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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 11, 2013

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The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Cummings:

I received your letter of June 9, 2013, and the attached staff memorandum, criticizing the Committee's ongoing investigation into the Internal Revenue Service's inappropriate treatment of certain applicants for tax-exempt status.¹ I am confused by the discrepancies between the memorandum -- which acknowledges that the information obtained therein is "preliminary and not comprehensive" -- and the conclusion you stated on CNN that "the case is solved."² That conclusion was inaccurate and highly misleading, and your decision to make that declaration in a very public way was irresponsible and emblematic of your general aversion to conducting meaningful oversight of the Administration. In fact, any time the Committee endeavors to engage in such an effort, your participation is generally limited to obstructing or criticizing the process, if you decide to participate at all. I urge you to adopt a more responsible approach.

As with other Committee investigations, your letter and public comments illustrate your unwillingness to conduct oversight that calls into question the actions and assertions of the Administration. During the Committee's investigation of the ATF's flawed Operation Fast and Furious, you sent several letters intended to frustrate the Committee's ability to uncover information about the circumstances surrounding the murder of Border Patrol Agent Brian Terry.³ During the Committee's investigation into the Administration's failed green energy programs, you sent a letter objecting to the Committee's manner of obtaining information from key Department of Energy officials.⁴ As in those cases, your obstructionist tactics with respect to the IRS investigation do not advance the investigative interests of the Committee in any meaningful way.

¹ Letter from Hon. Elijah E. Cummings, Ranking Mem., H. Comm. on Oversight & Gov't Reform, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Jun. 9, 2013).

² CNN, State of the Union with Candy Crowley (June 9, 2013).

³ See, e.g., Letter from Hon. Elijah E. Cummings, to Hon. Darrell E. Issa (Apr. 1, 2011) (objecting to a subpoena issued to the Department of Justice).

⁴ See Letter from Hon. Elijah E. Cummings to Hon. Darrell E. Issa (Sep. 12, 2012).

Your public comments that “the case is solved” and that you would “wrap this case up and move on” stand in stark contrast to the facts.⁵ The Committee has just begun its investigation. The Committee has reviewed only a small fraction of responsive documents from the Treasury Inspector General for Tax Administration and has yet to receive any substantive documents from the IRS. The Committee has interviewed only four employees from the IRS’s Cincinnati office and only one employee from the IRS’s Washington, D.C. office. Your assertions, based on such limited information, are incredibly irresponsible. The Committee must -- and will -- conduct an exhaustive investigation. The American people demand and deserve nothing less.

Further, contrary to your public comments that IRS employee John Shafer’s statements “go a long way to . . . showing that the White House was not involved in this,”⁶ Mr. Shafer in fact testified that he had no personal knowledge “whatsoever” about the motivations of Washington officials involved in the Tea Party cases.⁷ Indeed, Mr. Shafer testified that he had no personal involvement with the Tea Party applications after they were identified by IRS screeners as “Tea Party” cases and forwarded to Washington, D.C. for additional scrutiny.⁸ If you were truly committed to pursuing the truth, you would not have omitted this pertinent piece of information before publicly absolving the IRS.

There is still much that we do not know about how and why certain applications for tax-exempt status were denied, delayed, or otherwise received heightened scrutiny from the IRS. The Committee has received conflicting information about the origins of that scrutiny; the Committee does not know why applications from Tea Party groups experienced significant processing delays after they were identified; the Committee does not know why the IRS sent these groups inappropriate and intrusive information request letters; and the Committee does not know why senior IRS officials misled and failed to inform Congress about these serious problems in response to direct questions from Committee Members and staff. These are just some of the important questions that are still unanswered. If the Committee proceeded as you suggest, they would remain unanswered. Failing to explore these questions does not “restore trust . . . in our Committee.”⁹ To the contrary, ignoring these questions would erode public confidence that the Committee thoroughly investigates matters of serious concern.

Your decision to publicly announce that the investigation should wrap up was irresponsible, but not surprising. However, your push to release entire transcripts from witness interviews while the investigation remains active was reckless and threatened to undermine the integrity of the Committee’s investigation. The release of excerpts from witness interviews can serve to provide important updates to the public as the investigation progresses. Limited releases of testimony may also serve to empower other witnesses to become whistleblowers and serve to vindicate individuals who have been subjected to criticism or retaliation at the hands of their

⁵ See CNN, State of the Union with Candy Crowley (Jun. 9, 2013).

⁶ *Id.*

⁷ Transcribed Interview of John Shafer, Internal Revenue Serv. (Jun. 7, 2013).

⁸ *Id.*

⁹ Letter from Hon. Elijah E. Cummings, Ranking Mem., H. Comm. on Oversight & Gov’t Reform, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov’t Reform (Jun. 9, 2013).

managers. In fact, raising public awareness by releasing limited portions of transcripts decreases the likelihood that retaliations will occur -- when agency management knows the press and Congress are watching, witnesses tend to be less likely to be demoted or fired.

On the other hand, if a full transcript were released, it would serve as a roadmap of the Committee's investigation. The transcript could be used by future witnesses and their attorneys to prepare answers to likely questions, and to devise testimony consistent with the narrative that previous witnesses presented to Committee investigators. It should be clear to you that the release of full interview transcripts at a point in the investigation where additional witness interviews are likely would needlessly jeopardize the integrity of the investigation and hamper the Committee's ability to get to the truth. As you know, I have publicly stated that I want to release full transcripts to the public but the timing of posting or distributing transcripts must be based on the progress of the investigation and not on any arbitrary timeline. Taking actions that would jeopardize the integrity of this investigation is not in the best interests of the American people.

In the past month, both President Obama and Acting Commissioner Werfel have acknowledged the need for a robust Congressional investigation into abuses at the IRS.¹⁰ The Committee intends to fulfill that need. Once the Committee has completed its work, the American people will be made aware of the full extent of the IRS's mistakes. Until then, I sincerely hope that you will join me in uncovering all the facts about the IRS's inappropriate treatment of certain groups applying for tax-exempt status. Given your track record of obstruction, I am not optimistic. Nevertheless, rest assured that the Committee will not "move on" until we deliver all the facts to the American people and we ensure that the IRS is once again worthy of the public's trust.

Sincerely,



Darrell Issa
Chairman

¹⁰ See The White House, Statement by the President (May 15, 2013) (promising that the Administration will "make sure that we are working hand in hand with Congress to get this thing fixed"); *Collected and Wasted: The IRS Spending Culture and Conference Abuses: Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of Daniel Werfel, Acting Commission, Internal Revenue Serv.) (proclaiming that "[a]nybody who has information about this situation needs to provide that information" to the Committee).