

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON WAYS AND MEANS,  
UNITED STATES HOUSE OF REPRESENTATIVES,  
1102 Longworth House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

UNITED STATES DEPARTMENT OF  
THE TREASURY,  
1500 Pennsylvania Avenue N.W.  
Washington, D.C. 20220, *et al.*,

*Defendants.*

Case No. 1:19-cv-1974

**Exhibit A**

RICHARD E. NEAL,  
MASSACHUSETTS,  
CHAIRMAN

# Congress of the United States

## U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

1102 LONGWORTH HOUSE OFFICE BUILDING  
(202) 225-3625

Washington, DC 20515-0348

<http://waysandmeans.house.gov>

KEVIN BRADY,  
TEXAS,  
RANKING MEMBER

JOHN LEWIS, GEORGIA  
LLOYD DOGGETT, TEXAS  
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JIMMY GOMEZ, CALIFORNIA  
STEVEN HORSFORD, NEVADA

DEVIN NUNES, CALIFORNIA  
VERN BUCHANAN, FLORIDA  
ADRIAN SMITH, NEBRASKA  
KENNY MARCHANT, TEXAS  
TOM REED, NEW YORK  
MIKE KELLY, PENNSYLVANIA  
GEORGE HOLDING, NORTH CAROLINA  
JASON SMITH, MISSOURI  
TOM RICE, SOUTH CAROLINA  
DAVID SCHWEIKERT, ARIZONA  
JACKIE WALORSKI, INDIANA  
DARIN LAHOOD, ILLINOIS  
BRAD R. WENSTRUP, OHIO  
JODEY ARRINGTON, TEXAS  
DREW FERGUSON, GEORGIA  
RON ESTES, KANSAS

GARY ANDRES,  
MINORITY STAFF DIRECTOR

BRANDON CASEY,  
MAJORITY STAFF DIRECTOR

April 3, 2019

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Commissioner Rettig:

The Committee on Ways and Means ("Committee") has oversight and legislative authority over our Federal tax laws. With this authority comes a responsibility to ensure that the Internal Revenue Service ("IRS") is enforcing the laws in a fair and impartial manner.

Consistent with its authority, the Committee is considering legislative proposals and conducting oversight related to our Federal tax laws, including, but not limited to, the extent to which the IRS audits and enforces the Federal tax laws against a President. Under the Internal Revenue Manual, individual income tax returns of a President are subject to mandatory examination, but this practice is IRS policy and not codified in the Federal tax laws. It is necessary for the Committee to determine the scope of any such examination and whether it includes a review of underlying business activities required to be reported on the individual income tax return.

Pursuant to my authority under Internal Revenue Code section 6103(f), for each of the tax years 2013 through 2018, I request the following return and return information:

1. The Federal individual income tax returns of Donald J. Trump.
2. For each Federal individual income tax return requested above, a statement specifying:  
(a) whether such return is or was ever under any type of examination or audit; (b) the length of such examination or audit; (c) the applicable statute of limitations on such examination or audit; (d) the issue(s) under examination or audit; (e) the reason(s) the return was selected for examination or audit; and (f) the present status of such examination or audit (to include the date and description of the most recent return or return information activity).
3. All administrative files (workpapers, affidavits, etc.) for each Federal individual income tax return requested above.

Commissioner Rettig

April 3, 2019

Page 2

4. The Federal income tax returns of the following entities:
  - The Donald J. Trump Revocable Trust;
  - DJT Holdings LLC;
  - DJT Holdings Managing Member LLC;
  - DTTM Operations LLC;
  - DTTM Operations Managing Member Corp;
  - LFB Acquisition Member Corp;
  - LFB Acquisition LLC; and
  - Lamington Farm Club, LLC d/b/a Trump National Golf Club—Bedminster.
5. For each Federal income tax return of each entity listed above, a statement specifying:  
(a) whether such return is or was ever under any type of examination or audit; (b) the length of such examination or audit; (c) the applicable statute of limitations on such examination or audit; (d) the issue(s) under examination or audit; (e) the reason(s) the return was selected for examination or audit; and (f) the present status of such examination or audit (to include the date and description of the most recent return or return information activity).
6. All administrative files (workpapers, affidavits, etc.) for each Federal income tax return of each entity listed above.
7. If no return was filed for the tax year requested, a statement that the entity or individual did not file a return for such tax year.

