

A. (TAX) <Ronald.A.Cimino@tax.USDOJ.gov> (b)(6)(7)(C) per CRM
Cc: Buretta, John; Agrast, Mark D. (OLA) (JMD);
Subject: RE: New Whitehouse question regarding Campaign Finance Investigation and Prosecution

All: (b)(5) per OIP
(b)(5) per OIP

From: Shatz, Eileen M. (TAX)
Sent: Monday, April 08, 2013 4:59 PM
To: Erb, William (OLA); Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM);
Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman,
Daniel (CRM); Lenerz, Daniel J. (CRM); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM
(CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: New Whitehouse question regarding Campaign Finance Investigation and Prosecution

Bill- Will look at this now.

From: Erb, William (OLA)
Sent: Monday, April 08, 2013 4:54 PM
To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond
(CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz,
Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM
(CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: New Whitehouse question regarding Campaign Finance Investigation and Prosecution
Importance: High

All: New question from Sen. Whitehouse. Sen. Whitehouse is likely to ask AAAG Raman whether the Department of Justice is too deferential to IRS in deciding to prosecute 501(c) organizations that make fraudulent statements regarding their political activities in their IRS filings. Sen. Whitehouse is curious why, for example, if a 501(c) tax organization files were leaked, and they clearly showed that the organization made false statements, why the Department of Justice wouldn't prosecute the case by itself and not wait for the IRS. Looping in the Tax Division who also can help CRIM come up with a quick response. Thanks, Bill.

From: Erb, William (OLA)
Sent: Monday, April 08, 2013 12:20 PM
To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond
(CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz,
Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM
(CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation

All: Please see Bradley Smith's (Minority witness) testimony. Most of his criticism is directed at the FEC and IRS, but he does make reference to the Edward's prosecution and overzealous prosecutions, but again, most of his criticism is directed at the FEC and IRS. Thanks, Bill.

From: Erb, William (OLA)
Sent: Monday, April 08, 2013 10:27 AM
To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation

All: Please see the attached testimonies and Bio of the Majority's witnesses. Thanks, Bill.

From: Erb, William (OLA)
Sent: Friday, April 05, 2013 7:50 PM
To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation

All: Following up on Mythili's moot from today:

1) CRIM, as we discussed today, can you please send me the questions that we'd like the Members to ask Mythili during the hearing. (b)(5) per OIP
(b)(5) per OIP

2) Mythili's OMB cleared written testimony was sent to subcommittee staff this evening;

3) Mythili please recall to review the initial set of questions from staff that I forwarded to the group earlier;

4) So far, Sen. Klobuchar, Sen. Cruz, and Sen. Lee are likely to attend. Sen. Feinstein is unlikely to attend, and it is still unclear if Sen. Sessions will attend. I will be speaking with Sen. Lee's and Sen. Cruz's staff on Monday. I will pass on more information from the committee staff as I get it.

5) Please don't forget our call with the IRS at 11:00 am on Monday. More later.

Thanks, and have a nice weekend. Bill

From: Erb, William (OLA)

Sent: Thursday, April 04, 2013 5:55 PM

To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation

All: Attached is a copy of IRS' draft testimony for the upcoming hearing. IRS is providing us with this "FYI" only draft in order to give us a better idea of what they expect to testify about at the hearing. IRS is not accepting comments now on this draft, particularly since it is still being cleared within the Treasury Department. IRS prefers that we submit our comments on the testimony through the OMB process once it is placed in circulation. Thanks, Bill.

From: Erb, William (OLA)

Sent: Tuesday, April 02, 2013 10:50 AM

To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation

SJC Majority staff just heard from the Minority that they've invited Brad Smith, Josiah H. Blackmore II/Shirley M. Nault Professor of Law at Capital University Law School. His bio is here: <http://law.capital.edu/faculty/bios/bsmith.aspx>. He is a former FEC commissioner.

