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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

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July 17, 2013

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

Dear Mr. Chairman:

I have received a copy of a letter you sent today to the Internal Revenue Service (IRS) releasing selective portions of transcripts of interviews of IRS officials conducted by Committee staff. Rather than describing the whole truth, your letter appears yet again to create a skewed account based on partial, incomplete, and cherry-picked information while disregarding key evidence that contradicts your political narrative.

This has been an unfortunate pattern with this entire investigation. At the hearing tomorrow, for example, you have invited only two of the 16 IRS employees interviewed by Committee staff: Carter Hull, a former IRS Tax Law Specialist who worked in Washington, D.C., and Elizabeth Hofacre, an IRS Determinations Specialist working in the Exempt Organizations Determinations Unit in Cincinnati.

You have not invited any other IRS employees to testify, including any of the six IRS employees who identified themselves as Republicans or having voted for Republicans, and who reported that they were aware of no political motivation in the screening of Tea Party applicants for tax exempt status.

Just as troubling is your decision to suddenly withdraw your invitation to a third IRS employee immediately following his decision not to invoke his Fifth Amendment privilege. During a transcribed interview yesterday with Committee staff, this employee provided new evidence on how progressive groups were also reviewed by the IRS. These actions suggest that your interest may have been merely to promote the public spectacle of an IRS employee invoking the Fifth Amendment.

This letter provides additional information from IRS employees who you have decided not to invite to tomorrow's hearing. I believe this additional information provides a more accurate and comprehensive portrayal of the evidence obtained by the Committee to date.

Involvement of Chief Counsel's Office

Your letter argues that the involvement of the IRS Chief Counsel's office in assisting with the review of political advocacy cases was "unusual," "atypical," and "a break from ordinary procedure." Although it may have appeared unusual to some IRS employees with limited information, you failed to disclose that other IRS employees with more information told Committee staff during their interviews that it was "common," "typical," and "customary" to refer cases to the Chief Counsel's office.

For example, you failed to include in your letter information from Mr. Hull's successor as the Tax Law Specialist in Washington, D.C. with responsibility for Tea Party cases—a self-described Republican—who had this exchange with Committee staff:

- Q: Was it common to send recommendations to IRS Chief Counsel's Office to allow them to weigh in?
- A: On some issues, on some applications, it's common for us to ask for their assistance in review.
- Q: For what type of applications or recommendations is it common to ask IRS Chief Counsel to weigh in?
- A: From my experience, it's been cases, applications that have received some media attention or that, like in (c)(4) instances, the law is really murky. Those have been my experiences with the cases that I've had sent to them.
- Q: Does it make sense to you to send it to IRS Chief Counsel in instances when the law is murky and when there's media attention?
- A: I think so, yeah.
- Q: Can you explain to me why that is?
- A: For an extra kind of pair of eyes, additional attorneys to weigh in on the application of this area of law, to any specific facts, if we need their assistance, and kind of, I would say, well, like a hazards of litigation type, you know, whether there could be a strong argument made later down the line on the decision that we made, and whether kind of it's worth it going forward to deny an organization, for example, or approve them. Those are just the instances that I've had personally on some cases.¹

She also explained that these decisions were in no way intended to affect elections in 2010 or 2012:

- Q: Do you have any reason to believe the handling of advocacy cases was influenced at all by the fact that an election would take place in November 2012?
- A: No.
- Q: What about November 2010?
- A: No.

¹ House Committee on Oversight and Government Reform, Transcribed Interview of Tax Law Specialist III, Exempt Organizations Technical Unit, at 202-203 (July 2, 2013).

Q: Have you ever seen any evidence that an IRS employee who was involved in the review of advocacy cases used their position at the IRS to attempt to influence the outcome of the elections in November 2010?

A: No.²

When asked whether these activities were intended to “target the President’s political enemies,” this employee responded:

No, not at all. That’s kind of laughable that people think that. No, not at all. This is purely cases that, unfortunately, Cincinnati didn’t have enough guidance on. That (c)(4) area is a very, very difficult area, and there’s not much guidance. And so the lingering length of time, unfortunately, was just trying to apply the law to the specific facts of each case.³

You also failed to include in your letter similar statements from other IRS employees interviewed by Committee staff. For example, an employee who served as the Exempt Organizations Technical Unit Group Manager in Washington D.C.—who told Committee staff that he votes in Republican primaries—said it was “typical” to send cases to the Counsel’s office:

Q: And what was counsel’s office’s role in this process?