This document is a record of the Committee and is entrusted to the IRS only for use in handling this matter. Additionally, any documents created by the IRS in connection with a response to this Committee document, including (but not limited to) any replies to the Committee, are records of the Committee and shall be segregated from agency records and remain subject to the control of the Committee. Accordingly, the aforementioned documents are not “agency records” for purposes of the Freedom of Information Act. Absent explicit Committee authorization, access to this document and any responsive documents shall be limited to IRS personnel who need such access for the purpose of providing information or assistance to the Committee.

Please provide the requested return and return information by April 10, 2019. Thank you for your prompt attention to this matter.

Sincerely,



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The Honorable Richard E. Neal, *Chairman*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**Exhibit B**

(/)

 (<http://twitter.com/WaysMeansCmte>)  (<http://www.facebook.com/waysandmeanscommitteedems>)

 (<http://www.youtube.com/user/waysandmeansdems>)

# NEAL STATEMENT ON REQUESTING PRESIDENT TRUMP'S TAX RETURNS

Apr 3, 2019 | Press Release

**WASHINGTON, DC** – Today, Ways and Means Committee Chairman Richard Neal (D-MA) issued the following statement after sending a written request (</sites/democrats.waysandmeans.house.gov/files/documents/Neal%20Letter%20to%20Rettig%20%28signed%29%20-%202019.04.03.pdf>) to Internal Revenue Service (IRS) Commissioner Charles Rettig for six years of President Donald J. Trump's personal and business tax returns:

"It is critical to ensure the accountability of our government and elected officials. To maintain trust in our democracy, the American people must be assured that their government is operating properly, as laws intend.

"Congress, as a co-equal branch of government, has a duty to conduct oversight of departments and officials. The Ways and Means Committee in particular has a responsibility to conduct oversight of our voluntary Federal tax system and determine how Americans – including those elected to our highest office – are complying with those laws. It is also our duty to evaluate the operation of the Internal Revenue Service in its administration and enforcement of the tax laws.

"The IRS has a policy of auditing the tax returns of all sitting presidents and vice-presidents, yet little is known about the effectiveness of this program. On behalf of the American people, the Ways and Means Committee must determine if that policy is being followed, and, if so, whether these audits are conducted fully and appropriately. In order to fairly make that determination, we must obtain President Trump's tax returns and review whether the IRS is carrying out its responsibilities. The Committee has a duty to examine whether Congressional action may be needed to require such audits, and to oversee that they are conducted properly.

"I today submitted to IRS Commissioner Rettig my request for six years of the president's personal tax returns as well as the returns for some of his business entities. We have completed the necessary groundwork for a request of this magnitude and I am certain we are within our legitimate legislative, legal, and oversight rights.

"I take the authority to make this request very seriously, and I approach it with the utmost care and respect. This request is about policy, not politics; my preparations were made on my own track and timeline, entirely independent of other activities in Congress and the Administration. My actions reflect an abiding reverence for our democracy and our institutions, and are in no way based on emotion of the moment or partisanship. I trust that in this spirit, the IRS will comply with Federal law and furnish me with the requested documents in a timely manner."

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## Subcommittees:

Oversight (116th Congress) (</subcommittees/oversight-116th-congress>)



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**Exhibit C**





Consovoy McCarthy Park PLLC

3033 Wilson Boulevard  
Suite 700  
Arlington, VA 22201  
703.243.9423  
www.consovoymccarthy.com

April 5, 2019

Brent J. McIntosh  
General Counsel  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Mr. McIntosh:

Two days ago, Chairman Richard Neal of the House Ways and Means Committee sent Commissioner Charles Rettig of the Internal Revenue Service a letter, which asked for confidential tax information about President Donald J. Trump, The Donald J. Trump Revocable Trust, and seven related businesses. I represent President Trump and these entities in connection with Chairman Neal's request. Sheri Dillon and Will Nelson represent President Trump and these entities in connection with the underlying IRS examinations referenced below. Secretary Mnuchin has stated that he will consult with your office about any congressional request for the President's private tax information. I write to explain why Chairman Neal cannot legally request—and the IRS cannot legally divulge—this information.