Also, SJC staff is planning a conference call with the IRS later today, but it looks like they'll be able to provide a witness. More later, Bill

From: Erb, William (OLA)

Sent: Tuesday, April 02, 2013 8:45 AM

To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation

All: Following up on my earlier emails regarding the upcoming campaign finance hearing.

Updates:

1) IRS/Treasury is still considering whether to send a witness to the upcoming hearing. I understand IRS is continuing to discuss the possibility with Sen. Whitehouse's staff. I expect to hear very shortly of the IRS's decision;

(b)(5) per CRM

3) Mythili's testimony was cleared by ODAG and was sent to OMB yesterday morning;

4) I have been reaching out to Minority and Minority staff on the committee to determine whether their Senators have any particular questions or concerns that they plan to raise at the hearing. So far, I haven't heard much back from staff. Unfortunately, Senators and their staff often don't concentrate on an upcoming hearing until a few days before the hearing. Also, it doesn't help that Congress is on recess this week. I will continue to reach out to staff this week;

Oral Statement:

5) Now that Mythili's written testimony is with OMB, it probably makes sense for CRM to start drafting Mythili's oral statement. Mythili will have 5 minutes to give her opening statement. The general rule for getting an oral statement within 5 minutes is that it must be no more than 4.5 pgs, dbl spaced, 14pt font-times new roman. Also, the oral statement must stay within the "four corners" of the cleared written statement.

Hearing Procedures:

Mythili, will have 5 minutes for her opening statement, and then senators will ask questions in rounds that will likely be 7 minutes each. Senator questioning will be in order of seniority, as modified by the "early bird rule," whereby senators arriving early will have priority. Turn out among members for subcommittee hearings is typically pretty low, although there's no guarantee of this.

[From Ron Cimino's 3/28/13 email].

(b)(5) per CRM

From: Erb, William (OLA)
Sent: Thursday, March 28, 2013 4:02 PM
To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

All: Please see the two proposed witnesses that the majority is likely to have testify on the second panel: Larry Noble, President of Americans for Campaign Reform and former general counsel at the FEC, and Gregory Colvin of Adler Colvin, an expert on Internal Revenue Code/501c4 issues. The minority apparently has not decided on its witness yet. Importantly, Sen. Whitehouse has also invited a witness from the IRS to testify, and staff is waiting to hear back as to whether they'll be able to send someone. This is a suggestion we've made to staff several times now. More later. Bill.

From: Erb, William (OLA)
Sent: Tuesday, March 26, 2013 8:00 PM
To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

All: A few points from today's call with the IRS:

(b)(5) per CRM

(b)(5) per CRM

3) I explained to Sen. Whitehouse's staff again today (he called after our meeting) that we would not be sending a Tax witness to testify about the false statement issue relating to the 501(c)(4)s, because a Tax witness would have nothing more to say beyond what Mythili might say regarding the issue (i.e., that the Department would review a case for possible prosecution once it was referred to us).

4) I strongly suggested to staff that they speak to the IRS about any questions on the investigation of false statements on IRS forms 990 and 1024 regarding political activity by 501(c)(4) groups. I explained that the IRS might be able to clear up the "perception" vs. "reality" when it comes to 501(c)(4) misrepresentations, and the challenges of investigating these possible offenses to the extent that Citizens United is a recent decision, and the timing of reporting requirements by 501(c) organizations to the IRS. Thanks, Bill.

From: Erb, William (OLA)

Sent: Tuesday, March 26, 2013 12:32 PM

To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)

Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)

Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

Reminder: On today's call with the IRS will be Lois Lerner, Director of Exempt Organizations, her Senior Tech Advisor Judy Kindell, and Suzanne Sinno of IRS OLA. I provided the IRS with a copy of our draft testimony, and the list of the issues that Sen. Whitehouse sent us earlier regarding the hearing. My understanding is that of those who can make it, we will be gathering in CRM's large conference at 1:30 for the call. Alternatively, the call in number is 888-331-8226; ACCESS CODE: (b)(6) per OIP. See you at 1:30. Thanks, Bill.

