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GARY ANDRES,
MINORITY STAFF DIRECTOR

November 8, 2021

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

Dear Commissioner Rettig:

We write to express serious concern that the Internal Revenue Service (IRS) violated a valid consent order by initially denying the application for tax exempt status submitted by Christians Engaged. If the IRS has the power to violate a standing legal order without consequence, how can Americans trust the agency with greater authority and \$80 billion more taxpayer dollars?

As you know, the Court approved the consent order with an order issued on October 27, 2017, in *Linchpins of Liberty, et al. v. United States*, Case No. 1:13-cv-00777-RBW.¹ This litigation arose out of the systematic targeting of conservative and tea party groups by individuals inside the IRS, led by Lois Lerner. As part of that consent order, the IRS agreed to the following statement:

The IRS admits that its treatment of Plaintiffs during the tax-exempt determinations process, including screening their applications based on their names or policy positions, subjecting those applications to heightened scrutiny and inordinate delays, and demanding of some Plaintiffs' information that TIGTA determined was unnecessary to the agency's determination of their tax-exempt status, was wrong. For such treatment, the IRS expresses its sincere apology.²

While this admission and apology from the agency was an important step in resolving the litigation and related scandal. The more important part of the consent order, and the part at issue now, is the Court's declaratory judgment about what the IRS must do in the future:

The Court hereby declares that any action or inaction taken by the IRS must be applied evenhandedly and not based solely on a tax-exempt applicant or entity's name, political

¹ The consent order can be viewed here: <http://media.aclj.org/pdf/17.10.25-Proposed-Consent-Order-FILED.pdf>

² *Id.* at ¶ 40.

viewpoint, or associations or perceived associations with a particular political movement, position, or viewpoint.

The Court hereby declares that discrimination on the basis of political viewpoint in administering the United States tax code violates fundamental First Amendment rights. Disparate treatment of taxpayers based solely on the taxpayers' names, any lawful positions the taxpayers espouse on any issues, or the taxpayers' associations or perceived associations with a particular political movement, position, or viewpoint is unlawful.³

The circumstances surrounding the initial IRS denial of tax-exempt status for Christians Engaged leads us to question whether the IRS is conforming with the above statements. According to the denial letter, the applicant educates believers on public policy issues that “are central to their belief in the Bible as the inerrant [M]” and was denied status because certain bible teachings are “affiliated with the [D] party and candidates.”⁴ Reading from the legend created by the IRS in the denial letter, “M” means “Word of God” and “D” means “Republican.”⁵

We are concerned not only because the IRS recognizes the tax-exempt status of similarly situated groups advocating to “increase participation in each and every election” and “foster civic engagement,” such as When We All Vote, created by former First Lady Michelle Obama while denying Christians Engaged that same opportunity. But we are also concerned about the way the IRS initially denied the tax-exempt status of this applicant. The use of a legend throughout the denial letter makes it difficult to read and is inconsistently applied throughout the letter. Furthermore, it is unclear whether this legend applies only to Christians Engaged or if there are other groups whose tax-exempt status was denied using the same, or a slightly different legend.

Although the IRS reversed its denial of Christians Engaged application after public outrage, we are concerned that the initial denial violates the order in place through the court-approved consent order in *Linchpins of Liberty, et al. v. United States*.⁶ We are also concerned about what, if anything, the IRS is doing to ensure that the agency remains in compliance with this court order. While we are pleased that the IRS reversed its decision in this case, we remain concerned that these types of denials could be more systematic at the agency. Not every applicant organization is able to hire legal counsel on short notice to appeal such IRS decisions.

Given the significance of this issue and the applicable consent order in effect, we ask that you answer the following questions:

1. What procedures does the IRS have in place to ensure employee awareness of and compliance with the consent order?
2. What type of training is provided to employees to ensure they are not discriminating against organizations based on religious, political, or ideological beliefs?

³ *Id.* at ¶¶ 50-51.

⁴ https://firstliberty.org/wp-content/uploads/2021/06/Christians-Engaged-IRS-Determination-Letter_Redacted.pdf

⁵ *Id.*

⁶ *Linchpins of Liberty, et al. v. United States*, Case No. 1:13-cv-00777-RBW, Docket Entry 141.

3. Please explain the use of a legend and any associated template for Letter 4034, the final determination letter denying tax exempt status.
4. If the IRS were to take an action that violates the consent order, what is your understanding of how an aggrieved applicant would be able to challenge that action?

Please provide answers to the questions underlined above by November 22, 2021. If you have any questions, please contact Rachel Kaldahl or Sean Clerget on the Ways and Means Oversight Subcommittee staff.

Sincerely,



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Republican Leader
Committee on Ways and Means



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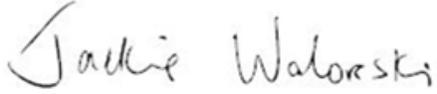
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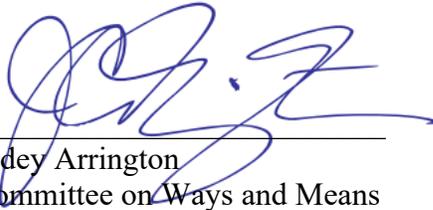
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