The Tax Code zealously guards taxpayer privacy. As Justice Ginsburg explained when she served on the D.C. Circuit, taxpayer privacy is “fundamental to a tax system that relies on self-reporting,” since it “guarantees that the sometimes sensitive or otherwise personal information in a return will be guarded” from individuals outside the IRS. *Nat'l Treasury Employees Union v. FLRA*, 791 F.2d 183, 184 (D.C. Cir. 1986). The “general rule,” accordingly, is that tax returns and return information “are confidential and not to be disclosed.” *Church of Scientology of Calif. v. IRS*, 484 U.S. 9, 15 (1987). Section 6103 of the Tax Code declares that tax returns, audits, administrative files, and other related information “shall be confidential” and prohibits federal officials from disclosing them. Though section 6103 contains some exceptions, they are “limited” and “narrowly drawn.” *EPIC v. IRS*, 910 F.3d 1232, 1235 (D.C. Cir. 2018). Federal officials who ignore these legal limitations are guilty of a crime and liable for damages. 18 U.S.C. §1905; 26 U.S.C. §§7213(a)(1), 7431(a).

One exception to the general rule prohibiting disclosure of tax returns and return information is the provision that Chairman Neal invokes, section 6103(f). While that section allows Ways and Means to obtain tax returns and return information under certain conditions, the committee's authority is subject to important constraints. These constraints “extend to the ordinary taxpayer and the President alike.” *EPIC*, 910 F.3d at 1235.

For starters, requests for tax returns and return information must have a legitimate legislative purpose. All legislative investigations “must be related to, and in furtherance of, a legitimate task of the Congress.” *Watkins v. United States*, 354 U.S. 178, 187 (1957). And that task must be squarely within the relevant committee's jurisdiction. *United States v. Patterson*, 206 F.2d 433, 434 (D.C. Cir. 1953). The Constitution does not grant Congress a standalone



“investigation” power; Congress can conduct investigations only to further some other legislative power enumerated in the Constitution. *Kilbourn v. Thompson*, 103 U.S. 168, 190 (1880). As the Supreme Court told the House Un-American Activities Committee decades ago, “there is no congressional power to expose for the sake of exposure”—especially not the “private affairs of individuals.” *Watkins*, 354 U.S. at 200, 187. And Congress cannot use investigations to exercise “the functions of the executive” or to act like a “law enforcement or trial agency.” *Id.* at 187.

Even when Ways and Means can identify some legitimate committee purpose, it cannot request tax returns and return information to punish taxpayers for their speech or politics. The “First Amendment freedoms” of “speech,” “political belief,” and “association” apply to congressional investigations. *Id.* at 188. And the First Amendment prohibits the government—including Congress—from harassing political opponents and retaliating against disfavored speech. *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 75 (1990); *Lozman v. City of Riviera Beach*, 138 S.Ct. 1945, 1949 (2018). The government commits illegal retaliation when the target’s speech or politics motivated its actions “at least in part.” *Cruise-Gulyas v. Minard*, 918 F.3d 494, 497 (6th Cir. 2019). That is because, even when the government could legitimately act “for any number of reasons, there are some reasons upon which the government may not rely”—including “constitutionally protected speech or associations.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

Chairman Neal’s request flouts these fundamental constitutional constraints. Ways and Means has no legitimate committee purpose for requesting the President’s tax returns or return information. While the committee has jurisdiction over taxes, it has no power to conduct its own examination of individual taxpayers. Enforcement of our nation’s tax laws is entrusted to the IRS—an arm of the Executive Branch. Indeed, the IRS is already conducting its own examination. Congressional inquiries made “while the decisionmaking process is ongoing” impose the “greatest” intrusion on “the Executive Branch’s function of executing the law.” 5 Op. O.L.C. 27, 31 (1981).