From: Erb, William (OLA)

Sent: Monday, March 25, 2013 2:48 PM

To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM); Cimino, Ronald A. (TAX)

Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)

Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

All: IRS has accepted our invitation for the conference call tomorrow, Tuesday at 1:30 on the 501(c)(4) matters, and the upcoming SJC hearing on criminal enforcement of the campaign finance laws. (b)(6)(7)(C) per CRM the call in number is: 888-331-8226; ACCESS CODE: (b)(6) per OIP. Looping in Ron Cimino of Criminal Tax who I understand will be representing Tax. Lois Lerner, Director of Exempt Organizations and her Senior Tech Advisor Judy Kindell will be on the call for the IRS. Thanks, Bill.

From: Erb, William (OLA)
Sent: Monday, March 25, 2013 1:15 PM
To: Raman, Mythili (CRM); (b)(6)(7)(C) per CRM (CRM); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

Mythili, I have been in contact with IRS on setting up the meeting and waiting for them to confirm that Tuesday at 1:30 is still an acceptable time for them to have a conference call. IRS originally proposed Tuesday at 1:30 as an acceptable time for a call. I'll let you know when I hear more from IRS. Thanks, Bill.

From: Raman, Mythili (CRM)
Sent: Monday, March 25, 2013 1:10 PM
To: (b)(6)(7)(C) per CRM (CRM); Erb, William (OLA); Wroblewski, Jonathan (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM); (b)(6)(7)(C) per CRM (CRM)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA); (b)(6)(7)(C) per CRM (CRM)
Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

Bill – Are we going to be calling IRS at 1:30? As far as I know, CRM hasn't actually invited anyone from IRS to the mtg.

From: (b)(6)(7)(C) per CRM
Sent: Monday, March 25, 2013 12:56 PM
To: Erb, William (OLA) (JMD); Wroblewski, Jonathan; Raman, Mythili; Hulser, Raymond; Smith, Jack; Burton, Faith (OLA) (JMD); Levine, Doug (OLA) (JMD); Suleiman, Daniel; Lenerz, Daniel J.; 'Eileen.M. Shatz@tax.USDOJ.gov'; OBrien, Paul
Cc: Buretta, John; Agrast, Mark D. (OLA) (JMD); Chen, Edgar (OLA) (JMD); (b)(6)(7)(C) per CRM
Subject: Re: Hearing on Campaign Finance Investigation is scheduled for 4/9.

PIN will be there.

(b)(6)(7)(C) per CRM
(b)(6)(7)(C) per CRM Election Crimes Branch
Public Integrity Section
Criminal Division
U.S. Department of Justice

From: Erb, William (OLA) [mailto:William.Erb@usdoj.gov]
Sent: Monday, March 25, 2013 12:54 PM Eastern Standard Time

To: Wroblewski, Jonathan; Raman, Mythili; Hulser, Raymond; Smith, Jack; Burton, Faith (OLA) (JMD); Levine, Doug (OLA) (JMD); Suleiman, Daniel; Lenerz, Daniel J.; Shatz, Eileen M. (TAX) <Eileen.M.Shatz@tax.USDOJ.gov>; OBrien, Paul; (b)(6)(7)(C) per CRM
Cc: Buretta, John; Agrast, Mark D. (OLA) (JMD); Chen, Edgar (OLA) (JMD); (b)(6)(7)(C) per CRM
Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

All: Just want to make sure that we are confirmed to speak with the IRS at 1:30 tomorrow as part of hearing prep, correct? Thanks, Bill.

From: Erb, William (OLA)
Sent: Friday, March 22, 2013 3:08 PM
To: Wroblewski, Jonathan (CRM); Raman, Mythili (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA)
Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

All: IRS Leg proposes the following days and times to have the call on the 501(c)(4) issues. Can CRIM and Tax please let us know when you're available for the call. I don't think we need to have a big group. Please let me know. Thanks, Bill.