A: Well, it was quite typical to send to counsel cases that were particularly difficult where there was felt to be a need for further review of the case.⁴

This IRS employee also stated that there was no political motivation behind these activities:

Q: Were any of your actions regarding the Tea Party cases motivated by political bias?

A: Definitely not.

Q: Were any of your actions regarding the Tea Party cases motivated by any of your opinions about the political views of Tea Party groups?

A: No.

Q: Did anyone at the IRS ever tell you that their actions regarding these Tea Party cases were motivated by their political views?

A: No one told me that.

Q: Are you aware of any political bias by the employees in the EO Technical Unit against conservative views?

² *Id.* at 126-127.

³ *Id.*

⁴ House Committee on Oversight and Government Reform, Transcribed Interview of Exempt Organizations Technical Unit Group Manager, Exempt Organizations Technical Unit, at 101 (June 21, 2013).

A: I am not aware of any bias like that.⁵

You also failed to disclose that a Senior Counsel in the IRS Chief Counsel's office explained that sending these cases to the Counsel's office was "customary":

Q: Did you think at the time that it was appropriate for Counsel to be sent those two cases to review?

A: It's customary. It would certainly be customary. It makes perfect sense that—I mean, we see—we have seen the situation before where they have a group of cases, that they would send over some to look at.⁶

When asked if anyone ever instructed the Senior Counsel "to stall or delay" this work, he responded: "No. On the contrary, we were told to work extremely fast."⁷ He also denied that cases were sent to the Office of Chief Counsel "as a delaying tactic."⁸ This employee explained during his transcribed interview why letters were being sent seeking information about the election year 2010 political activities of groups applying for tax exempt status:

Q: What exactly did you mean when you said, quote, "with the advice to factually develop the election year 2010"?

A: I think it's just simply that. I mean, we—the application or the file only had information for 2009. And for each of them our recommendation was that they develop the following year. You know, since each indicated some level of political intervention, it would be important to see what they're actually doing in an election year where you would expect a lot more political activity than in an off year.

Q: So your advice to factually develop election year 2010 was to elicit information about whether these organizations were engaged in a permissible or impermissible level of political campaign activity?

A: We made the recommendation because in 2009 there was an indication of political intervention. And so we, therefore, thought it was important to look at an actual election year to see if that level of political intervention would put them over the permissible line, correct.

Q: So of the purpose of developing the, quote, "election year of 2010" to identify the organizations political views or was it to determine whether they were engaging in a certain level of political campaign activity?

A: No, the latter. The level of political intervention. Did not matter for what purpose. I mean, the law doesn't care. It's just whether you intervene, not for

⁵ *Id.* at 131.

⁶ House Committee on Oversight and Government Reform, Transcribed Interview of Senior Counsel, IRS Office of Chief Counsel, at 66 (July 12, 2013).

⁷ *Id.* at 81.

⁸ *Id.* at 170.

which party or interest.⁹

With respect to delays experienced by applicants for tax exempt status, you failed to disclose an exchange you had personally with the Director of Rulings and Agreement, who reported that these types of extended delays were not limited only to Tea Party applicants:

Issa: Does it surprise you that when you work something in the case of hundreds of these, they were worked but never concluded? Does that happen in other areas in major numbers by any other group in your experience?

A: Yes, unfortunately, it does. We—there's a variety of, you know, difficult and complex legal issues that come through the office, and, you know, require coordination between EO Technical and Determinations. Sometimes also we will pull in the advice of chief counsel because it's an issue of first impression, and whenever—and many times when you have that kind of coordination, it does slow down the process, and a time elapse of 2 to 3 years is not, unfortunately, unusual. There are other cases that experience similar—

Issa: I didn't say cases, I said groups. Are there other groups I would discover of 10 or more of disparate, not directly related, but similar that I would find 3-year delays on anywhere in your experience?

[Employee Counsel] Excuse me. Groups of cases?

Issa: Groups of cases. Cases which are tagged for similarity.

A: Yes.

Issa: So I will find cases, 10 or more, that are tagged as similar and languish for 3 years or more?

A: I believe so, yes.¹⁰

Multi-Layer Review Involving IRS Employees in Washington, D.C.

Your letter also suggests that the “multi-layer review” involving IRS employees in Washington, D.C. was “uncommon,” citing selected portions of Ms. Hofacre's interview transcript. You failed to disclose, however, that numerous witnesses informed Committee staff that they specifically requested this assistance and that it was not only appropriate, but necessary, given the difficulty of these cases.

