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House of Representatives

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May 22, 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. On May 6, 2014, the Committee conducted a transcribed interview of Richard Pilger, the Director of the Department of Justice's Election Crimes Branch. While we knew that the Justice Department engaged with the IRS in May 2013 to consider prosecution of political active nonprofits,¹ we were shocked to learn that this engagement started in October 2010. According to Mr. Pilger, the Justice Department convened a meeting with former IRS official Lois Lerner in October 2010 to discuss how the IRS could assist in the criminal enforcement of campaign-finance laws against politically active nonprofits. This meeting was arranged at the direction of Public Integrity Section Chief Jack Smith. We therefore respectfully request that you make Mr. Smith available for a transcribed interview.

According to Mr. Pilger, Mr. Smith asked him to arrange a meeting in early October 2010 with the IRS about the "evolving legal landscape" of campaign-finance law following the Supreme Court's *Citizens United v. Federal Election Commission* decision.² Mr. Pilger testified that the Department's agenda for the meeting was to engage with Ms. Lerner and the IRS on being "more vigilant to the opportunities from more crime in the . . . 501(c)(4) area."³ Mr. Pilger testified that he was interested in the "practicalities" of criminal enforcement by the IRS, such as whether the IRS could review donor lists of 501(c)(4) organizations for potential violations of

¹ See Letter from Darrell Issa et al., H. Comm. on Oversight & Gov't Reform, to Eric H. Holder, Jr., U.S. Dep't of Justice (Apr. 23, 2014); Gregory Korte, *On eve of Tea Party scandal, IRS discussed criminal probes*, USA TODAY, Apr. 16, 2014.

² Transcribed interview of Richard Pilger, U.S. Dep't of Justice, in Wash., D.C., at 8 (May 6, 2014) [hereinafter "Pilger Interview"].

³ *Id.* at 101.

campaign-finance law.⁴ Mr. Pilger stated that Ms. Lerner, however, expressed skepticism about the practicality of using criminal law to address political speech by 501(c)(4) organizations.⁵

Mr. Pilger's testimony reveals that the Justice Department contributed to the political pressure on the IRS to "fix the problem" posed by the *Citizens United* decision. On October 19, 2010 – only days after Ms. Lerner's meeting with the Public Integrity Section – she spoke at a Duke University event about political speech by nonprofit organizations in wake of *Citizens United*.⁶ Ms. Lerner stated:

What happened last year was the Supreme Court – the law kept getting chipped away, chipped away in the federal election arena. The Supreme Court dealt a huge blow, overturning a 100-year old precedent that basically corporations couldn't give directly to political campaigns. And everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it.

They want the IRS to fix the problem. The IRS laws are not set up to fix the problem: (c)(4)s can do straight political activity. They can go out and pay for an ad that says, "Vote for Joe Blow." That's something they can do as long as their primary activity is their (c)(4) activity, which is social welfare.

So everybody is screaming at us right now: 'Fix it now before the election. Can't you see how much these people are spending?' I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can't do anything right now.⁷

We now know from Mr. Pilger that the Justice Department contributed to this pressure. By encouraging the IRS to be vigilant in possible campaign-finance crimes by 501(c)(4) groups, the Department was certainly among the entities "screaming" at the IRS to do something in the wake of *Citizens United* before the 2010 election.

Mr. Pilger's testimony further confirmed that the Justice Department reengaged with the IRS in 2013 as a result of pressure from United States Senator Sheldon Whitehouse.⁸ Senator Whitehouse convened a Senate Judiciary Subcommittee hearing in April 2013 to address the IRS's enforcement of campaign-finance laws, featuring testimony from Acting Assistant Attorney General Mythili Raman.⁹ According to Ms. Pilger, Senator Whitehouse's hearing led to the Justice Department reengaging with the IRS on possible criminal enforcement relating to political speech by nonprofits. Mr. Pilger testified that Ms. Lerner even helped the Justice

⁴ *Id.* at 159-60.

⁵ *Id.* at 94-95.

⁶ "Lois Lerner Discusses Political Pressure on IRS in 2010," www.youtube.com (last visited May 19, 2014) (transcription by Committee).

⁷ *Id.*

⁸ Pilger Interview at 40-42.

⁹ See "Current Issues in Campaign Finance Law Enforcement": Hearing before the Subcomm. on Crime & Terrorism of the S. Comm. on the Judiciary, 113th Cong. (2013).

The Honorable Eric H. Holder, Jr.

May 22, 2014

Page 3

Department and Ms. Raman prepare for Senator Whitehouse's hearing.¹⁰ Mr. Pilger further testified that following the hearing, he contacted Ms. Lerner to follow up on Senator Whitehouse's proposal that the Department prosecute nonprofits for false statements made on the groups' application forms about whether they intended to engage in political speech.¹¹ Although Mr. Pilger stated that Mr. Smith directed him to contact Ms. Lerner, Mr. Pilger was uncertain whether the instruction came from more senior Department leaders.¹²

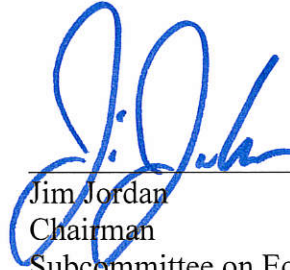
The Committee's transcribed interview of Richard Pilger presents further troubling information about the Department's contemplated prosecution of nonprofit groups for false statements. It is apparent that the Department's leadership, including Public Integrity Section Chief Jack Smith, was closely involved in engaging with the IRS in wake of *Citizens United* and political pressure from prominent Democrats to address perceived problems with the decision. We therefore ask that you make Jack Smith available for a transcribed interview with Committee staff on May 29, 2014. Please have your staff contact the Committee staff as soon as possible, but no later than May 27, 2014, to confirm 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,



Darrell Issa
Chairman



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

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

¹⁰ Pilger Interview at 39.

¹¹ *Id.* at 40-44.

¹² *Id.* at 10, 46.