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### **Hearing on Internal Revenue Service Targeting Conservative Groups**

This statement for the House Ways and Means Committee is submitted on behalf of the National Organization for Marriage (“NOM”), a nonprofit organization recognized by the Internal Revenue Service (“IRS”) as a social welfare organization, exempt from taxation pursuant to Internal Revenue Code (“IRC”) § 501(c)(4).

On March 30, 2012, NOM became aware that its confidential tax information—specifically, its 2008 Form 990 Schedule B—had been obtained by the Human Rights Campaign (“HRC”) and the Huffington Post and published by both of these entities. Shortly after its public disclosure, NOM determined that the copy of its 2008 Schedule B obtained by the HRC and Huffington Post websites is the official version it filed with the IRS, such that the source of the public disclosure could only be the IRS. The unauthorized public disclosure of NOM’s 2008 Schedule B by the IRS or its employees is a violation of federal law, 26 U.S.C. § 6103, for which civil remedies are made available, 26 U.S.C. § 7431.

As stated in an April 11, 2012 letter from NOM President Brian Brown to the Treasury Inspector General for Tax Administration (TIGTA), NOM’s belief that the IRS must be the source of the disclosure is supported by the attached image, which shows a side-by-side comparison of NOM’s 2008 Form 990 Schedule B that was submitted to the IRS and the image of that tax information on the HRC and Huffington Post websites. The images appear to be identical with the exceptions of the phrase “THIS IS A COPY OF A LIVE RETURN FROM SMIPS. OFFICIAL USE ONLY” appearing on the top and bottom of leaked return and the number “100560209” that was stamped across the middle of leaked return image. Such markings would only appear on documents originating from the IRS, indicating that the source of the information leak to the HRC and the Huffington Post must be within the IRS.

NOM has previously requested an investigation into this matter in its April 11, 2012 letter to TIGTA to which TIGTA responded in an April 20, 2012 letter that acknowledged receipt of NOM’s request and gave NOM complaint No. 63-1204-0051-C. As of May 13, 2013, however, over a year after making the request, NOM had not received any information resulting from the requested investigation from TIGTA.

In fact, the only responses received from TIGTA relating to NOM’s Privacy Act requests and Freedom of Information Act (“FOIA”) requests have demonstrated an Orwellian-like

obstruction from TIGTA and the IRS. Along with refusing to prosecute any responsible parties on their own, TIGTA has responded to NOM's several requests to disclose information related to the possible leak that constitutes an illegal action under 26 U.S.C. §§ 6103 and 7213 by stating that the body is prohibited from releasing that information under the same statutes. Thus, the very statute that rendered the disclosure and publication of NOM's private tax information illegal also prevents NOM from ascertaining the necessary information to refer for prosecution or civilly pursue the individual or individuals responsible for the violation, leaving NOM powerless and reliant on TIGTA to take action.

However, according to 26 U.S.C § 7431(e), the Secretary of Treasury is required under FOIA to notify an affected entity, NOM in this instance, of any criminal charges made against an individual who disclosed that entity's tax information. Considering this requirement and NOM's several requests for information under FOIA that have all been denied, TIGTA's reluctance to disclose the subject of investigation as protected by the 26 U.S.C. § 6103 non-disclosure requirements is unfounded, and TIGTA should be required to disclose those appearing responsible for the illegal leak of NOM's tax information.

Additionally, the information that NOM has requested under the Privacy Act falls within one of TIGTA's explicit "routine use exceptions." As stated in 75 Fed. Reg. 20715-16 (April 20, 2010):

Disclosure of returns and return information may be made only as provided by 26 U.S.C 6103. Records other than returns and return information may be used to...(12) Disclose information to complainants, victims, or their representatives (defined for purposes here to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance that complainant or victim has solicited) concerning the status and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken.

75 Fed. Reg. at 20715.

Based on this explicit language from TIGTA and 26 U.S.C § 7431(e), it would seem that TIGTA has no choice but to disclose the information requested by NOM under the Privacy Act, yet TIGTA has repeatedly failed to deliver that information.

