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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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April 23, 2014

The Honorable Eric H. Holder, Jr.  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Attorney General:

The Committee on Oversight and Government Reform continues to examine the Internal Revenue Service's targeting of conservative tax-exempt applicants. We are deeply dismayed that the Department of Justice may have contributed to this inappropriate treatment by considering prosecution of tax-exempt groups engaged in political speech.<sup>1</sup> This information, released by Judicial Watch, damages the integrity of the Department and undermines its fundamental mission of "fair and impartial administration of justice for all Americans."<sup>2</sup> We request your assistance as we examine this matter.

On May 8, 2013, Richard Pilger, Director of the Election Crimes Branch of the Department's Public Integrity Section, e-mailed Lois Lerner, then-Director of the IRS's Exempt Organizations Division, writing: "[W]hen you have a moment, would you call me? I have been asked to run something by you."<sup>3</sup> After Mr. Pilger and Ms. Lerner spoke, Ms. Lerner summarized the conversation in an e-mail to Nikole Flax, then-chief of staff to Acting Commissioner Steve Miller. She wrote:

I got a call today from Richard Pilger Director Election Crimes Branch at DOJ. I know him from contacts from my days there. He wanted to know who at IRS the DOJ folks could talk to about Sen. Whitehouse idea at the hearing that DOJ could piece together false statement cases about applicants who "lied" on their 1024s – saying they weren't planning on doing political activity, and then turning around and making large visible political expenditures. DOJ is feeling like it needs to respond, but want to talk to the right folks at IRS to see whether there are

<sup>1</sup> See Gregory Korte, *On eve of Tea Party scandal, IRS discussed criminal probes*, USA TODAY, Apr. 16, 2014.

<sup>2</sup> U.S. Dep't of Justice, About DOJ, <http://www.justice.gov/about/about.html>.

<sup>3</sup> E-mail from Richard Pilger, U.S. Dep't of Justice, to Lois Lerner, Internal Revenue Serv. (May 8, 2013). [IRSR 209188]

impediments from our side and what, if any damage this might do to IRS programs.<sup>4</sup>

Ms. Lerner asked veteran IRS official Nan Marks to arrange the meeting,<sup>5</sup> but it is unclear what additional steps the Department took to coordinate with the IRS about the targeting of tax-exempt applicants.

This e-mail is shocking on several levels. As an initial matter, this e-mail is further evidence that the Administration's targeting and inappropriate treatment of conservative tax-exempt applicants was the result of political pressure from prominent Democrats to "fix the problem" posed by the Supreme Court's *Citizens United* decision.<sup>6</sup> Information obtained by the Committee shows that beginning in 2010, the President and congressional Democrats loudly and aggressively criticized the Court's decision and conservative nonprofit groups that they believed would benefit from it.<sup>7</sup> This e-mail makes clear that the Justice Department, like the IRS and the Securities and Exchange Commission, played a role in a government-wide effort to target political speech.<sup>8</sup> Certainly, as is apparent in this e-mail, the Department felt the need to do something in response to Democratic rhetoric against nonprofit political speech.

More unbelievably, this e-mail also suggests that the Department actually considered prosecuting nonprofit groups for their political activities. Even more astounding, the Department considered prosecuting these groups for actions that are *legal* for 501(c)(4) nonprofits under federal tax law – that is, engaging in political speech.<sup>9</sup> The Department's use of alleged false statement on the tax-exempt application is an unfortunate instance of prosecutorial "gotcha," targeting these victims for supposed "lies" about activities that they are legally allowed to do. In this way, the tactics suggested by Mr. Pilger appear to be nothing more than harassment by the Justice Department of groups engaged in otherwise lawful activity.

Other e-mails show just how outrageous the Department's tactics were. As Ms. Lerner wrote to her colleagues, the law does not support the prosecution of a nonprofit for making false statements about political speech. She wrote:

Whether there was a false statement or fraud regarding an [*sic*] description of an alleged political expenditure that doesn't say vote for or vote against is not

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<sup>4</sup> E-mail from Lois Lerner, Internal Revenue Serv., to Nikole Flax, Internal Revenue Serv. (May 8, 2013). [IRSR 209282]

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., H. COMM. ON OVERSIGHT & GOV'T REFORM, LOIS LERNER'S INVOLVEMENT IN THE IRS TARGETING OF TAX-EXEMPT ORGANIZATIONS (Mar. 11, 2014).

<sup>7</sup> See Memorandum from Majority Staff, H. Comm. on Oversight & Gov't Reform, to Members, H. Comm. on Oversight & Gov't Reform, "Interim update on the Committee's investigation of the Internal Revenue Service's inappropriate treatment of certain tax-exempt applicants" (Sept. 17, 2013).

<sup>8</sup> See Memorandum from Majority Staff, H. Comm. on Oversight & Gov't Reform, to Member, H. Comm. on Oversight & Gov't Reform, "The SEC and Political Speech" (July 22, 2013); Memorandum from Majority Staff, H. Comm. on Oversight & Gov't Reform, to Members, H. Comm. on Oversight & Gov't Reform, "Interim update on the Committee's investigation of the Internal Revenue Service's inappropriate treatment of certain tax-exempt applicants" (Sept. 17, 2013); H. COMM. ON OVERSIGHT & GOV'T REFORM, LOIS LERNER'S INVOLVEMENT IN THE IRS TARGETING OF TAX-EXEMPT ORGANIZATIONS (Mar. 11, 2014).