IRS' availability:

Tuesday, 3/26 – after 11:00/before 3:00

Wednesday, 3/27 – after 11:30/before 1:30

Thursday, 3/28 – after 10:30/before 12:30

From: Erb, William (OLA)
Sent: Tuesday, March 19, 2013 1:34 PM
To: Wroblewski, Jonathan (CRM); Raman, Mythili (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Burton, Faith (OLA); Levine, Doug (OLA); Suleiman, Daniel (CRM); Lenerz, Daniel J. (CRM); Shatz, Eileen M. (TAX); OBrien, Paul (CRM); (b)(6)(7)(C) per CRM (CRM)
Cc: Buretta, John (CRM); Agrast, Mark D. (OLA); Chen, Edgar (OLA)
Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

All: Following up on our hearing prep from last Friday:

(b)(5) per CRM & OIP

(b)(5) per CRM

5) Later today I will discuss the hearing with Minority staff. Thanks, Bill.

From: Erb, William (OLA)

Sent: Wednesday, March 13, 2013 12:41 PM

To: Wroblewski, Jonathan (CRM); Raman, Mythili (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Agrast, Mark D. (OLA); Burton, Faith (OLA); Levine, Doug (OLA)

Cc: Appelbaum, Judy (OLA); Axelrod, Matthew (ODAG); Lenerz, Daniel J. (CRM); Buretta, John (CRM); Suleiman, Daniel (CRM); Shatz, Eileen M. (TAX)

Subject: RE: Hearing on Campaign Finance Investigation is scheduled for 4/9.

(b)(5) per CRM

(b)(5) per CRM

(b)(5) per CRM

Thanks, Bill.

From: Griffin, Ayo (Judiciary-Dem) [mailto:Ayo_Griffin@Judiciary-dem.senate.gov]
Sent: Tuesday, March 12, 2013 3:52 PM
To: Erb, William (OLA)
Cc: Lilley, Stephen (Judiciary-Dem)
Subject: RE: Hearing on Campaign Finance Investigation

Hi Bill,

Thanks for the message. I see your point, but while part of Sen. Whitehouse's interest is focused on certain conduct by 501(c)(4) groups, I don't think that we could really say that for the purposes of this hearing that interest extends to oversight and regulation of these groups, or the regulatory scheme surrounding these groups.

For the purpose of this hearing, Sen. Whitehouse's interest in 501(c)(4) groups is narrowly focused on criminal enforcement of potential material misstatements made under penalty of perjury. He is specifically interested in learning more about the Department of Justice's approach to these cases, as he is for the variety of non-tax issues that we've also discussed. By contrast, Sen. Whitehouse would not ask Ms. Raman about, for instance, what the appropriate limitations are on political spending by 501(c)(4) groups.

Since Sen. Whitehouse isn't planning to seek justifications for or explanations of the framework governing 501(c)(4) groups from a government witness, and since the majority of the issues that he's interested in don't relate to taxes or the IRS at all, we're not inclined to invite a Treasury Dept. witness to the hearing at this point. In part, we wouldn't want to have to deal with potential committee jurisdictional issues when IRS/Treasury issues aren't the main focus of the hearing. Hopefully this isn't a problem for you, but we're happy to work through any concerns you may have.

Thanks,

Ayo

From: Wroblewski, Jonathan (CRM)

Sent: Tuesday, March 12, 2013 8:35 AM

To: Erb, William (OLA); Raman, Mythili (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Agrast, Mark D. (OLA); Burton, Faith (OLA); Levine, Doug (OLA)

Cc: Appelbaum, Judy (OLA); Axelrod, Matthew (ODAG); Lenerz, Daniel J. (CRM); Buretta, John (CRM); Suleiman, Daniel (CRM); Shatz, Eileen M. (TAX)

Subject: Re: Hearing on Campaign Finance Investigation is scheduled for 4/9.

