



May 14, 2013

**VIA CERTIFIED MAIL**

Hon. Kerry B. Harvey  
United States Attorney for the Eastern District of Kentucky  
260 W. Vine Street, Suite 300  
Lexington, KY 40507-1612

**RE: REQUEST FOR INVESTIGATION**

Dear United States Attorney Harvey:

Cause of Action is a nonprofit, nonpartisan government accountability organization that fights for federal government transparency and accountability.

As you are no doubt aware, the Internal Revenue Service (IRS) has admitted that its employees conspired and combined to oppress and burden certain tax-exempt status applicants, by subjecting them to inappropriate government scrutiny and action solely and specifically because of those applicants' political views and orientation.<sup>1</sup> This conspiracy and combination targeting politically "disfavored" conservative groups is a facial violation of 18 U.S.C. § 241 and 26 U.S.C. 7214. Therefore, we hereby request that you convene a grand jury to investigate this matter.

Lois Lerner, Director of the IRS's Exempt Organizations division, has admitted that IRS employees in the IRS Cincinnati Service Center in Covington, KY, singled out organizations that included in their applications to the IRS the words "tea party" or "patriot" for additional and inappropriate government action.<sup>2</sup> Ms. Lerner has further admitted that IRS employees "sent some letters out that were far too broad, asking questions that weren't really necessary for the type of application."<sup>3</sup> As a consequence of this conspiracy and combination, organizations have been unable to receive tax-exempt determinations and, in some cases, have been subject to additional audit and disclosure requirements, burdening them in the exercise of their Constitutionally-protected rights to free speech and free association.

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<sup>1</sup> Stephen Ohlemacher, *IRS Apologizes for Inappropriately Targeting Conservative Political Groups in 2012 Election*, HUFFINGTON POST (May 10, 2013, 06:15 PM ET), [http://www.huffingtonpost.com/2013/05/10/irs-apology\\_n\\_3253001.html?view=print&comm\\_ref=false](http://www.huffingtonpost.com/2013/05/10/irs-apology_n_3253001.html?view=print&comm_ref=false).

<sup>2</sup> *Id.*

<sup>3</sup> *Transcript of Lois Lerner's Remarks at Tax Meeting Sparking IRS Controversy*, FREE REPUBLIC (May 11, 2013), <http://www.freerepublic.com/focus/f-news/3018259/posts>.

A draft investigative report from the Treasury Inspector General for Tax Administration (TIGTA) has found that the IRS began targeting these groups in March, 2010, and that senior agency officials were informed of this inappropriate conduct in June, 2011.<sup>4</sup> TIGTA also found that “issue” criteria were used to choose applicants for unusual, oppressive and burdensome review. Specifically, the IRS scrutinized applications containing references to “Government spending, Government debt, or taxes; Education of the public via advocacy/lobbying to ‘make America a better place to live;’ and Statements in the case file (that) criticize how the country is being run.”<sup>5</sup>

The IRS employees’ conspiracy and combination to carry out such oppressive and burdensome government conduct is prohibited criminal conduct. *See* 18 U.S.C. § 241 (“[i]f two or more persons conspire to injure, oppress, threaten, or intimidate any person . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same . . . shall be fined under this title or imprisoned not more than ten years, or both”). The IRS employees’ use of their authority under the “revenue laws” of the United States to oppress and punish disfavored political groups is also a crime. *See* 26 U.S.C. 7214 (“[a]ny officer or employee of the United States acting in connection with any revenue law of the United States . . . who is guilty of any extortion or willful oppression under color of law . . . shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both”) Moreover, 26 U.S.C. § 7217 prohibits any “applicable person” – which would include the “President, the Vice President, any employee of the executive office of the President, and any employee of the executive office of the Vice President” – from requesting, “directly or indirectly, any officer or employee of the Internal Revenue Service to conduct . . . an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer.”

