

May 15, 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:

Today the Internal Revenue Service (IRS) Criminal Supervisory Special Agent we represent was informed that he and his entire investigative team are being removed from the ongoing and sensitive investigation of the high-profile, controversial subject about which our client sought to make whistleblower disclosures to Congress. He was informed the change was at the request of the Department of Justice.

On April 27, 2023, IRS Commissioner Daniel Werfel appeared before the House Committee on Ways and Means. He testified: "I can say without any hesitation there will be no retaliation for anyone making an allegation or a call to a whistleblower hotline." However, this move is clearly retaliatory and may also constitute obstruction of a congressional inquiry.

Our client has a right to make disclosures to Congress pursuant to 26 U.S.C. § 6103(f)(5) and 5 U.S.C. § 7211. He is protected by 5 U.S.C. § 2302 from retaliatory personnel actions—including

receiving a “significant change in duties, responsibilities, or working conditions”¹ (which this clearly is) because of his disclosures to Congress.² Any attempt by any government official to prevent a federal employee from furnishing information to Congress is also a direct violation of longstanding appropriations restriction.³ Furthermore, 18 U.S.C. § 1505 makes it a crime to obstruct an investigation of Congress.

We respectfully request that you give this matter your prompt attention. Removing the experienced investigators who have worked this case for years and are now the subject-matter experts is exactly the sort of issue our client intended to blow the whistle on to begin with.

Cordially,

/Tristan Leavitt/
Tristan Leavitt
President
Empower Oversight

/Mark D. Lytle/
Mark D. Lytle
Partner
Nixon Peabody LLP

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

The Honorable Merrick Garland
Attorney General, U.S. Department of Justice

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

The Honorable Daniel Werfel
Commissioner, Internal Revenue Service

The Honorable Henry Kerner
Special Counsel, Office of Special Counsel

¹ 5 U.S.C. § 2302(a)(2)(A)(xii).

² 5 U.S.C. § 2302(b)(8)(C).

³ The Consolidated Appropriations Act, 2023, Pub. L. 117–328, Div. E, Sec. 713 states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who –

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee[.]