For example, you failed to disclose that Ms. Hofacre herself told Committee staff that, despite her frustration with the length of time reviews were taking, it was appropriate for IRS employees in Washington to respond to requests for guidance from employees in Cincinnati on these cases. As she explained: “there were so many of them coming in, so we needed guidance from EO Technical.”¹¹ She had this exchange with Committee staff:

⁹ *Id.* at 125-26.

¹⁰ House Committee on Oversight and Government Reform, Transcribed Interview of Director, Rulings and Agreements, and Former Exempt Organizations Technical Unit Manager, at 103 (May 21, 2013).

¹¹ House Oversight and Government Reform, Transcribed Interview of Determinations

- Q: You stated earlier that EO Technical in Washington is—consists of tax law experts?
- A: Correct.
- Q: Did it make sense to you at the time in April 2010 that you're being asked to consult with a tax law expert in reviewing these applications?
- A: Yes, it did.
- Q: Why did that make sense to you?
- A: Because of the complexity of these issues; the fact that these applicants are high-profile; the fact that their activities were very sensitive; and political organizations, again, they are high-profile, so it made perfect sense to try to get some specific guidance in how to develop these kind of cases.¹²

You also failed to disclose that Ms. Hofacre's supervisor in Cincinnati, a Group Manager with no political affiliation who was first assigned the political advocacy cases, agreed that it was appropriate for IRS employees in Washington to respond to requests for guidance:

- Q: And when evaluating a 501(c)(4) application, are you required to determine whether or not an applicant may have political activity as its primary activity?
- A: When making a determination on 501(c)(4) organizations, that is the key is, is political activity the primary activity. Actually, to say that another way is, is ensuring that social welfare, something actually that qualifies for exemption as the primary activity. There could be a series of nonexempt activities, political activities being one of those.
- Q: And is it often difficult to determine whether or not organizations fall below these limits on local campaign activity, the permissible level that you were just discussing? Is that the challenge of determining whether an organization that engages in some level of political activity has crossed that line over the permissible level?
- A: Yes, that's one of the challenges of these cases.
- Q: Was that one of the factors that made it important for EO Technical to provide guidance on the Tea Party cases, how this political activity limitation should be applied in the context of Tea Party organizations?
- A: That would be one aspect of why you would coordinate with EO Technical.
- Q: Would EO Technical have a greater level of expertise in this area than EO Determinations specialists in Cincinnati?
- A: They have—they have individuals and have specializations in the tax law that they understand, so yes, they would have.¹³

Specialist I, Exempt Organizations Determinations Unit, at 82 (May 31, 2013).

¹² *Id.* at 82-83.

¹³ House Committee on Oversight and Government Reform, Transcribed Interview of Group Manager I, Exempt Organizations Determinations Unit, at 80-81 (June 4, 2013).

You also failed to disclose that the second Group Manager in charge of political advocacy cases who supervised Ms. Hofacre, a self-described Republican, also explained to Committee staff that it was typical to consult with employees in Washington:

- Q: You spoke earlier about the process of having cases—excuse me—of when Liz Hofacre was working with EO Technical in Washington, D.C., to review these cases. Was there anything unusual about that?
- A: No.
- Q: Were there other instances in which specialists have worked with EO Technical on novel or difficult issues being presented in an application.
- A: Yes, typically, again, when we were looking at lack of precedents, we were going to reach out to—for guidance to our Washington office on any issue.¹⁴

You also failed to disclose that the Head of Exempt Organizations Determinations Unit in Cincinnati, who has 35 years of management experience, also informed Committee staff that it was appropriate for officials in Washington to provide guidance:

- Q: Given this backdrop, did it make sense to you at the time for EO Technical to be involved in helping specialists review the cases?
- A: Definitely, because there was concern about the legal aspect of whether they should even qualify for exemption or not, and our specialists were confused. And we're looking for guidance from the Washington office, just like we do with other cases.¹⁵

Conclusion

As we prepare for tomorrow's hearing, I urge the Committee to focus on obtaining the full set of facts relating to the handling of all applicants for tax exempt status rather than ignoring information that does not comport with a predetermined political narrative.

Sincerely,



Elijah E. Cummings
Ranking Member

¹⁴ House Committee on Oversight and Government Reform, Transcribed Interview of Group Manager II, Exempt Organizations Determinations Unit, at 63 (June 12, 2013).

¹⁵ House Committee on Oversight and Government Reform, Transcribed Interview of Program Manager, Exempt Organizations Determinations Unit, at 86 (June 28, 2013).