

May 22, 2023

Via Electronic Transmission

The Honorable Ron Wyden
Chairman, Committee on Finance
Co-Chair, Whistleblower Protection Caucus
United States Senate

The Honorable Jason Smith
Chairman, Committee on Ways & Means
United States House of Representatives

The Honorable Mike Crapo
Ranking Member, Committee on Finance
United States Senate

The Honorable Richard Neal
Ranking Member, Committee on Ways & Means
United States House of Representatives

The Honorable Richard Durbin
Chairman, Committee on the Judiciary
United States Senate

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
United States House of Representatives

The Honorable Lindsey Graham
Ranking Member, Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Ranking Member, Committee on the Judiciary
United States House of Representatives

The Honorable Charles Grassley
Co-Chair, Whistleblower Protection Caucus
Member, Committee on Finance
United States Senate

Dear Chairs and Ranking Members:

On May 15th, we wrote you to inform you that the Internal Revenue Service (IRS) Criminal Supervisory Special Agent we represent had been told that he and his entire investigative team would be removed from the ongoing and sensitive investigation of the high-profile, controversial subject about which our client sought to make whistleblower disclosures to Congress. It is unclear to us what, if anything, you have done or will do with this information to help protect our client and other IRS employees with similar concerns from further reprisal.

In light of the circumstances, on May 17th, we filed a prohibited personnel practice complaint with the U.S. Office of Special Counsel.¹

¹ Attachment 1.

Yet the IRS has proceeded to take further actions against our client and others in an apparent attempt to intimidate and prevent them from making similar disclosures.

As detailed in the attached letter to IRS Commissioner Daniel Werfel, our client's supervisor is purporting to require that all case-related discussions require supervisory approval.² This illegal gag order does not include the language required by both statute³ and appropriations law.⁴

Furthermore, our client has become aware that the case agent on the case, which our client supervises, also sent a protected disclosure directly to IRS Commissioner Werfel this week. The IRS responded by raising the baseless and absurd prospect that his email to the Commissioner may have violated Federal Rule of Criminal Procedure 6(e) restrictions on disclosing grand jury proceedings. It did not.⁵ The email simply raised reasonable, good faith concerns to his chain of command, including Commissioner Werfel, about the removal of an entire investigative team from the case—which some of them have worked diligently for almost five years—before it has been resolved.

It is your constitutional duty to act as a check on Executive Branch abuse and ensure that the limits on appropriated funds and statutory whistleblower protections you have enacted have real meaning. Failing to act would send a chillingly clear message that discourages other whistleblowers from providing you with information and encourages retaliators to keep silencing employees without fear of scrutiny or consequences.

The longer it takes for Congress to begin oversight of this issue in earnest, the more it emboldens those who would retaliate against our client. For more than a month since first writing to you on April 19th, we have been attempting to schedule a transcribed interview—under appropriate protections in light of tax secrecy laws—with the House Committee on Ways and Means and the Senate Committee on Finance.

Throughout the last month we have repeatedly requested that our client be allowed to testify voluntarily on a bipartisan, bicameral basis. In addition to the risks he is already taking with his career and livelihood to offer you information, he should not have to take the additional risks associated with being forced to testify twice, in two different settings, with two different transcripts in the control of two different committees, led by two different chairmen with opposing partisan interests.

In short, our client is unwilling to be a political football, and is disappointed that the committees have been unwilling to negotiate one voluntary interview at which all could participate fully.

Over the last month, although the Senate Finance Committee leadership has been unwilling to even consider a joint interview, they had indicated a willingness to at least coordinate scheduling

² Attachment 2.

³ 5 U.S.C. § 2302(b)(13).

⁴ Consolidated Appropriations Act, 2023, Pub. L. 117–328, Div. E, Sec. 743.

⁵ Rule 6(e)(2) of the Federal Rules of Criminal Procedure prohibits certain enumerated persons from disclosing “a matter occurring before a grand jury.” Clearly, none of the assertions the IRS has complained of indicate any matters occurring before any grand jury, such as testimony occurring before the grand jury or grand jury deliberations.

with the House Ways and Means Committee, so our client could testify on two consecutive days back-to-back. That offer was encouraging and appreciated as a possible compromise to accommodation to some of our client's concerns.

On Friday we informed Senate Finance Committee staff that the House Ways and Means Committee had scheduled our client's private testimony for Friday, May 26th. We repeated our preference for a single joint interview, or at minimum, a Finance Committee interview on the previous day, Thursday, May 25th. Unfortunately, the Finance Committee would not commit to a date consecutive to the House interview as an accommodation to our client's concerns, as the staff had previously offered.

Therefore, our client intends to appear on Friday, May 26th for the scheduled testimony agreed to by the House Ways and Means Committee. Our client would welcome appropriately designated Senate staff to join and participate as well but is unlikely to agree to testify separately on another date.

Whistleblowers take enormous risks to try to bring you the information you need to conduct your constitutional duties. Thus, we respectfully urge you cooperate on a bipartisan, bicameral basis to address the mistreatment of whistleblowers in the wake of these protected disclosures and to hear our client's testimony as soon as possible.

Cordially,

[/Tristan Leavitt/](#)
Tristan Leavitt
President
Empower Oversight

[/Mark D. Lytle/](#)
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Partner
Nixon Peabody LLP

ATTACHMENTS

cc: The Honorable Henry Kerner
Special Counsel, Office of Special Counsel

The Honorable Russell George
Inspector General for Tax Administration, U.S. Department of the Treasury

The Honorable Michael Horowitz
Inspector General, U.S. Department of Justice