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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 1, 2013

The Honorable J. Russell George
Treasury Inspector General for Tax Administration
U.S. Department of the Treasury
City Center Building
1401 H Street, NW Suite 469
Washington, D.C. 20005

Dear Mr. Inspector General:

It has been two weeks since you testified before our Committee on July 18, 2013, and we are writing to inquire about the status of your objection to the IRS providing information to the Committee relating to the scrutiny of progressive applicants for tax exempt status. When you appeared before the Committee, you testified that you were engaged in "ongoing" meetings with IRS officials who determined that producing this information to the Committee would be appropriate and consistent with the law, and that you would have a resolution of this matter "sooner rather than later."

When IRS Acting Commissioner Danny Werfel appeared before the Committee on July 17, 2013, he testified that some progressive or left-leaning groups applying for tax-exempt status received treatment similar to Tea Party applicants, including at least one category of applicants that had their applications denied by the IRS after a three-year review. Ranking Member Cummings had this exchange with Mr. Werfel:

Cummings: During our interviews, we have been told by more than one IRS employee that there were progressive or left-leaning groups that received treatment similar to the Tea Party applicants. As part of your internal review, have you identified non-Tea Party groups that received similar treatment?

Werfel: Yes.

Cummings: We were told that one category of applicants had their applications denied by the IRS after a three-year review. Is that right?

Werfel: Yes, that's my understanding—that there is a group or set of groups that had that experience, yes.¹

¹ House Committee on Oversight and Government, Subcommittee on Energy Policy, Health Care and Entitlements, and House Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection and Security Technologies, *Joint Hearing on Evaluating*

During your appearance before the Committee on July 18, you and your lead auditor testified that you did not examine the treatment of progressive, Occupy Wall Street, or other categories of left-leaning applicants. You explained that you did not know the meaning of the term “progressive”:

I have no idea what that stands for, sir. Teddy Roosevelt ran for president under the Progressive Party banner. Would you consider him a Democrat or a Republican?²

Further, your lead auditor had this exchange:

Q: Were tea party, 9/12, patriot groups treated predominantly differently than the occupy or progressive groups that we have?

A: We don’t know. We did not audit “occupy” or the other names you’ve used.³

You testified on July 18 that when you appeared previously before our Committee in May 2013, you knew generally that IRS employees were screening for “Occupy” groups, but that you “had no information whatsoever how, if at all, that information was used or misused.” You had this exchange:

Q: When did you first find out there were BOLOs about liberal or progressive groups?

A: It was the night before I was testifying before the Senate Finance Committee at around 6:30 p.m.

Q: And was that before your testimony here on May 22nd?

A: That was before, yes.

Q: So you were here on May 22nd, testifying about BOLOs about tea party groups, and when Mr. Issa questioned you specifically about other groups, you said there were no others—

A: Well—

Q: —but you didn’t say a word about BOLOs that you knew were about progressive or liberal organizations even though you just admitted today—

A: Yeah—

Q: —that you were aware of that as of your May 22nd testimony. Am I correct in that, Mr. George?

A: Sir, I need to clarify something. One, it was on—the BOLO group name was on “occupy.” And I can use that word because it’s generic. We had no information whatsoever how, if at all, that information was used or misused.

Q: It doesn’t matter. You knew there were BOLOs about “occupy.”

Privacy, Security, and Fraud Concerns with ObamaCare’s Information Sharing Apparatus (July 17, 2013).

² House Committee on Oversight and Government Reform, *Hearing on The IRS’s Systematic Delay and Scrutiny of Tea Party Applications* (July 18, 2013).

³ *Id.*

A: But we—

Q: You didn't say a word about it in your last testimony here in this committee May 22nd.

A: Yeah.⁴

As we have stated on multiple occasions, our interest is in obtaining as much information as possible so we can draw accurate conclusions about the treatment of all applicants for tax exempt status, regardless of their political affiliation. Since your audit failed to examine the treatment of progressive groups, it is essential that the Committee receive information from the IRS about entities that were treated similarly.

To date, however, you have blocked the IRS from producing this information. At the Committee's July 18 hearing, you confirmed that you personally intervened to prevent our Committee from receiving documents related to categories of progressive or left-leaning groups that received treatment similar to Tea Party applicants:

Cummings: Mr. Werfel said that career experts at the IRS determined that it was permissible to share this information with our committee because it related to categories of groups rather than specifically identifiable taxpayers, but Mr. Werfel said you personally intervened and objected to the legal determination of these career IRS officials who make these determinations for a living. I want to read exactly what he said yesterday under oath and then get your response. He said, and I quote, "We were imminently going to produce a document in an unredacted form that would indicate the identity of a grouping of entities that we felt were similar in a kind of scope as Tea Party in terms of its grouping so that it wouldn't be able—you wouldn't be able to identify a particular taxpayer because the grouping name was so broad and he," meaning you, Mr. George, "he reached out when he learned that we were about to produce this information and expressed concern and indicated a disagreement with our internal experts on whether this information was 6103 protected or not," and that's the end of the quote. Mr. George, is that true?

