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Congress To IRS 'You Can't Take The Fifth', IRS To Congress 'You Can't Handle The Truth'

Perhaps it is human nature to imagine that someone who won't talk knows something juicy. In a criminal trial, we may assume that a defendant who won't take the stand must know something. Yet criminal defense lawyers rarely advise their clients to take the stand, and the law is clear that we cannot hold this against the defendant.



Nevertheless, having key IRS employees refuse to testify still grates on many. IRS Exempt Organization Chief Lois Lerner caused a kerfuffle when she invoked her Fifth Amendment rights. See [IRS Takes The Fifth, But You Can't](#). Ms. Lerner was Director of Exempt Organizations at the IRS so is a key witness in the [IRS Tea Party scandal](#) over targeting political groups applying for tax exempt status.

Controversially, she first read a statement saying she did nothing wrong. Then she invoked her Fifth Amendment rights. She remains on administrative leave from the IRS. This dismays the [House Committee on Oversight and Government Reform](#), chaired by [Rep. Darrell Issa](#) (R-CA). As a result, a [House Committee voted that she must testify despite the Fifth](#)

[Amendment](#). See [Resolution of the Committee on Oversight and Government Reform](#).

Legal experts disagree over whether her reading of a prepared statement and **thereafter** taking the Fifth was OK. See [Rogers v. United States](#), [Brown v. United States](#), and [Mitchell v. United States](#). Yet her lawyer, William W. Taylor III, said she would continue to assert her rights, which he claims she never waived. One answer might be complete or partial immunity, but that seems to be a sensitive topic in this case.

Meanwhile, another high level IRS employee, Greg Roseman, a Deputy Director at the IRS also [refused to testify](#). Some in Congress don't like how this is trending. True, Mr. Roseman was asked to testify about his relationship with a government contractor unrelated to the Lois Lerner matter. In fact it is far juicier. Mr. Roseman is said to have facilitated a huge IRS contract with a company owned by his close friend, an action prohibited by government contracting regulations.

Still, the chorus of Fifth Amendment protection annoyed some in Congress anew. In response, [Rep. Mo Brooks](#) (R-AL) [proposed legislation](#) to require federal workers to be fired if they don't answer questions from Congress. The bill, [HR 2458](#), was introduced on June 20, 2013, and has 14 [cosponsors](#). Basically, it would require federal employees who refuse to answer questions at a congressional hearing **after being granted immunity** to be fired.

A key qualifier is the grant of immunity. But the bill goes on to say that even if the federal employee is **not** granted immunity, he or she will still be fired if they refuse to answer certain questions in a congressional hearing. What questions?

If the questions **specifically, directly, and narrowly** relate to the official duties of the employee, the refusing employee will be fired. Finally, there's a firing rule for false testimony. If three-fourths of the congressional body to whom testimony is given finds that a Federal employee willfully or knowingly gave false testimony in a congressional hearing, the employee must be fired.

This bill may well go nowhere, as a great many bills do. Even if this bill progresses there will be debates about its constitutionality. The Fifth Amendment guarantees one's right not to incriminate oneself. But waivers are allowed, and what's a waiver can be debated.

Whatever the constitutional lawyers may say, for many, the business of government should be more transparent. And as the seemingly endless talks continue, at some point, someone may be tempted to mimic Jack Nicholson as Col. Nathan R. Jessup in [A Few Good Men \(1992\)](#): *“You can’t handle the truth!”*

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.