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ONE HUNDRED THIRTEENTH CONGRESS

# 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 23, 2014

I want to get right to the heart of the accusation Republicans have been making for the past week. What are they really saying? They are saying that Lois Lerner intentionally—intentionally—destroyed her emails, and that IRS officials helped cover it up. Chairman Issa has been leading the charge. These are some of the accusations he has made:

- On June 13, Chairman Issa suggested that this was "nefarious conduct that went much higher than Lois Lerner."
- On June 18, he said "the emails of a prominent official don't just disappear without a trace unless that was the intention."
- On June 19, he said Ms. Lerner "made the decision not to have this drive recovered."
- And just this morning, he said "the Justice Department, the IRS, and the White House are interested in her succeeding in hiding what she's hiding."

Chairman Issa made these accusations on national television, without first obtaining a briefing from IT officials at the IRS who could have explained what really happened. And he made them before hearing from the IRS Commissioner.

Mr. Koskinen testified last Friday before the Ways and Means Committee. And now that we have the facts, they tell a vastly different story.

Our Committee has obtained no evidence to support Chairman Issa's claim that Lois Lerner intentionally destroyed her emails. To the contrary, we have now obtained contemporaneous evidence from 2011 showing the exact opposite—that this was a technological problem with her computer.

In Mr. Koskinen's testimony last Friday, he walked through email after email from 2011 showing that Ms. Lerner sought help from IT staff at the IRS, and that they went to great lengths to recover her data, but at the end of that process, they could not do so.

Mr. Koskinen also testified last week that the IRS took the extraordinary step of sending Ms. Lerner's hard drive to experts in the forensic lab at the IRS Criminal Investigation Division, but even they could not recover her data.

On August 5, 2011, Ms. Lerner received an email with the bad news. It said this: "Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecoverable. I am very sorry. Everyone involved tried their best."

So, if anyone wants *actual evidence* of what happened in this case, now we have it. I ask unanimous consent that all of these emails—from July 19, July 20, August 1, and August 5—be entered into the official hearing record. These emails are all from 2011, well *before* any congressional investigation began. And they show that Ms. Lerner's computer crashed *before* she was informed that IRS employees in Cincinnati were using inappropriate search terms, according to the Inspector General.

Now, we can certainly take issue with why the IRS did not have backup tapes for this data. As Mr. Koskinen testified last week, IRS policy in 2011 was to recycle backup tapes after six months to save money. He also explained that this policy was changed in 2013 to save all backup tapes.

The fact is that there are longstanding problems with electronic record-keeping at federal agencies. The Bush Administration lost millions of emails relating to the U.S. Attorney firings, the outing of covert CIA agent Valerie Plame, and other investigations. In 2007, White House spokeswoman Dana Perino admitted that they lost five million emails. As she said at the time, "We screwed up, and we're trying to fix it."

There has been some progress since then, but I have always believed we need to do more. That is why nearly a year and a half ago, I introduced the Electronic Message Preservation Act. My bill would have required federal agencies to preserve email records electronically. Although this Committee voted on a bipartisan basis to approve my legislation, it has languished since then, and House Republicans have declined to bring it to the House floor for a vote.

I believe our Committee's work should be a responsible effort to obtain the facts. It should not be an unseemly race against other Republicans to hold the first hearing in front of the cameras. And it should not be a ludicrous competition for the most hyperbolic sound-bites based on the least amount of evidence.

In this case, Republicans have been trying desperately—and unsuccessfully—for more than a year to link this scandal to the White House. Rather than continuing on this path, I sincerely hope we will turn to constructive legislation with concrete solutions to help federal agencies run more effectively and efficiently.