Even if Ways and Means had a legitimate committee purpose for requesting the President’s tax returns and return information, that purpose is not driving Chairman Neal’s request. His request is a transparent effort by one political party to harass an official from the other party because they dislike his politics and speech. Chairman Neal wants the President’s tax returns and return information because his party recently gained control of the House, the President is their political opponent, and they want to use the information to damage him politically. It is no secret that a vocal wing of the Chairman’s party has been clamoring for the President’s tax returns since before the 2016 election. And it is no coincidence that Chairman Neal made his request just days after prominent Democratic constituencies began publicly criticizing the House for its failure to go after the President.

While Chairman Neal now claims that he needs the President’s tax returns and return information to assess how “the IRS audits and enforces the Federal tax laws against a President,” that explanation is obviously pretextual. If Chairman Neal genuinely wants to review how the IRS audits Presidents, why is he seeking tax returns and return information covering the four years before President Trump took office? Why is he not requesting information about the audits of previous Presidents? And why can he not simply ask the IRS to explain its policy? The answer, of course, is that Chairman Neal’s request is not about

examining IRS policy. It is about scoring political points against President Trump. As Chairman Neal explained to the partisan groups demanding the President's tax returns: He had to be "meticulous about [his] choice of words" because his request will "become the basis of a long and arduous court case." He stressed that Democrats had to "resist the emotion of the moment," not "step on [their] tongue[s]," and "approach this gingerly and make sure the rhetoric that is used does not become a footnote to the court case." Rep. Neal, *In the News* (Jan. 23, 2019), [bit.ly/2TPe1k0](https://bit.ly/2TPe1k0); Rep. Neal, *In the News* (Jan. 24, 2019), [bit.ly/2UfiYaT](https://bit.ly/2UfiYaT). In short, Chairman Neal promised to draft a request that concealed his party's motive: unconstitutional retaliation against the President.

If the IRS acquiesces to Chairman Neal's request, it would set a dangerous precedent. As Secretary Mnuchin recently told Congress, he is "not aware that there has ever been a request for an elected official's tax returns." For good reason. It would be a gross abuse of power for the majority party to use tax returns as a weapon to attack, harass, and intimidate their political opponents. Once this Pandora's box is opened, the ensuing tit-for-tat will do lasting damage to our nation. Can the Chairman request the returns of his primary opponents? His general-election opponents? Judges who are hearing his case? The potential abuses would not be limited to Congress, as the President has even greater authority than Congress to obtain individuals' tax returns. 26 U.S.C. §6103(g). Congressional Democrats would surely balk if the shoe was on the other foot and the President was requesting their tax returns. After all, nearly 90% of them have insisted on keeping their tax returns private, including Speaker Pelosi, Senator Schumer, Representative Nadler, Representative Schiff, and Representative Neal himself. *Members of Congress: Where Are Your Tax Returns?*, Roll Call (June 26, 2017), [bit.ly/2VmhnN4](https://bit.ly/2VmhnN4).

Chairman Neal's request is especially inappropriate because, as noted above, he is asking for tax returns, administrative files, and other information regarding an ongoing IRS examination. IRS examinations are trial-like adjudications, and basic principles of due process require adjudications to be insulated from congressional interference. When a congressional investigation focuses on a "pending" adjudication, it violates "the right of private litigants to a fair trial and, equally important, with their right to the appearance of impartiality"—the "*sine qua non* of American judicial justice." *Pillsbury Co. v. FTC*, 354 F.2d 952, 964 (5th Cir. 1966). Even the most scrupulous IRS officials could not help but be influenced by the fact that Congressional partisans are scrutinizing their work in real time. *Id.*

Knowing this, Chairman Neal decided to make his request anyway. The IRS's ability to do its job fairly and impartially has already been undermined. But complying with the request, and turning over the requested files, would make matters far worse. The executive branch has long refused to "provide committees of Congress with access to, or copies of, open law enforcement files." 10 Op. O.L.C. 68, 76 (1986). Making Congress "a partner in the investigation," every administration since George Washington has recognized, would create "a substantial danger that congressional pressures will influence the course of the investigation." 8 Op. O.L.C. 252, 263 (1984).

