26, 2014, by saying the IRS would produce all of Ms. Lerner’s emails, Steven

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<sup>15</sup> *Id.*

<sup>16</sup> Treasury Inspector General for Tax Administration, *Report of Investigation: Exempt Organizations Data Loss* (June 30, 2015) (#54-1406-0008-I).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (emphasis added).

Manning, former IRS Deputy Chief Information Officer for Enterprise Networks, said “no.”<sup>20</sup>

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<sup>20</sup> House Committee on Oversight and Government Reform, Interview of Steven Manning (Apr. 6, 2015).

**Claim # 3: Commissioner Koskinen did not earnestly search for missing emails.**

Republicans have alleged that Commissioner Koskinen engaged in “lies, obfuscation, and deceit” and that he “did not look in earnest” for Ms. Lerner’s emails.<sup>21</sup>

**The Facts: Commissioner Koskinen relied on the advice of senior IT officials to determine what media was recoverable.**

- The Inspector General’s report described how the former Deputy Chief Information Officer for Enterprise Networks at the IRS, Steven Manning, made decisions regarding the availability of IRS backup tapes. The report concluded:  
  
“MANNING stated that he was responsible for providing technical explanations to IRS senior management and Chief Counsel, as well as coordinating the internal flow of data from IRS IT personnel during the process of gathering data for the IRS’ production process to Congress for the IRS EO matter.”<sup>22</sup>
- The Inspector General’s report also noted: “MANNING stated that the decisions on whether or not to restore data from tape backups rested with IRS Chief Counsel, but it was not considered because the tape backups only went back to November 2012, which was significantly after LERNER’s hard drive failure in 2011.”<sup>23</sup>
- The Committee interviewed Mr. Manning on April 6, 2015, and he stated that he never presented the Commissioner with the option of forensically examining backup tapes because he considered it a “hail Mary pass” and said it was an “IT technical kind of discussion.”<sup>24</sup>
- The Inspector General’s report further noted: “When interviewed, [IRS Chief Technology Officer Terence] MILHOLLAND was asked if he knew that e-mail backup tapes from a decommissioned e-mail server had been degaussed in March 2014, MILHOLLAND stated that he was not aware of this, and he advised that he was ‘blown away’ at the revelation. He further stated that IRS IT senior management was ultimately responsible.”<sup>25</sup>

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<sup>21</sup> *Impeach the Director*, The National Review (Oct. 7, 2015) (online at [www.nationalreview.com/article/425222/irs-director-house-impeachment](http://www.nationalreview.com/article/425222/irs-director-house-impeachment)).

<sup>22</sup> Treasury Inspector General for Tax Administration, *Report of Investigation: Exempt Organizations Data Loss* (June 30, 2015) (#54-1406-0008-I).

<sup>23</sup> *Id.*

<sup>24</sup> House Committee on Oversight and Government Reform, Interview of Steven Manning (Apr. 6, 2015).

<sup>25</sup> Treasury Inspector General for Tax Administration, *Report of Investigation: Exempt Organizations Data Loss* (June 30, 2015) (#54-1406-0008-I).



- According to the Inspector General report's Memorandum of Interview of Commissioner Koskinen, "Mr. KOSKINEN had been advised by his staff that the information contained on the backup tapes was "inaccessible."<sup>26</sup> In addition, "When informed that this investigation had determined that IRS IT personnel were restoring several accounts per month from tape backups, Mr. KOSKINEN advised he was not aware of that information."<sup>27</sup>
- The report's Memorandum of Interview of Commissioner Koskinen, further noted, "Mr. KOSKINEN said he was not aware of the possibility of individual e-mail accounts being retrieved from disaster recovery backup tapes."<sup>28</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

**Claim #4:     Degaussed backup tapes contained “key” evidence.**

Republicans have alleged that the 422 degaussed backup tapes contained “key pieces of evidence that were in the agency’s possession, and destroyed, on Koskinen’s watch.”<sup>29</sup>

**The Facts:     According to the Department of Justice’s findings, it is highly unlikely that the hard drive crash or technical failure by any particular employee caused the permanent loss of any relevant email or other document.**

- The Deputy Treasury Inspector General for Investigations testified before the Committee about the emails his office uncovered after extensive review of Ms. Lerner’s hard drive. His written testimony stated: “A review of these e-mails did not provide additional information for the purposes of our investigation.”<sup>30</sup>
- Instead, these so-called “new” emails pertain to completely irrelevant topics. For instance, one of the recovered emails that the Inspector General produced to Congress is a December 25, 2012, email from eBay advertising holiday shopping deals. Another newly discovered email is from FlowerShopping.com a few days before.
- In its October 23, 2015, letter to the Committee, the Department of Justice concluded that “we are confident that we were able to compile a substantially complete set of the pertinent documents.”<sup>31</sup> The Department further stated:

“The IRS collected documents from more than 80 employees—many more employees than were regularly and directly involved in the matters under investigation—making exceedingly remote the chance that a hard drive crash or other technical failure experienced by any particular employee could cause the permanent loss of any relevant email or other document.”<sup>32</sup>

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<sup>29</sup> House Committee on Oversight and Government Reform, *Republican Staff Report on Impeachment Resolution* (Oct. 27, 2015) (online at <https://oversight.house.gov/wp-content/uploads/2015/10/1027-Impeachment-Resolution.pdf>).

<sup>30</sup> House Committee on Oversight and Government Reform, *Written Testimony of Hearing on IRS: TIGTA Update, Part Two*, 114th Cong. (June 25, 2015).

<sup>31</sup> Letter from Peter J. Kadzik, Assistant Attorney General, Department of Justice, to Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 23, 2015) (online at <http://democrats.oversight.house.gov/news/press-releases/justice-department-finds-no-political-targeting-at-irs>).

<sup>32</sup> *Id.*

- The Senate Finance Committee released its [bipartisan IRS report](#) based on “the large volume of information” it received during its investigation, with “a high degree of confidence in the accuracy of the conclusions reached.”<sup>33</sup>

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<sup>33</sup> Senate Committee on Finance, *Bipartisan IRS Report* (Aug. 5, 2015) (online at [www.finance.senate.gov/newsroom/chairman/release/?id=11f4db1f-9986-4ecb-ba61-f3a8abeb2672](http://www.finance.senate.gov/newsroom/chairman/release/?id=11f4db1f-9986-4ecb-ba61-f3a8abeb2672)).

**Claim #5: Rep. Camp’s letter prompted Ms. Lerner to crash her hard drive.**

Republicans have alleged it was “more than a coincidence” that Ms. Lerner’s hard drive “magically fails on its own in her office on a Saturday, 5 days” after Rep. Camp’s letter to the IRS.<sup>34</sup>

**The Facts: The Treasury Inspector General for Tax Administration and the Department of Justice found no evidence Ms. Lerner intentionally crashed her hard drive.**

- The *Washington Post* [Fact Checker](#) awarded three Pinocchios to Republican claims that Rep. Camp’s June 3, 2011, letter prompted Ms. Lerner to crash her hard drive, concluding: “We can appreciate the argument that this was an important letter, but the causal connection to Lerner’s hard drive appears far too tenuous for [Rep.] Roskam to make such claims, given that the letter does not mention conservative groups.”<sup>35</sup>
- The *Washington Post* further noted: “Recall that the issue involving Lois Lerner was the targeting of conservative advocacy groups applying for 501(c)(4) status. But this letter concerned something different—the IRS’s decision to send letters to the donors of such organizations that their contributions might be subject to gift taxes.”<sup>36</sup>
- In 2013, the Inspector General that Lois Lerner’s hard drive crash occurred two weeks before she was informed about the use of inappropriate criteria by IRS employees in Cincinnati. The Inspector General also found that “immediately” upon learning about the use of inappropriate screening criteria, Ms. Lerner directed the criteria be changed.<sup>37</sup>
- The Inspector General’s June 30, 2015, report identified no evidence Ms. Lerner purposely crashed her computer. Instead, the report found that IRS IT technicians “did not observe any indications of tampering or physical damage to LERNER’s laptop.”<sup>38</sup>
- The Department of Justice’s findings are consistent with the conclusions of the Inspector General. The Department’s [October 23, 2015, letter](#) to the Committee states:

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<sup>34</sup> House Committee on Oversight and Government Reform, *Hearing on TIGTA Update, Part Two*, 114th Cong. (June 25, 2015).

<sup>35</sup> *The Letter that Supposedly Led to the Crash of Lois Lerner’s Hard Drive*, *Washington Post* (June 24, 2014).

<sup>36</sup> *Id.*

<sup>37</sup> Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013) (2013-10-053).

<sup>38</sup> Treasury Inspector General for Tax Administration, *Report of Investigation: Exempt Organizations Data Loss 2* (June 30, 2015) (#54-1406-0008-I).