In light of the recent discovery that the IRS has been using additional scrutiny measures to target conservative groups filing for tax-exempt statuses through 501(c)(3) and 501(c)(4) classifications, an investigation into how NOM's 2008 Form 990 Schedule B information was

obtained by the HRC and the Huffington Post seems to carry even greater weight. As Brown stated in a May 13, 2013 press release from NOM, "what NOM has experienced suggests that problems at the IRS are potentially far more serious than even these latest revelations reveal."

National Organization for Marriage  
2008 Form 990 extract

As posted by Human Rights Campaign with all masks turned on

**Schedule B**  
Form 990, 990-EZ, or 990-PF

**Schedule of Contributors**  
Attach to Form 990, 990-EZ, and 990-PF.

OMB No. 1545-0047  
**2008**

Name of the organization  
National Organization for Marriage Inc.

Employer identification number  
28 | 626298

Organization type (check one)

File as:

Form 990 or 990-EZ  501(c)(3) letter numbered organization  
 501(c)(29) nonprofit charitable trust not treated as a private foundation  
 527 political organization

Form 990-PF  501(c)(29) exempt private foundation  
 501(c)(29) nonprofit charitable trust treated as a private foundation  
 501(c)(28) taxable private foundation

Check if your organization is covered by the General Rule or a Special Rule. Only a section 501(c)(7), (8), or (13) organization can check boxes for both the General Rule and a Special Rule.

**General Rule**  
 For organizations filing Form 990, 990-EZ, or 990-PF and, during the year, \$1,000 or more (in money or property) from any one contributor. Complete Part VII.

**Special Rules**

For a section 501(c)(29) organization (Reg Form 990, or Form 990-EZ, that met the 33% support test of the regulations under sections 5080(a)(1)(B)(i)(2)(B) received from any one contributor, during the year, a contribution of the greater of (i) \$5,000 or (ii) 2% of the amount on Form 990, Part VIII, line 7b or 2% of the amount on Form 990-EZ, line 7. Complete Parts I and 6.

For a section 501(c)(7), (8), or (13) organization filing Form 990, or Form 990-EZ, that received from any one contributor, during the year, aggregate contributions or bequests of more than \$1,000 for use exclusively for religious, charitable, scientific, literary, or educational purposes, or the promotion of cruelty to children or animals. Complete Parts I, 5, and 6.

For a section 501(c)(7), (8), or (13) organization filing Form 990, or Form 990-EZ, that received from any one contributor, during the year, some contributions for use exclusively for religious, charitable, etc., purposes, but these contributions did not aggregate to more than \$1,000. If this box is checked, enter here the total contributions that were received during the year for an exclusively religious, charitable, etc., purpose. Do not complete any of the parts unless the General Rule applies to the organization because it received nonexclusively religious, charitable, etc., contributions of \$1,000 or more during the year.

**Caution:** Organizations that are not covered by the General Rule and/or the Special Rules do not file Schedule B (Form 990, 990-EZ, or 990-PF), but they must answer "No" on Part IV, line 7 of their Form 990, or check the box in the heading of their Form 990-EZ, or on line 7 of their Form 990-PF, to certify that they do not meet the filing requirements of Schedule B (Form 990, 990-EZ, or 990-PF).

For Preparer Use and Preparation Information See Instructions, and the instructions for Form 990. These instructions will be bound separately. Ca No. 990110 Schedule B (Form 990, 990-EZ, or 990-PF) 2008

Attachment 2

As posted by Human Rights Campaign with all masks turned off

**Schedule B**  
Form 990, 990-EZ, or 990-PF

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For a section 501(c)(7), (8), or (13) organization filing Form 990, or Form 990-EZ, that received from any one contributor, during the year, aggregate contributions or bequests of more than \$1,000 for use exclusively for religious, charitable, scientific, literary, or educational purposes, or the promotion of cruelty to children or animals. Complete Parts I, 5, and 6.