Finally, given the unprecedented nature of Chairman Neal's request, the IRS should refrain from divulging the requested information until it receives a formal legal opinion from the Justice Department's Office of Legal Counsel. Caution and deliberation are essential to ensure that the Treasury Department does not erode the constitutional separation of powers

or the Tax Code's "core purpose of protecting taxpayer privacy," *Tax Analysts v. IRS*, 117 F.3d 607, 615 (D.C. Cir. 1997)—protections that safeguard not just the President, but all Americans.

We would welcome an opportunity to meet and discuss these issues. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "WSC", followed by a long horizontal line extending to the right.

William S. Consovoy

cc: Steven T. Mnuchin  
Charles P. Rettig  
Sheri A. Dillon  
William F. Nelson

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Case No. 1:19-cv-1974

**Exhibit D**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

April 10, 2019

The Honorable Richard E. Neal  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Neal:

I write in response to the Committee's April 3 letter to the Commissioner of Internal Revenue requesting private tax return information under 26 U.S.C. § 6103(f). The Committee requests the materials by April 10, but the Treasury Department will not be able to complete its review of your request by that date.<sup>1</sup>

We begin with an awareness of Congressional concerns already raised regarding this inquiry. In the last Congress, the Committee on Ways and Means issued a formal report concerning a House resolution of inquiry seeking information substantially similar to the information you request. The Committee determined that such a request would be an "abuse of authority" and "set a dangerous precedent by targeting a single individual's confidential tax returns and associated financial documents for disclosure" for political reasons.<sup>2</sup> The Committee recognized that section 6103(f) may not be used "for purposes of embarrassing or attacking political figures of another party."<sup>3</sup> Noting a similar concern in a recent floor speech, the Chairman of the Senate Finance Committee—who shares the same section 6103(f) authority as you—described the April 3 request as lacking the requisite "legitimate legislative purpose" and as "Nixonian to the core."<sup>4</sup>

You too have acknowledged the unprecedented nature of this request. As you stated in October 2018 with respect to this long-planned inquiry, "[t]his has never happened before, so you want to be very meticulous."<sup>5</sup> We share that caution, and we agree that this is not a routine section 6103(f) request. The Committee's request raises serious issues concerning the

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<sup>1</sup> Although the letter attempts to instruct the Commissioner to strictly limit access to the letter to "IRS personnel" only, the Committee promptly released the letter on Twitter and its website.

<sup>2</sup> H. Comm. on Ways & Means, H. Rept. No. 115-309, at 2, 3 (2017), <https://www.congress.gov/115/crpt/hrpt309/CRPT-115hrpt309.pdf>.

<sup>3</sup> *Id.* at 3.

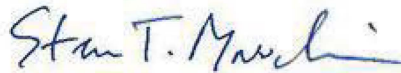
<sup>4</sup> 165 Cong. Rec. S2258-02 (Apr. 4, 2019) (statement of Sen. Charles Grassley).

<sup>5</sup> R. Rubin, *Wall Street Journal* (Oct. 3, 2018) (quoting then-Ranking Member Neal), <https://www.wsj.com/articles/trumps-tax-returns-in-the-spotlight-if-democrats-capture-the-house-1538575880>.

constitutional scope of Congressional investigative authority, the legitimacy of the asserted legislative purpose, and the constitutional rights of American citizens. The legal implications of this request could affect protections for all Americans against politically-motivated disclosures of personal tax information, regardless of which party is in power. Given the seriousness of these issues, which bear no connection to ordinary tax administration, we have begun consultations with the Department of Justice to ensure that our response is fully consistent with the law and the Constitution. For the same reasons, I intend to supervise the Department's review of the Committee's request to ensure that taxpayer protections and applicable laws are scrupulously observed, consistent with my statutory responsibilities.<sup>6</sup>

The Department respects Congressional oversight, and we intend to review your request carefully.