(b)(5) per CRM

-Jonathan

From: Erb, William (OLA) [mailto:William.Erb@usdoj.gov]

Sent: Monday, March 11, 2013 12:30 PM Eastern Standard Time

To: Wroblewski, Jonathan; Raman, Mythili; Hulser, Raymond; Smith, Jack; Agrast, Mark D. (OLA) (JMD); Burton, Faith (OLA) (JMD); Levine, Doug (OLA) (JMD)

Cc: Appelbaum, Judy (OLA) (JMD); Axelrod, Matthew (ODAG) (JMD)

Subject: Re: Hearing on Campaign Finance Investigation is scheduled for 4/9.

Now looping in Doug. Doug, please see below. Thanks, Bill.

From: Erb, William (OLA)

Sent: Monday, March 11, 2013 12:28 PM

To: Wroblewski, Jonathan (CRM); Raman, Mythili (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Agrast, Mark D. (OLA); Burton, Faith (OLA)

Cc: Appelbaum, Judy (OLA); Axelrod, Matthew (ODAG)

Subject: Re: Hearing on Campaign Finance Investigation is scheduled for 4/9.

All: I want to loop in Doug Levin of OLA who will be handling the internal and OMB clearance of Mythili's testimony for the April 9th hearing. Doug, can you please send out the date that CRIM must provide you with Mythili's testimony in order to get the testimony cleared internally and with OMB. Doug, when setting up the deadlines for clearance please allow for extra time, sense other agencies might have comments on our testimony. Thanks, Bill.

From: Erb, William (OLA)
Sent: Thursday, March 07, 2013 03:56 PM
To: Wroblewski, Jonathan (CRM); Raman, Mythili (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Agrast, Mark D. (OLA)
Cc: Appelbaum, Judy (OLA); Axelrod, Matthew (ODAG)
Subject: Re: Hearing on Campaign Finance Investigation is scheduled for 4/9.

All: Whitehouse's staff has confirmed that the campaign finance hearing will take place on April 9th and they will be sending out the formal invitation shortly. So far, I have confirmed that there will be two panels with the government witnesses testifying first. Waiting for staff to confirm who else will be testifying. Staff does not have any additional intel about the hearing for now. More later. Bill.

From: Erb, William (OLA)
Sent: Wednesday, March 06, 2013 01:24 PM
To: Wroblewski, Jonathan (CRM); Raman, Mythili (CRM); Hulser, Raymond (CRM); Smith, Jack (CRM); Agrast, Mark D. (OLA)
Cc: Appelbaum, Judy (OLA)
Subject: Fw: Hearing on Campaign Finance Investigation likely to be on the week of 4/8

All: See the below from Whitehouse's staff confirming that the campaign finance hearing will not take place during the week of 3/20, but instead possibly during the week of 4/8. Ray, I will also send you a paper Tax prepared on cases related to 501(c)(4) This issue came up at the briefing. Thanks, Bill.

From: Griffin, Ayo (Judiciary-Dem) [mailto:Ayo_Griffin@Judiciary-dem.senate.gov]
Sent: Wednesday, March 06, 2013 12:56 PM
To: Erb, William (OLA)
Cc: Lilley, Stephen (Judiciary-Dem) <Stephen_Lilley@Judiciary-dem.senate.gov>
Subject: RE: Hearing on Campaign Finance Investigation

Hi Bill,

Yes, we can confirm that the hearing will not take place on 3/20, or during that week. We are now seeking to confirm a date during the week of 4/8, and I will let you know as soon as we have that date finalized.

We are talking to a number of experts, both academics and campaign finance lawyers, about appearing as witnesses, but have not confirmed anyone yet. We will let you know when we get the witnesses set.

I'm generally available and happy to discuss further, but I don't think we really have any updated information on our end aside from what I mentioned above, so I'd hate for you to have to find time during your trip. If you would like to talk, Friday morning before 10:30am EST would be good (I assume that with the time difference, morning times would be preferable to you).

