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August 25, 2014

Commissioner John Koskinen
Internal Revenue Service
1111 Constitution Ave N.W.
Washington, D.C. 20224

Dear Commissioner Koskinen:

We are deeply concerned about news of the recent IRS dismissal agreement with the Freedom from Religion Foundation, *Freedom From Religion Found, Inc. v. Koskinen,* Civ. No. 12 cv 0818 (W.D.Wis. 2014), especially since this may cause the IRS to impinge on our constitutionally enshrined rights. Although the details of the collusive deal the IRS agreed to are not readily available to the public, it has been alleged that the agreement includes a promise by the IRS to investigate religious organizations based on statements made from the pulpit. We are deeply troubled by these allegations and would like your assurance that these claims are false.

Our country has a long history of religious leaders speaking freely on matters of public discourse. Whether it is Rev. Martin Luther King Jr. leading the charge against segregation, or preachers opposing the Vietnam War, Americans expect their religious leaders to be able to speak freely to their flock without government oversight. The recent agreement by the IRS seems to impinge on these fundamental rights protected by the First Amendment's guarantee of freedom of religion, speech, and assembly.

What is even more concerning, given the IRS' recent history of politically motivated investigations, is the Service's Orwellian sounding "Political Activities Referral Committee." The revelation that this IRS committee is currently investigating statements made by various religious leaders is in direct conflict with the 2009 case holding that the IRS's procedures for investigating religious leaders were unlawful. *See United States v. Living Word Christian Ctr.*, 2009 U.S. Dist. LEXIS 6902 (D. Minn., Jan. 30, 2009). There is no indication that the IRS has come up with different, more lawful procedures since the old procedures were thrown out in 2009.

Moreover, we are deeply concerned about the positioning the IRS took in this litigation. The IRS won a dismissal against the same plaintiffs, in the same court, with the same claim and with nearly identical briefs based on the plaintiff's clear lack of standing. Given the Administration's narrow definition of standing in other, more highly publicized matters, it is peculiar to learn that the IRS collusively decided to agree to a dismissal without prejudice in the second case with this plaintiff instead of with prejudice. Rather than taking the tried and true arguments that won them the first case, the IRS agreement allows the Freedom from Religion Foundation to bring this case

again. Without knowing more, it is impossible to view this as anything other than an attempt by the IRS to escape the confines of the 2009 ruling.

By September 8, 2014, please respond to the following:

1. Provide a copy of any agreement between the IRS and the Freedom from Religion Foundation.
2. Provide any communications between the IRS and the Freedom from Religion Foundation regarding dismissal of the case.
3. Why did the IRS agree to dismiss this case without prejudice when it recently won a nearly identical case, and who was the highest ranking official to sign off on the settlement?
4. How have the IRS regulations in this area changed since the 2009 ruling in *U.S. v Living Word Christian Ctr.,* which deemed them unlawful?
5. How is the IRS going to enforce the Johnson Amendment without impinging on the First Amendment freedoms of religious leaders?
6. Other than self-referral by leaders opposed to the Johnson Amendment, how did the IRS find the 99 religious organizations currently under investigation by the "Political Activities Referral Committee," and how did they decide these organizations merited the use of precious investigative resources?
7. How much money has been spent by the Political Activities Referral Committee in each of the last fiscal years since 2009?
8. How much has been spent in total investigating the 99 organizations currently under investigation?
9. What safeguards are in place to make sure that the IRS does not stifle protected First Amendment speech?

Thank you for your prompt attention to this matter.

Sincerely,

Scott Garrett

SCOTT GARRETT
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