Sincerely,

A handwritten signature in blue ink that reads "Steven T. Mnuchin". The signature is fluid and cursive, with the first name "Steven" and last name "Mnuchin" clearly legible.

Steven T. Mnuchin

cc: The Honorable Kevin Brady, Ranking Member, Committee on Ways and Means

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<sup>6</sup> See 26 U.S.C. § 6103(f) (entrusting responsibility to "the Secretary"); *see also* 26 U.S.C. § 7801(a)(1) ("Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury."); 31 U.S.C. § 321(c) ("Duties and powers of officers and employees of the Department are vested in the Secretary....").

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**Exhibit E**



RICHARD E. NEAL,  
MASSACHUSETTS,  
CHAIRMAN

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TEXAS,  
RANKING MEMBER

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JIMMY GOMEZ, CALIFORNIA  
STEVEN HORSFORD, NEVADA

## U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

1102 LONGWORTH HOUSE OFFICE BUILDING  
(202) 225-3625

Washington, DC 20515-0348

<http://waysandmeans.house.gov>

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DREW FERGUSON, GEORGIA  
RON ESTES, KANSAS

GARY ANDRES,  
MINORITY STAFF DIRECTOR

BRANDON CASEY,  
MAJORITY STAFF DIRECTOR

April 13, 2019

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Commissioner Rettig:

On April 3, 2019, pursuant to my authority under section 6103(f) of the Internal Revenue Code ("IRC"), I requested that the Internal Revenue Service ("IRS") furnish certain return and return information by April 10, 2019. As I explained in my earlier letter, that request is in furtherance of consideration by the Committee on Ways and Means ("Committee") of legislative proposals and oversight related to our Federal tax laws, including, but not limited to, the extent to which the IRS audits and enforces the Federal tax laws against a President.

I am aware that concerns have been raised regarding my request and the authority of the Committee. Those concerns lack merit. Moreover, judicial precedent commands that none of the concerns raised can legitimately be used to deny the Committee's request.

*First*, it bears noting that the statutory language of section 6103(f) is unambiguous and raises no complicated legal issues that warrant supervision or review by the Department of the Treasury ("Treasury") or the Department of Justice ("Justice"). Section 6103(f) commands that "[u]pon written request from the chairman of the Committee on Ways and Means of the House of Representatives . . . the Secretary *shall* furnish such committee with any return or return information specified in such request." 26 U.S.C. § 6103(f)(1) (emphasis added). It is a well-established principle of statutory interpretation that words that are neither terms of art nor statutorily defined be given their ordinary meaning. Here, the statute's use of the "mandatory 'shall' . . . creates an obligation impervious to judicial discretion." *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see also, e.g., EPA v. EME Homer City Generation*, 572 U.S. 489, 509 (2014); *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461-62 (2002) (courts "must presume that a legislature says in a statute what it means and means in a statute what it says there." (internal quotation marks omitted)).

*Second*, there is no valid basis to question the legitimacy of the Committee's legislative purpose here. The Supreme Court has instructed that Congress's power to investigate is "broad"

Commissioner Rettig

April 13, 2019

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and “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” *Watkins v. United States*, 354 U.S. 178, 187 (1957).

It is not the proper function of the IRS, Treasury, or Justice to question or second guess the motivations of the Committee or its reasonable determinations regarding its need for the requested tax returns and return information. Indeed, the Supreme Court has consistently noted that the motivations underlying Congressional action are not to be second guessed, even by the courts. *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 509 (1975) (“The wisdom of congressional approach or methodology is not open to judicial veto.”); *Watkins*, 354 U.S. at 200 (“But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function.”); *Barenblatt v. United States*, 360 U.S. 109, 132 (1959) (“So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power.”).