“Finally, our investigation uncovered no evidence that Ms. Lerner intentionally caused her hard drive to crash or that she otherwise endeavored to conceal documents or information from IRS colleagues or this investigation.”<sup>39</sup>

- None of the 54 witnesses interviewed by the House Oversight and Government Reform Committee expressed a belief that Ms. Lerner intentionally crashed her computer.
- John Minsek, a Senior Investigative Analyst in the IRS’s Criminal Investigation Electronic Crimes Division, made the [following conclusions](#) to the House Ways and Means Committee regarding damage he observed to Ms. Lerner’s hard drive: “Nothing in my course of the examination and observations made me believe that this was sabotage or any kind of strange physical damage.”<sup>40</sup>
- The Senior Investigative Analyst added: “We have seen many, many times where a drive will produce damage, physical damage for no apparent reason. It’s a mechanical device. And it will fail.” He also stated: “I’ve seen physical damage caused by sabotage. And this didn’t appear to me to be that.”<sup>41</sup>

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<sup>39</sup> Letter from Peter J. Kadzik, Assistant Attorney General, Department of Justice, to Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 23, 2015) (online at <http://democrats.oversight.house.gov/news/press-releases/justice-department-finds-no-political-targeting-at-irs>).

<sup>40</sup> *IRS Technician: Lerner Hard Drive Not Intentionally Damaged*, The Hill (July 23, 2014) (online at <http://thehill.com/policy/finance/213187-irs-technician-lerner-hard-drive-not-intentionally-damaged>).

<sup>41</sup> *Id.*

**Claim #6:     Obama Administration directed the use of inappropriate criteria.**

Republicans have alleged that “[t]his was the targeting of the president’s political enemies, effectively, and lies about it during the election year, so that it wasn’t discovered until afterwards.”<sup>42</sup>

**The Facts:     No evidence supports the Republicans’ central accusation of White House involvement.**

- The Oversight Committee determined years ago how this activity began when it interviewed a self-identified [conservative Republican](#) Screening Group Manager who worked at the IRS for 21 years as a civil servant and supervised a team of Screening Agents in the Cincinnati field office. The manager had this exchange:

Q:     Do you have any reason to believe that anyone in the White House was involved in the decision to screen Tea Party cases?

A:     I have no reason to believe that.

Q:     Do you have any reason to believe that anyone in the White House was involved in the decision to centralize the review of Tea Party cases?

A:     I have no reason to believe that.<sup>43</sup>

- The Screening Group Manager agreed with the decision of his screening agent to flag and forward the first “Tea Party” case at issue up the chain to officials in the Exempt Organizations office in Washington. According to the Screening Group Manager:

“The reason that the case was elevated to EO Technical was based upon, you know, the high-profile issue. The agent appropriately identified the issue as not being fully developed, and that it should be gone into the inventory and assigned for that purpose. It wasn’t the purpose of the difficulty of those issues that was the—you know, the reason that I elevated it to my manager. It was more the high-profile part of the case.”<sup>44</sup>

- In addition, the Inspector General’s [May 2013 report](#) concluded that Ms. Lerner “immediately directed that the criteria be changed” as soon as she learned of them.<sup>45</sup>

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<sup>42</sup> *Issa on IRS Scandal: “Deliberate” Ideological Attacks*, CBS This Morning (May 14, 2013) (online at [www.cbsnews.com/video/watch/?id=50146771n](http://www.cbsnews.com/video/watch/?id=50146771n)).

<sup>43</sup> House Committee on Oversight and Government Reform, Interview of Screening Group Manager (June 6, 2013).

<sup>44</sup> *Id.*

<sup>45</sup> Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013) (2013-10-053).

- As detailed in a May 6, 2014, House Oversight and Government Reform Committee [Democratic Staff Report](#):

“The detailed and lengthy interviews conducted over the past year show definitively that none of the 39 witnesses interviewed by Committee staff identified any evidence whatsoever to support Republican accusations that the White House was involved in any way with the screening of tax-exempt applications.”<sup>46</sup>

- Since then, the Committee has interviewed an additional 15 witnesses. None of the now-54 interviewed witnesses reported observing that any IRS employee involved in the screening process acted on behalf of the White House or out of any political motivation.

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<sup>46</sup> House Committee on Oversight and Government Reform, *Democratic Staff Report: No Evidence of White House Involvement or Political Motivation in IRS Screening of Tax-Exempt Applicants* (May 6, 2014) (online at <http://democrats.oversight.house.gov/sites/democrats.oversight.house.gov/files/migrated/uploads/Cummings%20Report%20on%2039%20IRS%20Transcripts%20050614.pdf>).