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## **Lois Lerner Of IRS Is Held In Contempt, Next Prosecution?**

Lois Lerner, the former Director of Tax Exempt Organizations at the IRS, has been found in contempt of Congress by a vote of 231 to 187. Now she may face prosecution. She is retired now (with pension) and still stays mum. But when she testified before Congress, she read a statement saying she did nothing wrong.

Controversially, she then invoked the Fifth Amendment. The inconsistency can be viewed as a waiver of that right, and legal opinions vary. But with sensitive tax issues and stake, whether it was a waiver or not, Republicans sure didn't like it.

The House passed this resolution:

Recommending that the House of Representatives find Lois G. Lerner, former Director, Exempt Organizations, Internal Revenue Service, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform.



*My Trusty Gavel (Photo credit: steakpinball)*

This follows close on the heels of the House Oversight and Government Reform Committee, which recently [voted 21-12](#) to hold her in [contempt of Congress](#) for refusing to testify about the IRS Tea Party scandal. Next, Lerner's fate will be referred to the U.S. Attorney. And while it is not clear that she will even be charged with a crime, she could be.

And if charged, she could be convicted, facing jail and a fine of up to \$100,000. Many Republicans think Lois Lerner knows a lot and pushed hard for this result. Not long ago the House Ways and Means Committee [voted 23-14 to send a criminal referral](#) accusing her of "extreme bias" in scrutinizing conservative groups seeking tax-exempt status.

Now capped by contempt of Congress, a [14-page letter](#) to U.S. Attorney General Eric Holder said Lerner "may have violated multiple criminal statutes." It accuses her of using her position to improperly target conservative groups, impeding an investigation with misleading statements, and risking the disclosure of confidential taxpayer information. They are serious charges, much more so than contempt of Congress.

But when one adds up all the elements, if a panoply of charges were to be filed, they could be quite serious. A conviction could carry up to 11 years in prison. Lerner allegedly flagged the tax-exemption applications of conservative organizations such as Crossroads GPS and turned a blind eye to liberal groups like Priorities USA.

For the time being, though, the contempt citation means the controversy over Lerner's testimony before the House Oversight and Government Reform Committee will not go away. That much is clear. And taxpayers may feel that it's strange they are paying her pension, when some taxpayers aren't allowed to seek Fifth Amendment protection.

How is that? In a string of IRS cases, taxpayers could not take the Fifth. In sniffing out foreign bank accounts, the IRS and DOJ issue [John Doe summonses](#), indict foreign nationals, and more. The law requiring [FBARs](#) gives the government a hook to subpoena a taxpayer suspected of having an undisclosed offshore account. You can take the Fifth Amendment and refuse to testify, but can you take the Fifth on bank records?

You might think so, since the "act of production" privilege is part of the Fifth Amendment guarantee. The government can't compel you to produce incriminating documents. Clearly, bank records or FBARs could incriminate you.

Nevertheless, the [Fifth](#), [Seventh](#), [Ninth](#), and [Eleventh](#) Circuits say the Fifth Amendment provides no protection. The government victory in these cases hinges on [Shapiro v. United States](#), holding that you can be forced to produce "essentially regulatory" records if the conduct was not "inherently criminal" and the records are not purely personal. You might think foreign bank records are such hot buttons that the Fifth applies.

You also might think your foreign bank records are purely personal too, especially today. Nope, the government can make you incriminate yourself. Lawyers [petitioned](#) the U.S. Supreme Court for certiorari review, but the Court said [no](#).

As a result, some people are being forced to produce bank records that may land them in jail. Conversely, a retired IRS official with government pension can take the Fifth about official duties that go to the heart of taxpayer perceptions of a fair tax system. Admittedly, these are quite distinct issues. Arguably they are entirely unrelated.

But taxpayers may still scratch their heads, especially as they are writing big checks to the IRS to pay their taxes.

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