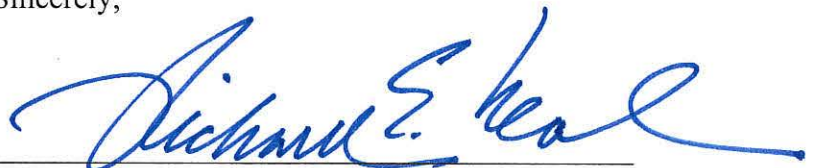
Courts have held that, where “a rational legislative purpose is present for investigating a particular person, organization, or institution[,] [t]here is no requirement that every piece of information gathered in such an investigation be justified before the judiciary.” *McSurely v. McClellan*, 521 F.2d 1024, 1041 (D.C. Cir. 1975); *see also Townsend v. United States*, 95 F.2d 352, 361 (D.C. Cir. 1938). “A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress.” *Townsend*, 95 F.2d at 361. Furthermore, the Supreme Court has expressly recognized that “[t]o be a valid legislative inquiry there need be no predictable end result.” *Eastland*, 421 U.S. at 509.

*Third*, concerns about what the Committee may do with the tax returns and return information are baseless. As my April 3<sup>rd</sup> letter noted, this request falls squarely within the Committee’s oversight authority. It is well-established law in the D.C. Circuit that “[t]he presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.” *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007) (citation omitted); *Exxon Corp. v. FTC*, 589 F.2d 582, 589 (D.C. Cir. 1978) (“committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties.”). In other words, the IRS, Treasury, and Justice must assume that the Committee Members, like all government officials, will act properly in the conduct of their official duties.

To date, the IRS has failed to provide the requested return and return information despite an unambiguous legal obligation to do so under section 6103(f). I expect a reply from the IRS by 5:00 p.m. on April 23, 2019. Please know that, if you fail to comply, your failure will be interpreted as a denial of my request.

Thank you for your prompt attention to this matter.

Sincerely,



The Honorable Richard E. Neal, *Chairman*



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON WAYS AND MEANS,  
UNITED STATES HOUSE OF REPRESENTATIVES,  
1102 Longworth House Office Building  
Washington, D.C. 20515,

*Plaintiff,*

v.

UNITED STATES DEPARTMENT OF  
THE TREASURY,  
1500 Pennsylvania Avenue N.W.  
Washington, D.C. 20220, *et al.*,

*Defendants.*

Case No. 1:19-cv-1974

**Exhibit F**



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Suite 700  
Arlington, VA 22201  
703.243.9423  
www.consovoymccarthy.com

April 15, 2019

Brent J. McIntosh  
General Counsel  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Mr. McIntosh:

I wrote you on April 5 to explain why Chairman Neal's request for my clients' confidential tax information is illegal. Since then, Chairman Neal has once again requested that information. In his April 13 letter to Commissioner Rettig, Chairman Neal asserts that "none" of the legal objections raised in my letter "can legitimately be used to deny the Committee's request." The Chairman is wrong.

Chairman Neal begins with a red herring. He stresses the mandatory language of section 6103(f): "Upon written request from the chairman of the Committee on Ways and Means ... the Secretary *shall* furnish such committee with any return or return information." 26 U.S.C. §6103(f)(1) (emphasis added). But highlighting the word "shall" is a talking point, not a serious legal argument. "It is a proposition too plain to be contested" that no statute—not even one that uses mandatory language—can be used to violate the Constitution. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). After all, it is "the Constitution" that Chairman Neal and his colleagues took an oath to "support and defend." 5 U.S.C. §3331. That is why the Congressional Research Service has acknowledged that, despite the "plain language of Section 6103(f)," requests for tax information "must further a 'legislative purpose' and not otherwise breach relevant constitutional rights or privileges." *Congressional Access to the President's Federal Tax Returns*, CRS (updated Apr. 4, 2019), [bit.ly/2Z9ofj3](https://bit.ly/2Z9ofj3). Chairman Neal's request does not do that, as my previous letter explains.