George: It is—

Cummings: Did you personally contact Mr. Werfel's office and—

George: Yes, I did. Yes, I did.⁵

At the hearing, you also confirmed that this was the first time you ever intervened to object to a legal decision made by career experts at the IRS regarding the planned release of information:

Cummings: So we asked Mr. Werfel whether this has ever happened before—that is, an Inspector General intervening personally in a production of documents

⁴ *Id.*

⁵ *Id.*

that Congress based on a disagreement with career IRS experts. And Mr. Werfel went back to his office and checked and then provided us with this response and let me read it. And keep in mind according to law this is still under oath—this written response. “I had my staff check with the current IRS disclosure counsel and one retired disclosure counsel. None of the people we checked with recalled a situation where the Inspector General told the IRS that a planned release of information by the IRS would constitute a Section 6103 violation after the IRS disclosure counsel determined that particular material was releasable to the public or to Congress under Section 6103,” end of quote. So, Mr. George, he is basically saying your intervention is unprecedented. That’s what he’s saying.

George: You know, there’s a first time for everything, sir.⁶

At the hearing, you explained that your initial concern with the production of the information stemmed from the fact that career IRS employees who make legal decisions about the disclosure of sensitive taxpayer information had altered their conclusions without briefing you personally. You explained:

George: I was contacted by counsel on my staff about the overall situation that you described and that there was a dispute, there was some concern, because the career IRS officials that you referred to—

Cummings: Yes.

George: —you cited Mr. Werfel—

Cummings: Yes.

George: —had indicated their original position was that this was 6103 protected information.

Cummings: Okay.

George: And then lo and behold, after all of this has broken into the public, they all of a sudden changed their legal, you know, decision—

Cummings: Okay.

George: —position on this, and without providing me personally with a legal analysis. Now, I have had subsequent conversations with my staff and we are still in the process of discussing this. But if I’m going to err, sir, it’s going to be err on the—I’m going to err on the side of protecting confidential taxpayer information and not on some willy nilly decision by some unnamed career IRS employees to release sensitive taxpayer information.⁷

You explained that discussions with the IRS regarding this information were ongoing, and that you would withdraw your objections if your career disclosure experts and the IRS’s career disclosure experts could come to an agreement:

⁶ *Id.*

⁷ *Id.*

- Cummings: Mr. Werfel testified yesterday that the IRS has asserted its position that he has been in further discussions with your office and that if you—if you withdraw your objection he will send over the documents to our committee. And so, you said those discussions are continuing. Is that what you said?
- George: That is correct.
- Cummings: And if you all can come to an agreement, you will allow us to see those documents?
- George: Most definitely. We're going to comply with the law, sir.⁸

Chairman Issa also supports the Committee's right to this information. He had this exchange with Committee Member Jackie Speier:

- Speier: Mr. Chairman, based on these training materials, I think we need to see what is under those redactions and examine in more detail how these progressive cases were handled as well.
- Issa: I agree with the gentlelady. We would like to see the claim of 6103 modified to be more reasonable.⁹

When asked when you would resolve this issue, you responded that meetings were ongoing and that a resolution would be coming soon:

- Cummings: And how soon do you think a decision might be made?
- George: That, I have no—I don't know, sir. I don't know the answer to that.
- Cummings: I mean, are there planned meetings already, or what?
- George: They are ongoing. It's going to be sooner rather than later.¹⁰

Despite your assertions, we have received no indication of when or whether you plan to lift your objection to the Committee receiving this information. For these reasons, we request that you appear personally tomorrow alongside your Deputy Inspector General for Audit, who has already agreed to testify before the Subcommittee on Government Operations with Acting IRS Administrator Werfel. The question to be answered is not whether you disagree with the legal conclusions of IRS career experts, which has been established, but whether career IRS experts are so unreasonable in their legal conclusions as to be in violation of federal law.

⁸ *Id.*

⁹ *Id.*

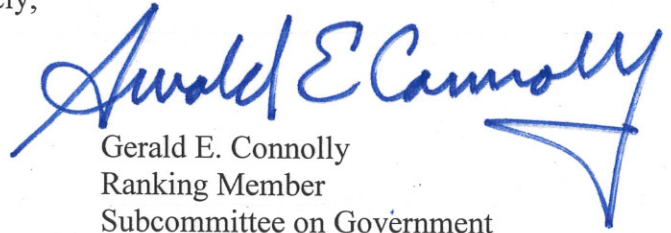
¹⁰ *Id.*

Thank you for your cooperation with this request.

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Gerald E. Connolly
Ranking Member
Subcommittee on Government
Operations

cc: The Honorable Darrell E. Issa, Chairman

The Honorable John L. Mica, Chairman