Best,

Ayo

From: Erb, William (OLA) [mailto:William.Erb@usdoj.gov]
Sent: Wednesday, March 06, 2013 12:34 PM
To: Griffin, Ayo (Judiciary-Dem)
Cc: Lilley, Stephen (Judiciary-Dem)
Subject: Re: Hearing on Campaign Finance Investigation

Ayo, (b)(6) per OIP I was unaware that Stephen spoke to Jonathan W recently about the hearing being possible scheduled for the week of April the 8th. Can you at this point confirm that the hearing will not occur during the week of 3/20? Do you have a few seconds to discuss? If so, when would be a good time to call? Also, do you have any idea who the other witnesses might be? Thanks, Bill.

From: Griffin, Ayo (Judiciary-Dem) [mailto:Ayo_Griffin@Judiciary-dem.senate.gov]
Sent: Tuesday, March 05, 2013 06:30 PM
To: Erb, William (OLA)
Subject: RE: Hearing on Campaign Finance Investigation

Hi Bill,
That's what we had in mind, so that works fine for us. Also, I think Stephen may have mentioned this to Jonathan Wroblewski, but we're now looking at the week of Apr. 8 for the hearing, so it will be a few weeks later than we had previously thought. I'll let you know as soon as I know the specific date.
Thanks,

Ayo

From: Erb, William (OLA) [mailto:William.Erb@usdoj.gov]
Sent: Tuesday, March 05, 2013 1:49 PM
To: Griffin, Ayo (Judiciary-Dem)
Subject: Re: Hearing on Campaign Finance Investigation

Ayo, let us know. Also, as we discussed and as usual practice, our witness will testify by themselves or with a "government" panel. Thanks, Bill.

From: Griffin, Ayo (Judiciary-Dem) [mailto:Ayo_Griffin@Judiciary-dem.senate.gov]
Sent: Monday, March 04, 2013 06:07 PM
To: Erb, William (OLA)
Subject: RE: Hearing on Campaign Finance Investigation

That's great, Bill. Thanks very much. We're getting the final details nailed down on our end and will get back to you once we've confirmed our date.

From: Erb, William (OLA) [mailto:William.Erb@usdoj.gov]
Sent: Monday, March 04, 2013 6:03 PM
To: Griffin, Ayo (Judiciary-Dem)
Subject: Re: Hearing on Campaign Finance Investigation

Ayo, I confirmed that we are willing to participate with a witness in the upcoming campaign finance hearing, depending on the availability of our witness once you announce the hearing and we receive two weeks advance written notice. Thanks, Bill.

From: Griffin, Ayo (Judiciary-Dem) [mailto:Ayo_Griffin@Judiciary-dem.senate.gov]
Sent: Friday, March 01, 2013 07:09 PM
To: Erb, William (OLA)
Subject: RE: Hearing on Campaign Finance Investigation

Will do. Thanks. (b)(6) per OIP

From: Erb, William (OLA) [mailto:William.Erb@usdoj.gov]
Sent: Friday, March 01, 2013 5:20 PM
To: Griffin, Ayo (Judiciary-Dem)
Subject: Re: Hearing on Campaign Finance Investigation

Ayo, please also include faith.burton@usdoj.gov and Mark.Agrast@usdoj.gov if you do send us an invite. Thanks, Bill.

From: Griffin, Ayo (Judiciary-Dem) [mailto:Ayo_Griffin@Judiciary-dem.senate.gov]
Sent: Wednesday, February 27, 2013 09:47 AM
To: Erb, William (OLA)
Subject: Hearing on Campaign Finance Investigation

Hi Bill,

It was good talking with you yesterday. As we discussed, Sen. Whitehouse would like to convene a subcommittee hearing to look into issues surrounding investigation and prosecution of criminal campaign finance violations by outside groups following Citizens United, and would like to invite a witness from DoJ to testify on the Department's approach to these kinds of potential violations, and to any barriers to effective investigation or prosecution. As I mentioned when we spoke, we have not yet set a hearing date with Chairman Leahy's office, but we are hopeful that we will be able to schedule something for this work period, most likely the week of Mar. 18.