Chairman Neal weakly repeats his original explanation that the request is an effort to determine "the extent to which the IRS audits and enforces the Federal tax laws against a President." But no one actually believes this. To quote Senator Kennedy, Chairman Neal's request "is not in good faith" and "nobody believes he's in good faith." And to quote Senator Grassley, who chairs the Senate Finance Committee and has the same requesting authority as Chairman Neal, this invented justification for requesting the President's tax information "doesn't make sense when taken at face value because you can't take it at face value." Indeed, Chairman Neal's own committee has concluded that a request for the President's personal and business tax information would not further any legitimate legislative purpose, but instead "would be the first time the Committee exercised its authority to wade into the confidential tax information of an individual with no tie to any investigation within our jurisdiction." H. Rep. No. 115-309, at 3.

Yet instead of reassuring the Treasury Department that his request is not pretextual, Chairman Neal argues that his motives do not matter. The executive branch cannot “question or second guess the motivations” of Congress, he insists, and Treasury must afford his actions a “presumption of regularity.” Of course, the Chairman is not willing to reciprocate; the entire premise of his request is that the executive branch cannot be trusted to faithfully apply the tax laws to a sitting President. But hypocrisy aside, Chairman Neal is wrong about the law.

Congress’s motives do matter under the Constitution. Take the Constitution’s ban on intentional racial discrimination, for example. What if, during the height of the civil-rights movement, the Democrat-controlled House tried to intimidate African-American leaders by requesting their tax returns? Surely no one would agree with Chairman Neal that the other branches could not “question or second guess the motivations” of Congress. The same is true for the First Amendment’s ban on political retaliation. Because this constitutional prohibition is “motive-based,” it would be “unprecedented” to “immunize all officials whose conduct is ‘objectively valid,’ regardless of improper intent.” *Cranford-El v. Britton*, 523 U.S. 574, 592-94 (1998). Outside of special contexts like immigration and foreign affairs, “the government’s *reason* for [acting] is what counts” under the First Amendment. *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016) (emphasis added). Tellingly, Chairman Neal does not cite a single case where Congress was accused of using investigatory tools to unlawfully retaliate against a political opponent—or even a case that was decided in the last forty years. That is because his radical view of unchecked congressional power has no support in law.

Further, as explained by Chairman Neal’s own authorities, Congress must always “act[] in pursuance of its constitutional power.” *Barenblatt v. United States*, 360 U.S. 109, 132 (1959). The “power to investigate, broad as it may be, is also subject to recognized limitations.” *Quinn v. United States*, 349 U.S. 155, 161 (1955). Most notably, “the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary.” *Id.* Congress has no constitutional authority to act like a junior-varsity IRS, rerunning individual examinations or flyspecking the agency’s calculations. Congress especially has no constitutional authority to interfere with an ongoing examination, which would infringe “the Executive Branch’s function of executing the law.” 5 Op. O.L.C. 27, 31 (1981). Because the separation of powers restricts Congress no less than any other branch of government, the nature of Chairman Neal’s request matters. That it is limited to a single President, seeks tax information from before the President took office, asks no questions about IRS policy, and does not even wait for the IRS to finish its ongoing examinations (and any resulting appeals) reveals that Chairman Neal’s request is nothing more than an attempt to exercise constitutional authority that Congress does not possess.

I appreciate your thoughtful consideration of these important issues and the Treasury Department’s prudent decision to consult “with the Department of Justice to ensure that [its] response is fully consistent with the law and the Constitution” given “the unprecedented nature of this request.” As Secretary Mnuchin explained, “these are complicated legal issues” and it is “important to the American taxpayers that we get this right” because “this is a decision that has enormous precedence in terms of potentially weaponizing the IRS.”

Sincerely,

A handwritten signature in black ink, appearing to read 'W. S. Consovoy', followed by a long horizontal line extending to the right.

William S. Consovoy

cc: Steven T. Mnuchin  
Charles P. Rettig  
Sheri A. Dillon  
William F. Nelson