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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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LAWRENCE J. BRADY
STAFF DIRECTOR

October 22, 2013

Ms. Kathryn Ruemmler
Counsel to the President
The White House
Washington, DC 20500

Dear Ms. Ruemmler:

The Committee on Oversight and Government Reform continues its investigation into the Internal Revenue Service's inappropriate treatment of certain applicants for tax exempt status. Through the course of the Committee's investigation, the Committee has obtained documents showing correspondence between the IRS and the White House about policy and political matters. In one troubling instance, documents produced by the IRS show that IRS officials counseled the White House on strategy for responding to lawsuits brought by groups about infringements on their religious liberty.

The Affordable Care Act and its implementing regulations require providers of group health plans to provide preventive coverage for women, including all FDA-approved contraception.¹ On August 1, 2011, the Administration issued a rule that added a narrow exemption to the contraception mandate for religious employers that meet four criteria.² The fourth prong of this test is that the employer is a non-profit church, the "integrated auxiliary" of a church, an association of churches, or a religious order.³ Under the tax code, these non-profit religious employers are exempt from filing IRS Form 990, Return of Organization Exempt from Income Tax.⁴

Over thirty religious-affiliated non-profit organizations – including schools, hospitals and charities – have sued the Administration alleging that the contraception mandate violates their religious freedom.⁵ One such religious-affiliated school, Wheaton College in Illinois, filed suit

¹ Patient Protection and Affordable Care Act, Pub. L. 111-148 (2010); Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 41,726 (2010); Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (2010).

² Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (2010).

³ *Id.*; see 45 C.F.R. 147.130(a)(iv)(B).

⁴ I.R.C. § 6033(a)(3)(A).

⁵ See *The Becket Fund for Religious Liberty, HHS Mandate Information Center*, <http://www.becketfund.org/hhsinformationcentral/> (last visited Sept. 30, 2013).

against the Administration on July 18, 2012.⁶ The very same date that Wheaton College sued the Administration for infringing on its religious liberty, career IRS officials were engaged in an e-mail exchange with senior White House officials about the scope and contours of the Administration's religious exemption to the contraception mandate.

On July 18, 2012, Ellen Montz, a health policy advisor at the White House, e-mailed IRS officials Sarah Hall Ingram and Catherine Livingston with questions about whether religious-affiliated schools are "automatically exempt" from filing Form 990, which is the fourth prong of the Administration's test for exemption to the contraception mandate.⁷ Ms. Ingram responded the same day with answers to her questions, writing in part:

Below-college-level schools that are "affiliated" with a church or operated by a religious order generally don't have to file. If they are not "affiliated" then likely also not "integrated auxiliary." Colleges – it will depend on whether they are integrated auxiliaries of a church and then they may not meet the internal support test. As [the U.S. Conference of Catholic Bishops] attachment discusses, just because an entity is in a group ruling (for tax exemption) doesn't mean they are exempted from the requirement to file a 990.⁸

This response referenced a document pertaining to the U.S. Conference of Catholic Bishops, an organization that represents the 43 Catholic entities fighting for freedom of religion.⁹ The Archbishops of Washington and New York filed suit against the Administration on May 21, 2012 – only weeks before the e-mail exchange with the IRS.¹⁰

Jeanne Lambrew, the Deputy Assistant to the President for Health Policy, e-mailed Ms. Ingram the following day with additional questions, writing: "[D]o we feel at this point we can say that we believe that replacing the four-prong test with the fourth prong will not expand the number of workers in health plans that are exempt from contraception coverage? What more needs to be done to make such a determination?"¹¹ Ms. Ingram responded in part:

Not sure what you are looking for on your question since I don't think it is possible to say that zero additional people would fall into the reg rule. If you are looking for a quantification of the delta between using prongs 1-4 and using only prong 4, my sense is anecdotally is that the delta is more than zero but I don't think we would have any way of quantifying it for you.¹²

⁶ *Wheaton Coll. v. Sebelius et al.*, 1:12-cv-1169 (D.D.C. filed July 18, 2012).

⁷ E-mail from Ellen Montz, Exec. Office of the Pres., to Catherine Livingston & Sarah Hall Ingram, Internal Revenue Serv. (July 18, 2012, 5:33 p.m.).

⁸ E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Ellen Montz, Exec. Office of the Pres. (July 18, 2012, 7:23 p.m.).

⁹ See Mary Ann Glendon, *Why the Bishops are Suing the U.S. Government*, Wall St. J., May 21, 2012.

¹⁰ See *Roman Catholic Archbishop of Washington v. Sebelius*, 1:12-815 (D.D.C. May 21, 2012); *Roman Catholic Archbishop of New York v. Sebelius*, 12-2542 (E.D.N.Y. May 21, 2012).

