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# Congress of the United States

## House of Representatives

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### Opening Statement

#### Rep. Elijah E. Cummings, Ranking Member

#### Hearing on "IRS Obstruction: Lois Lerner's Missing E-Mails"

June 24, 2014

I welcome the opportunity to hear testimony this morning from the Archivist of the United States about longstanding challenges at federal agencies with electronic records retention.

During the Bush Administration, federal agencies admitted to losing millions of emails related to ongoing Congressional and criminal investigations, including the U.S. Attorney firings, the outing of covert CIA agent Valerie Plame, and a host of other matters.

Our Committee played an integral role in investigating these problems. Rep. Henry Waxman, our former Chairman, engaged in a constructive effort to find solutions to these challenges. He hosted monthly meetings with the Archivist and the White House Counsel's office to monitor progress in implementing recommendations. I believe the Archivist would agree with his predecessor that those meetings served a useful purpose. Today, the White House system automatically preserves emails from all employee email accounts.

Since 2008, there has been additional progress. On November 28, 2011, President Obama issued a directive to agencies on managing federal records. The President also directed the Archivist and the Director of the Office on Management and Budget to craft a modernized framework to improve agency performance and begin managing email records in electronic formats by 2016. I look forward to hearing a status report on these efforts.

I also hope the Archivist will give us his view on legislation I introduced last year, the Electronic Message Preservation Act, which would require federal agencies to preserve email records electronically. The Committee voted on a bipartisan basis to approve my legislation, but it has languished since then, and Republican leaders have declined to bring it to the floor for a vote.

Although today's hearing could have the potential to help improve agency systems for managing electronic records, I was dismayed last night that Chairman Issa issued a unilateral subpoena to compel Ms. O'Connor to appear here today.

Today's hearing title is "Lois Lerner's Missing Emails." It is true that Ms. O'Connor used to work at the IRS. She worked there from May to November of last year.

The problem is that Ms. O'Connor left the IRS seven months ago—in 2013—well before these recent discoveries about Lois Lerner's emails. As Commissioner Koskinen testified last night, IRS officials learned there was a potential problem in February of 2014, and it was not until May of 2014 that they understood the scope of the problem, completed their investigation, and determined the extent to which emails were available or not. Ms. O'Connor left the IRS before any of these discoveries occurred.

So why is she here? According to the Chairman's own press release, it's not because of her old job, it's because of her new one. She currently works at the White House Counsel's office. She has worked there less than one month—one month—but apparently that is enough to warrant a subpoena from this Committee.

Last night, Republicans demanded to know when the White House first became aware that the IRS was having difficulty locating Ms. Lerner's emails. I am sure my colleagues will repeat those questions today. But we already know the answer. The White House sent a letter to Congress on June 18, 2014, and it said this:

"In April of this year, Treasury's Office of General Counsel informed the White House Counsel's Office that it appeared Ms. Lerner's custodial email account contained very few emails prior to April 2011 and that the IRS was investigating the issue and, if necessary, would explore alternate means to locate additional emails."

That was in April, but Ms. O'Connor did not start her job at the White House until at least a month later. I ask unanimous consent to enter this June 18 letter into the record.

Today's hearing is not about policy or substance, it's about politics and press. Today, Ms. O'Connor will join the ranks of dozens of other officials during Chairman Issa's tenure who have been hauled up here unnecessarily, without a vote, and without any debate, as part of a partisan attempt to generate headlines with unsubstantiated accusations against the White House.

Regardless of how many times Republicans claim that the White House was behind these IRS actions, there is still no evidence—none—that the White House was involved in any way with screening applicants for tax-exempt status. Not one of the 41 witnesses we have interviewed has identified any evidence of White House involvement or political motivation.

And the Inspector General has also identified no evidence to support these baseless claims. Issuing a subpoena to a White House lawyer does not change that fact.

I sincerely hope that today's hearing will focus on a serious examination of the longstanding and widespread challenges of retaining electronic records and on constructive solutions. I look forward to the statements of our witnesses.

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