The scope of the hearing will be similar to that for the very helpful briefing that you recently organized for us. Sen. Whitehouse would like to focus on the activities of groups attempting to influence elections through independent expenditures and electioneering communications. Some of the potential violations that he most interested in learning about the investigation of include:

1. Knowing and willful violations of FECA prohibitions on coordination between independent organizations and candidates or parties. 2 U.S.C. § 441a(a).
2. Knowing and willful violations of disclosure rules, such as prohibitions on contributing money in the name of another person. 2 U.S.C. § 441f.
3. Knowing and willful violations of prohibitions on political expenditures by foreign nationals, or the acceptance of funds from foreign nationals to be spent to influence federal elections. 2 U.S.C. § 441e.
4. Material false statements to the IRS regarding political activity in order to obtain and maintain 501(c)(4) status. 26 U.S.C. § 7206.

The overarching context here is that with unprecedented amounts of money being raised and spent to influence elections in the wake of Citizens United, and particularly being raised and spent by outside groups like super PACs and 501(c)(4) groups, which are less tightly regulated than candidates, parties, and conventional PACs, Sen. Whitehouse wants to make sure that the Department is able to effectively investigate, and when necessary, prosecute, the conduct of these groups.

With all of the public accounts about, for instance, shell companies being used to hide donor identities, or groups apparently misrepresenting their activities to the IRS, it would be helpful to know how the Department approaches these cases.

It would be particularly helpful if the witness could convey some of the points that came across in the briefing. One point that particularly resonated during the briefing was that the lack of disclosure in the fundraising of these groups makes it difficult to "follow the money" in the context of conduit transfer cases and foreign donation cases. Other issues raised that would be relevant include, for instance, that coordination cases can be challenging to prosecute because the coordination statute is not as clear as it might be; the high bar posed by knowing and willful standards; and privacy considerations when bringing a tax enforcement case. These are just some initial thoughts. We look forward to having a dialogue about what your people think would be informative and appropriate.

I hope this is helpful as you begin to make inquiries, and let's stay in touch as we both develop more information going forward.

Thanks,

Ayo

Ayo Griffin

Counsel

Subcommittee on Crime and Terrorism
Senator Sheldon Whitehouse, Chair
U.S. Senate Committee on the Judiciary
(202) 224-5168

[1] Michael Beckel, Nonprofit spends big on politics despite IRS limitation, NBC News, Jan. 28, 2013.

[2] AFF Form 1024.

[3] Letter to the IRS from AFF, August 18, 2008, at 3.

[4] Andy Kroll, Ex-IRS Director on Dark-Money Groups: "Investigate Them and Prosecute Them", Mother Jones, Jan. 14, 2013.

[5] American Future Fund, "Independent," YouTube (March 18, 2008).

[6] OpenSecrets.org, American Future Fund.

[7] OpenSecrets.org, 2012 Outside Spending, by Group.

[8] Beckel, *supra* note 13.

[9] Viveca Novak & Robert Maguire, Mystery Health Care Group Funneled Millions to Conservative Nonprofits, OpenSecrets.org.

[10] Crossroads GPS Form 1024 Part II Question 1.

[11] OpenSecrets.org, Crossroads GPS.

[12] *Id.*

[13] Americans for Responsible Leadership Form 1024.

[14] OpenSecrets.org, Americans for Responsible Leadership.

[15] Kim Barker, Controversial Dark Money Group Among Five That Told IRS They Would Stay Out of Politics, Then Didn't, ProPublica, Jan. 2, 2013.

[16] Chris Detrick, A peek at who's behind pro-Hatch nonprofit group, Salt Lake Tribune.

[17] OpenSecrets.org, Freedom Path.

[18] Rightchange.com II Form 1024.

[19] OpenSecrets.org, RightChange.com II.

[20] America is Not Stupid, Inc. Form 1024.

[21] OpenSecrets.org, America is Not Stupid.

[22] A Better America Now Form 1024.

[23] OpenSecrets.org, A Better America Now.