¹¹ E-mail from Jeanne Lambrew, Exec. Office of the Pres., to Sarah Hall Ingram, Internal Revenue Serv., & Ellen Montz, Exec. Office of the Pres. (July 19, 2012, 5:50 p.m.).

¹² E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Jeanne Lambrew & Ellen Montz, Exec. Office of the Pres. (July 19, 2012, 7:40 p.m.).

We have substantial concerns that the White House used the IRS, traditionally an impartial administrator of tax law, to seek partisan policy guidance on the four-prong test for religious exemption to the ObamaCare mandate. The substance and the context of this exchange show that the White House hoped to include religious-affiliated schools – such as Wheaton College – within the scope of the Form 990 filing exemption. If possible and if, as Ms. Lambrew suggested, the Administration replaced the four-prong test with just the fourth prong – i.e. exemption from filing Form 990 – the Administration could moot the lawsuits filed by religious-affiliated non-profit organizations on standing grounds. From this e-mail exchange, therefore, it appears that the White House sought and received IRS counsel on a strategy for dismissing lawsuits brought by groups concerned about infringements of their religious liberty.

The discussion in the e-mail exchange appeared to be part of a larger strategy by the Administration to prevent courts from hearing challenges to the contraception mandate. Because the Administration issued informal “safe harbor” guidance promising not to enforce the mandate, courts dismissed many of these lawsuits on procedural grounds.¹³ Only a month after this e-mail exchange with the White House, the court dismissed Wheaton College’s lawsuit on standing grounds because it ruled Wheaton lacked an injury due to the Administration’s safe harbor.¹⁴ In fact, according to the Becket Fund for Religious Liberty, only one of the thirty lawsuits filed by a religious-affiliated non-profit organization has been decided on the merits of the case.¹⁵

The Administration’s recent final rule on the contraception mandate – which implemented Ms. Lambrew’s proposal to replace the four-part test with only the fourth prong¹⁶ – has not assuaged the religious objections. The U.S. Conference of Catholic Bishops said the final rule does not eliminate “the need to continue defending our rights in Congress and the courts.”¹⁷ The Becket Fund for Religious Liberty, which is representing Wheaton College, issued a similar statement that the final rule does not solve the “religious conscience problem . . . and provides no protection to religious businesses.”¹⁸

Fundamentally, partisan policy discussions between the White House and the IRS violate the sanctified trust that the American people place in the IRS to impartially and independently administer federal tax law. We are concerned that any coordination that aids in ostensibly political goals compromises the IRS’s function as an independent agency with a responsibility to “enforce the law with integrity and fairness to all.”¹⁹ The e-mail exchange between senior White

¹³ See Timothy Jost, *Implementing Health Reform: Contraception Coverage Final Regulations*, Health Affairs Blog (June 29, 2013).

¹⁴ *Wheaton Coll. v. Sebelius et al.*, 1:12-cv-1169 (D.D.C. Aug. 24, 2012) (memorandum opinion).

¹⁵ See The Becket Fund for Religious Liberty, HHS Mandate Information Center, <http://www.becketfund.org/hhsinformationcentral/> (last visited Sept. 30, 2013).

¹⁶ See The Center for Consumer Information & Insurance Oversight, *Women’s Preventive Services Coverage and Non-Profit Religious Organizations*, <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womens-preven-02012013.html> (last visited Sept. 30, 2013).

¹⁷ U.S. Conf. of Cath. Bishops, *HHS Final Rule Still Requires Action In Congress, By Courts, Says Cardinal Dolan* (July 3, 2013).

¹⁸ The Becket Fund for Religious Liberty, *Final HHS Rule Fails to Protect Constitutional Rights of Millions of Americans* (June 28, 2013).

¹⁹ Internal Revenue Service, *The Agency, its Mission and Statutory Authority*, <http://www.irs.gov/uac/The-Agency,-its-Mission-and-Statutory-Authority> (last visited Oct. 17, 2013).

House policy advisors and IRS employees about a highly contentious political issue only serves to undermine the IRS's role as a neutral administrator of federal tax law.

In order to determine the full extent of inappropriate communications between the White House and the IRS, we ask that you provide the following information to the Committee as soon as possible but no later than November 5, 2013:

1. All documents and communications between employees of the White House Office and employees of the Internal Revenue Service from February 2010 to present.
2. All documents and communications referring or relating to the consultation and review by the White House Counsel's Office, pursuant to the White House Counsel's memorandum of April 15, 2009, of documents produced to Congress that involved "White House equities."²⁰

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact David Brewer or Tyler Grimm of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

²⁰ See Memorandum from Gregory Craig, Counsel to the President, for all Executive Department and Agency General Counsel (Apr. 19, 2009).

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.