By targeting particular groups’ tax-exempt applications, IRS employees may have engaged in a conspiracy against rights and therefore subject to criminal liability.<sup>6</sup>

Based on Cause of Action’s longstanding concerns regarding oversight of tax-exempt groups by the IRS,<sup>7</sup> we are particularly concerned that this conspiracy, combination and conduct

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<sup>4</sup> Kevin Drawbaugh & Kim Dixon, *IRS Kept Shifting Targets in Tax-Exempt Groups Scrutiny: Report*, REUTERS (May 13, 2012, 3:18 AM), <http://www.reuters.com/article/2013/05/13/us-usa-tax-irs-criteria-idUSBRE94C03N20130513>.

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

<sup>6</sup> Furthermore, the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA) lists ten actions that require the IRS commissioner to terminate an IRS employee, commonly referred to as “The 10 Deadly Sins.” Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 1203, 112 Stat 685, 720 (1998). Under the RRA, an employee must be fired for violating an individual’s constitutional rights or the civil rights established under six specifically identified laws with respect to a taxpayer, taxpayer representative, or other employee of the IRS. § 1203(b)(3). The RRA also requires the IRS to terminate employees for violations of the Internal Revenue Code, Treasury Regulations, or policies of the IRS for the purpose of retaliating or harassing a taxpayer or other IRS employee. § 1203(b)(6). By targeting particular groups’ tax-exempt applications, IRS employees may have violated the above provisions of the RRA.

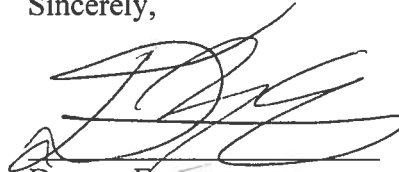
<sup>7</sup> For instance, Cause of Action filed a complaint against the IRS after it refused to release documents that would identify the names of individuals and businesses of which President Obama has requested tax records. Complaint,

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reflects deepening and pernicious politicization within the IRS. We therefore urge you to convene a grand jury and carry out a prompt investigation of this matter to ensure full disclosure of the facts and an appropriate measure of accountability for those who have abused government power.

Thank you for your attention to this matter. Please contact me at [Daniel.Epstein@causeofaction.org](mailto:Daniel.Epstein@causeofaction.org) or at 202-499-4232 if you should have any questions.

Sincerely,



DANIEL EPSTEIN  
EXECUTIVE DIRECTOR

cc:

Hon. Max Baucus, Chairman, Senate Finance Committee  
Hon. Orrin Hatch, Ranking Member, Senate Finance Committee  
Hon. Dave Camp, Chairman, House Committee on Ways and Means  
Hon. Sander Levin, Ranking Member, House Committee on Ways and Means  
Hon. Darrell Issa, Chairman, House Committee on Oversight and Government Reform  
Hon. Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform  
Hon. Harry Reid, Senate Majority Leader  
Hon. Mitch McConnell, Senate Minority Leader  
Hon. Rand Paul  
Hon. Hal Rogers

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Cause of Action v. Internal Revenue Serv., No. 12-1633 (D.D.C. Oct 2, 2012). Cause of Action also called on the IRS to investigate re-branded ACORN branches out of concern that they were using an affiliated 501(c)(3) to serve as a financial conduit for tax-deductible contributions. Tony Lee, *Watchdog Group Calls on IRS to Investigate Re-Branded TX Acorn Branch*, BREITBART (July 20, 2012), <http://www.breitbart.com/Big-Government/2012/07/19/Taxpayer-Watchdog-Group-Calls-on-1-R-S-To-Investigate-Re-Branded-Texas-ACORN-Branch>. There is no evidence that the IRS took any action in response to Cause of Action's requests for investigation. Similarly, Cause of Action revealed that the IRS has failed to monitor lobbying coalitions, allowing tax-exempt corporations to sponsor coalition lobbying without disclosing those activities. Andrew Joseph, *Watchdog Group Says IRS Not Monitoring Lobbying Coalitions*, NAT'L J. (Jun 15, 2012, 4:14 PM), <http://www.nationaljournal.com/blogs/influencealley/2012/06/watchdog-group-says-irs-not-monitoring-lobbying-coalitions-15>.