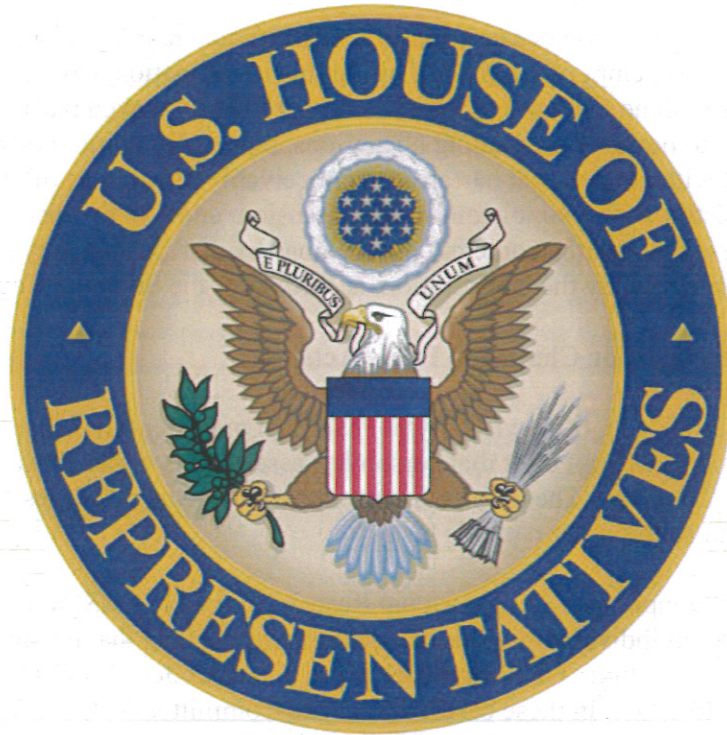


# MINORITY VIEWS

## Democratic Members of the Committee on Oversight and Government Reform



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### OPPOSITION TO RESOLUTION BY CHAIRMAN DARRELL ISSA PROPOSING THAT THE HOUSE OF REPRESENTATIVES HOLD LOIS LERNER IN CONTEMPT OF CONGRESS

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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES  
113TH CONGRESS  
APRIL 10, 2014

When Chairman Issa demanded—with only a week’s notice—that Ms. Lerner appear before the Committee on March 5, her attorney had obligations out of town, so he requested an additional seven days to prepare his client to testify. If Chairman Issa had sought our input on this request, every one of us would have accepted it without a moment’s hesitation. Anyone actually interested in obtaining Ms. Lerner’s testimony would have done the same.

We wanted to question Ms. Lerner about the Inspector General’s finding that she failed to conduct sufficient oversight of IRS employees in Cincinnati who developed inappropriate terms to screen tax-exempt applicants. We wanted to know why she did not discover the use of these terms for more than a year, as the Inspector General reported, and how new inappropriate terms were put in place after she had directed employees to stop using them. We also wanted to know why she did not inform Congress sooner about the use of these inappropriate terms.

Instead, Chairman Issa rejected this request without consulting any of us. Even worse, he went on national television and stated—inaccurately—that Ms. Lerner had agreed to testify without the extension, scuttling the offer from Ms. Lerner’s attorney. This counterproductive action deprived the Committee of Ms. Lerner’s testimony, deprived us of the opportunity to question her, and deprived the American people of information important to our inquiry.

### **Independent Experts Conclude That Chairman Issa Botched Contempt Proceedings**

Based on an overwhelming number of legal assessments from Constitutional law experts across the country—and across the political spectrum—we believe that pressing forward with contempt based on the fatally flawed record compiled by Chairman Issa would undermine the credibility of the Committee and the integrity of the House of Representatives.

We do not believe that Ms. Lerner “waived” her Fifth Amendment rights during the Committee’s hearing on May 22, 2013, when she gave a brief statement professing her innocence. Ms. Lerner’s attorney wrote to the Committee before the hearing making clear her plan to exercise her Fifth Amendment right not to testify, yet Chairman Issa compelled her to appear in person anyway. Ms. Lerner relied on her attorney’s advice at every stage of the proceeding, and there is no doubt about her intent. As the Supreme Court held in 1949, “testimonial waiver is not to be lightly inferred and the courts accordingly indulge every reasonable presumption against finding a testimonial waiver.”

In addition, 31 independent legal experts have now come forward to conclude that Chairman Issa botched the contempt proceeding when he abruptly adjourned the Committee’s hearing on March 5, 2014. In an effort to prevent Ranking Member Cummings from speaking, Chairman Issa rushed to end the hearing, ignored the Ranking Member’s repeated requests for recognition, silenced the Ranking Member’s microphone, and drew his hand across his neck while ordering Republican staff to “close it down.”

According to more than two dozen Constitutional law experts who have reviewed the record before the Committee, the legal byproduct of Chairman Issa’s actions on March 5 was that—in his rush to silence the Ranking Member—he failed to take key steps required by the Constitution, according to the Supreme Court. Specifically, these experts found that the

## **Democrats Call for Full Release of All Committee Interview Transcripts**

Rather than jeopardizing Constitutional protections and continuing to waste taxpayer funds in pursuit of deficient contempt litigation, we call on the Committee to release copies of the full transcripts of all 38 interviews conducted during this investigation that have not been released to date.

For the past year, Chairman Issa's central accusation in this investigation has been that the IRS engaged in political collusion directed by—or on behalf of—the White House. Before the Committee received a single document or interviewed one witness, Chairman Issa went on national television and stated: "This was the targeting of the President's political enemies effectively and lies about it during the election year."

The full transcripts show definitively that the Chairman's accusations are baseless. They demonstrate that the White House played no role in directing IRS employees to use inappropriate terms to screen tax-exempt applicants, they show that there was no political bias behind those actions, and they explain in detail how the inappropriate terms were first developed and used.

Until now, Chairman Issa has chosen to leak selected excerpts from interview transcripts and withhold portions that directly contradict his public accusations. For example, Chairman Issa leaked cherry-picked transcript excerpts prior to an appearance on national television on June 2, 2013. When pressed on why he provided only portions instead of the full transcripts, he responded: "these transcripts will all be made public."

On June 9, 2013, Ranking Member Cummings asked Chairman Issa to "release publicly the transcripts of all interviews conducted by Committee staff."

This request included, for example, the full transcript of an interview conducted with a Screening Group Manager in Cincinnati who identified himself as a "conservative Republican." This official explained how one of his own employees first developed the inappropriate terms, and he explained that he knew of no White House involvement or political motivation. As he told us: "I do not believe that the screening of these cases had anything to do other than consistency and identifying issues that needed to have further development."

Although Chairman Issa had promised to release the transcripts, he responded to this request by calling the Ranking Member "reckless" and claiming that releasing the full transcripts would "undermine the integrity of the Committee's investigation." The Ranking Member asked Chairman Issa to "identify the specific text of the transcripts you believe should be withheld from the American public," but he refused. As a result, the Ranking Member released the full transcript of the Screening Group Manager, while deferring to the Chairman on the others.

It has been more than nine months since Chairman Issa promised on national television to release the full transcripts, and we believe it is now time for the Chairman to make good on his promise.

*Elijah E. Cummings*

Rep. Elijah E. Cummings

*Eleanor Holmes Norton*

Rep. Eleanor Holmes Norton

*Wm. Lacy Clay*

Rep. Wm. Lacy Clay

*Jim Cooper*

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*Peter Welch*

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Rep. Steven Horsford