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JW Obtains IRS Documents Showing Lerner in Contact With DOJ about Potential Prosecution of Tax-Exempt Groups

May 9, 2013, email reveals IRS plans to meet with Department of Justice over whether to prosecute groups that “lied” about plans for political activity

(Washington, DC) – Judicial Watch today released [a new batch of internal IRS documents](#) revealing that former IRS official Lois Lerner communicated with the Department of Justice (DOJ) about whether it was possible to criminally prosecute certain tax-exempt entities. The documents were obtained as a result of an October 2013 Judicial Watch Freedom of Information Act (FOIA) [lawsuit](#) filed against the Internal Revenue Service (IRS) after the agency refused to respond to four FOIA requests dating back to May 2013 (*Judicial Watch, Inc. v. Internal Revenue Service* (No. 1:13-cv-01559)).

The newly released IRS documents contain an email exchange between Lerner and Nikole C. Flax, then-Chief of Staff to then-Acting IRS Commissioner Steven T. Miller discussing plans to work with the DOJ to prosecute nonprofit groups that “lied” (Lerner’s quotation marks) about political activities. The exchange includes the following:

- [May 8, 2013](#): Lerner to Flax

I got a call today from Richard Pilger Director Elections Crimes Branch at DOJ ... He wanted to know who at IRS the DOJ folks [sic] could talk to about Sen. Whitehouse idea at the hearing that DOJ could piece together false statement cases about applicants who “lied” on their 1024s – saying they weren’t planning on doing political activity, and then turning around and making large visible political expenditures. DOJ is feeling like it needs to respond, but want to talk to the right folks at IRS to see whether there are impediments from our side and what, if any damage this might do to IRS programs.

I told him that sounded like we might need several folks from IRS ...

- [May 9, 2013](#): Flax to Lerner

I think we should do it – also need to include CI [Criminal Investigation Division], which we can help coordinate. Also, we need to reach out to FEC. Does it make sense to consider including them in this or keep it separate?

Lerner then “[handed off](#)” scheduling the issue to Senior Technical Adviser, Attorney Nancy Marks, who was then supposed to set up the meeting with the DOJ. Lerner also decided that it would be DOJ’s decision as to whether representatives from the Federal Election Commission would attend.

Democratic Rhode Island Senator Sheldon Whitehouse had [held a hearing](#) on April 9 during which, “in questioning the witnesses from DOJ and IRS, Whitehouse asked why they have not prosecuted 501(c)(4) groups that have seemingly made false statements about their political activities.” Lerner described the impetus for this hearing in a March 27, 2013, [email](#) to top IRS staff:

As I mentioned yesterday — there are several groups of folks from the FEC world that are pushing tax fraud prosecution for c4s who report they are not conducting political activity when they are (or these folks think they are). One is my ex-boss Larry Noble (former General Counsel at the FEC), who is now president of Americans for Campaign Reform. This is their latest push to shut these down. One IRS prosecution would make an impact and they wouldn't feel so comfortable doing the stuff.

So, don't be fooled about how this is being articulated – it is ALL about 501(c)(4) orgs and political activity.

But in an [email](#) sent a few minutes earlier, Lerner acknowledged prosecutions would evidently be at odds with the law:

Whether there was a false statement or fraud regarding an [*sic*] description of an alleged political expenditure that doesn't say vote for or vote against is not realistic under current law. Everyone is looking for a magic bullet or scapegoat — there isn't one. The law in this area is just hard.

The documents also include email exchanges showing that before Lerner's May 10, 2013, [speech to the American Bar Association blaming "low-level" employees in Cincinnati for targeting tax-exempt organizations](#), the IRS Exempt Organizations division was scrambling to defuse the emerging targeting scandal:

- [May 1, 2013](#): After receiving an email from an assistant showing that 501(c)(4) applications had increased from 1591 in 2010 to 3398 in 2012, Lerner wrote back, "Looks to me like 2010-2012 doubled too. Oh well – thanks."
- [May 2, 2013](#): Discussing an upcoming conference call with approximately 100 congressional staffers on May 22, Lerner cautions aides, "Need to be careful not to mention sequester/furlough unless asked although can allude to budget and resources restraints."
- [May 2, 2013](#): In response to an email reminding her about the upcoming conference call with congressional staffers, Lerner responded, "Arrgh – I just saw it. Sharon [White] could skate, but Cindy [Thomas] is the person who could answer that stuff. We need to give them some type of language in the event that type of question comes up" [apparently in reference to earlier email referencing "sensitive issues"].

The new documents obtained by Judicial Watch also include emails exchanged after Lerner's May 10 ABA speech:

- [May 10, 2013](#): In an email to an aide responding to a request for information from a *Washington Post* reporter, Lerner admits that she "can't confirm that there was anyone on the other side of the political spectrum" who had been targeted by the IRS. She then adds that "The one with the names used were only know [*sic*] because they have been very loud in the press."
- [May 10, 2013](#): An email from former Cincinnati program manager Cindy Thomas excoriates Lerner for her comments blaming ["low-level" employees in its Cincinnati office for targeting tax-exempt organizations that had "Tea Party" or "Patriots" in their names during the 2012 election](#). Highlighting the words "low-level workers" in bold-face type each of the seven times she used it in short, pungent email, Thomas asked, "How am I supposed to keep the **low-level workers** motivated when the public believes they are nothing more than **low-level workers** and now will have no respect for how they are working cases?" Lerner's response nearly an hour later was a terse, "I will be back shortly and give you a call."
- [May 15, 2013](#): In an email from an aide to Lerner, the aide specifically mentions "Tea Party Organizations, the "Tea Party movement," and "Tea Party Patriots" as organizations targeted by the IRS.

The Judicial Watch FOIA requests came on the heels of an explosive May 14, 2013, [Treasury Inspector General report](#) revealing that the IRS had singled out groups with conservative-sounding terms such as “patriot” and “Tea Party” in their titles when applying for tax-exempt status. The IG probe determined that “Early in Calendar Year 2010, the IRS began using inappropriate criteria to identify organizations applying for tax-exempt status to (*e.g.*, lists of past and future donors).” According to the report, the illegal IRS reviews continued for more than 18 months and “delayed processing of targeted groups’ applications” preparing for the 2012 presidential election.

Lerner, who headed the IRS division that handles applications for tax-exempt status, refused to testify at a May 2013 hearing before Rep. Darrell Issa’s (R-CA) House Oversight Committee, demanding immunity concerning her role in the targeting scandal. Lerner retired from the IRS with full benefits on September 23 after an internal investigation found she was guilty of “neglect of duties” and was going to call for her ouster, [according to news reports](#). On April 9, 2014, the Ways and Means Committee referred Lois Lerner to the DOJ for [criminal prosecution](#). On April 10, 2014, the House Oversight Committee voted to hold Lerner in [contempt of Congress](#).

“These new emails show that the day before she broke the news of the IRS scandal, Lois Lerner was talking to a top Obama Justice Department official about whether the DOJ could prosecute the very same organizations that the IRS had already improperly targeted,” said Judicial Watch President Tom Fitton. “The IRS emails show Eric Holder’s Department of Justice is now implicated and conflicted in the IRS scandal. No wonder we had to sue in federal court to get these documents.”