For a section 501(c)(7), (8), or (13) organization filing Form 990, or Form 990-EZ, that received from any one contributor, during the year, some contributions for use exclusively for religious, charitable, etc., purposes, but these contributions did not aggregate to more than \$1,000. If this box is checked, enter here the total contributions that were received during the year for an exclusively religious, charitable, etc., purpose. Do not complete any of the parts unless the General Rule applies to the organization because it received nonexclusively religious, charitable, etc., contributions of \$1,000 or more during the year.

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THIS IS A COPY OF A LIVE RETURN FROM SIRS. OFFICIAL USE ONLY.



INSPECTOR GENERAL  
FOR TAX  
ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20005

May 3, 2013

Mr. Brian S. Brown, President  
Dr. John C. Eastman, Chairman  
National Organization for Marriage  
C/O ActRight Legal Foundation  
209 West Main Street  
Plainfield, Indiana 46168

Dear Mr. Brown and Dr. Eastman:

This is in response to your Privacy Act request, dated April 15, 2013, seeking access to records maintained by the Treasury Inspector General for Tax Administration (TIGTA). The TIGTA Disclosure Branch received your request on April 18, 2013. Specifically, you are requesting that TIGTA provide the following information, including any records related to or supporting the same information:

1. Whether the investigation of Complaint No. 63-1204-0051-C is open or closed.
2. Whether the allegations made in Complaint No. 63-1204-0051-C, including the allegations made in the April 11, 2012 letter from the Requestors to TIGTA, were substantiated or were not substantiated.
3. If the subject(s) of Complaint No. 63-1204-0051-C has/have exhausted all reasonable appeals, any action taken by TIGTA, or any other agency, as a result of Complaint No. 63-1204-0051-C.

You have requested that TIGTA disclose this information pursuant to a routine use in TIGTA's System of Records Notice under the Privacy Act. However, in addition to the Privacy Act, the release of TIGTA Title 26 (I.R.C.) investigative records, if any, is also governed by the confidentiality provisions of I.R.C. § 6103. Specially, records compiled pursuant to a Title 26 investigation, including even the fact of an investigation, are the protected return information of the subject(s) of the investigation. Your complaint (#63-1204-0051-C) concerned allegations of an unauthorized disclosure of return information by a third party, which is an allegation of a potential violation of I.R.C. § 7213. Therefore, pursuant to I.R.C. § 6103, TIGTA can neither admit nor deny the existence of any records responsive to your current request.

Moreover, we note that this request asks for information which was encompassed in previous FOIA requests you made to TIGTA.<sup>1</sup> A review of TIGTA Disclosure Branch indices revealed you previously submitted FOIA requests (case numbers #2012-FOI-00205 and 2012-FOI-00232) to TIGTA on August 9, and September 21, 2012, respectively, seeking information that encompasses items 1-3 of your current request. Furthermore, you appealed TIGTA's initial decisions (2012-APP-00025 and 2013-APP-00004) on September 21, and December 3, 2012, respectively. Your requests and subsequent appeals for this information have been addressed by TIGTA previously and a copy of each decision is enclosed for your reference.

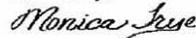
We have enclosed an Information Sheet that explains your administrative appeal rights. You may appeal this decision within thirty-five (35) days from the date of this letter. Your appeal must be in writing and signed by you. You should address the envelope as follows:

Freedom of Information Act Appeal  
Treasury Inspector General for Tax Administration  
Office of Chief Counsel  
City Center Building  
1401 H Street, NW, Suite 469  
Washington, DC 20005

No fees were assessed in the processing of this request because the cost incurred was less than \$25.00, the threshold set by Treasury's FOIA regulation.

If you have any questions, please contact Government Information Specialist Monica Frye at (202) 622-2738 and refer to case number 2013-FOI-00144.

Sincerely,



Monica Frye  
(for) Amy P. Jones  
Disclosure Officer

Enclosures

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<sup>1</sup> Because it is TIGTA policy to process requests for information under the statute that provides the greatest access to the requested records, we processed your prior requests under the FOIA.