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May 20, 2013

VIA FACSIMILE AND OVERNIGHT DELIVERY

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: The Committee's Request for Lois Lerner's Testimony

Dear Mr. Chairman:

You have requested that our client, Lois Lerner, appear at a public hearing on May 22, 2013, to testify regarding the Treasury Inspector General for Tax Administration's ("TIGTA") report on the Internal Revenue Service's ("IRS") processing of applications for tax-exempt status. As you know, the Department of Justice has launched a criminal investigation into the matters addressed in the TIGTA report, and your letter to Ms. Lerner dated May 14, 2013, alleges that she "provided false or misleading information on four separate occasions last year in response to" the Committee's questions about the IRS's processing of applications for tax-exempt status. Accordingly, we are writing to inform you that, upon our advice, Ms. Lerner will exercise her constitutional right not to answer any questions related to the matters addressed in the TIGTA report or to the written and oral exchanges that she had with the Committee in 2012 regarding the IRS's processing of applications for tax-exempt status.

She has not committed any crime or made any misrepresentation but under the circumstances she has no choice but to take this course. As the Supreme Court has "emphasized," one of the Fifth Amendment's "basic functions . . . is to protect *innocent* [individuals]." *Ohio v. Reiner*, 532 U.S. 17, 21 (2001) (quoting *Grunewald v. United States*, 353 U.S. 391, 421 (1957)).

Because Ms. Lerner is invoking her constitutional privilege, we respectfully request that you excuse her from appearing at the hearing. Congress has a longstanding practice of permitting a witness to assert the Fifth Amendment by affidavit or through counsel in lieu of appearing at a public hearing to do so. In addition, the District of Columbia Bar's Legal Ethics Committee has opined that it is a violation of the Bar's ethics rule to require a witness to testify before a congressional committee when it is known in advance that the witness will invoke the



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Fifth Amendment, and the witness's appearance will serve "no substantial purpose 'other than to embarrass, delay, or burden' the witness." D.C. Legal Ethics Opinion No. 358 (2011); *see also* D.C. Legal Ethics Opinion No. 31 (1977). Because Ms. Lerner will exercise her right not to answer questions related to the matters discussed in the TIGTA report or to her prior exchanges with the Committee, requiring her to appear at the hearing merely to assert her Fifth Amendment privilege would have no purpose other than to embarrass or burden her.

We thank you for your attention to this matter. Please do not hesitate to contact us, or have counsel do so, if the Committee has any questions.

Sincerely,

William W. Taylor, III

cc: The Honorable Elijah E. Cummings, Ranking Member (via facsimile)
Stephen Castor, Majority Chief Counsel for Investigations (via e-mail)