<sup>9</sup> See I.R.C. § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1(a)(2).

realistic under current law. Everyone is looking for a magic bullet or scapegoat – there isn't one. The law in this area is just hard.<sup>10</sup>

Instead, as Lerner indicated in another e-mail, those individuals pushing for the prosecution of politically active nonprofits for “tax fraud” were seeking to “shut these down.”<sup>11</sup> She elaborated: “One IRS prosecution would make an impact and they wouldn't feel so comfortable doing stuff. So, don't be fooled about how this is being articulated – it is ALL about 501(c)(4) orgs and political activity.”<sup>12</sup>

Mr. Pilger's communications with Ms. Lerner are also striking for their timing. They show that the IRS and the Justice Department were actively considering efforts to target tax-exempt organizations just two days before Ms. Lerner's public apology for the targeting.<sup>13</sup> This information certainly undermines the sincerity of Ms. Lerner's apology, but it calls into question your reaction that targeting was “outrageous” and “unacceptable.”<sup>14</sup> These comments ring hollow in light of evidence that your subordinates apparently colluded with the IRS to target nonprofit groups less than a week before.

We are severely disappointed in the Department's apparent contribution to the Administration's targeting of tax-exempt applicants. With your constant reminders about the Department's limited criminal justice resources,<sup>15</sup> we would have hoped that the Department would better focus its prosecutorial resources. To examine fully the Department's apparent role in targeting tax-exempt applicants and the Department's coordination with the IRS on this matter, we ask that you produce the following material as soon as possible, but no later than May 5, 2014:

1. All documents and communications referring or relating to 501(c)(4) tax-exempt organizations or applicants for 501(c)(4) tax-exempt status for the period January 1, 2009, through the present.
2. All documents and communications between or among Lois Lerner and employees of the Department of Justice for the period January 1, 2009, through the present.
3. All documents and communications referring or relating to the potential prosecution of tax-exempt organizations for alleged false statements made on Internal Revenue Service forms for the period January 1, 2009, through the present.

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<sup>10</sup> E-mail from Lois Lerner, Internal Revenue Serv., to Suzanne Sinno et al., Internal Revenue Serv. (Mar. 27, 2013). [IRSR 188327]

<sup>11</sup> E-mail from Lois Lerner, Internal Revenue Serv., to Nikole Flax et al., Internal Revenue Serv. (Mar. 27, 2013). [IRSR 188329]

<sup>12</sup> *Id.*

<sup>13</sup> See Rick Hasen, *Transcript of Lois Lerner's Remarks at Tax Meeting Sparking IRS Controversy*, ELECTION LAW BLOG (May 11, 2013, 7:37AM) <http://electionlawblog.org/?p=50160>.

<sup>14</sup> Rachael Weiner, *Holder has ordered IRS investigation*, WASH. POST, May 14, 2013.

<sup>15</sup> See, e.g., Press Release, U.S. Dep't of Justice, Statement by Attorney General Holder on Sentencing Commission's Vote to Approve Reductions in Sentencing Guidelines for Nonviolent Drug Offenders (Apr. 10, 2014).

The Honorable Eric H. Holder, Jr.

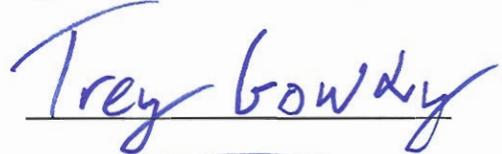
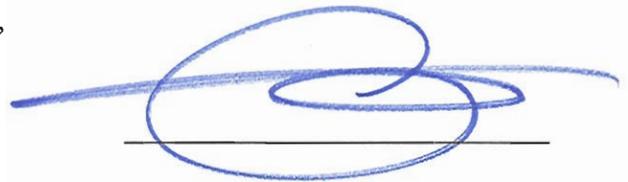
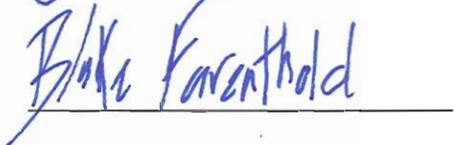
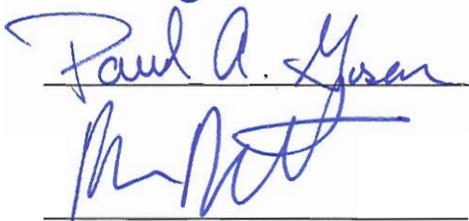
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In addition, we ask that you make Richard Pilger available for a transcribed interview with Committee staff. Please have your staff contact the Committee staff as soon as possible, but no later than April 29, 2014, to schedule this interview.

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. Please contact David Brewer or Tyler Grimm with the Committee staff at 202-225-5074 if you have any questions. Thank you for your attention to this matter.

Sincerely,

 GA09 TN-04

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