

# United States Senate

WASHINGTON, DC 20510

June 11, 2021

## VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

The Honorable Christopher Wray  
Director, Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535

Attorney General Garland and Director Wray:

We write to express our anger over the recent criminal disclosure of the confidential tax information of U.S. citizens. We demand that you both take swift and decisive action to find those responsible, prosecute them, and ensure that they are punished to the furthest extent the law permits.

Paying one's taxes is a civic duty, and that duty requires taxpayers to disclose to the IRS deeply personal financial information. That information includes where they work or what they do earn their living; how much money they make; how much they spent on healthcare and child care; the size and contents of their retirement funds; the property they own; the charities to which they donated; and the persons to whom they are indebted. In fact, failing to disclose all of the information demanded by the IRS can land a taxpayer in jail.

But those compelled disclosures should not, and do not, make that financial information public. Congress has therefore established a fundamental, baseline rule of confidentiality for the information that Americans are forced to disclose to the IRS. Section 6103 of the Internal Revenue Code provides as a baseline that "returns and return information shall be confidential," and prohibits any officer or employee of the United States or any state—as well as any person with access to returns or return information—from disclosing anyone's return or return information except when authorized by the taxpayer or provided expressly by federal law.<sup>1</sup> The IRS's Taxpayer Bill of Rights further emphasizes this critical right to confidentiality:

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.<sup>2</sup>

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<sup>1</sup> 26 U.S.C. § 6103(a).

<sup>2</sup> I.R.S. Publication 1, "The Taxpayer Bill of Rights" (rev. Sept. 2017), available at <https://www.irs.gov/pub/irs-pdf/p1.pdf>.

The unauthorized disclosure of returns or return information is a felony, punishable by up to five years' imprisonment and/or a \$5,000 fine.<sup>3</sup> Indeed, federal law makes it a felony to even publish returns or return information that were disclosed to the publisher by someone else.<sup>4</sup>

This rule of confidentiality is about more than just protecting individual privacy, although that is an important objective. The rule is a vital check against the use of the incredible power of federal taxation for nefarious political purposes. Congress enacted section 6103 in the Tax Reform Act of 1976 in response to allegations that felon John Dean attempted to use the federal tax apparatus to harass political enemies while he served in President Nixon's White House, and that an associate of President Kennedy obtained tax-return information while conducting investigations on behalf of the Kennedy Administration.<sup>5</sup> Congress thus placed tax returns and return information entirely off limits for use in politics, and enforced this prohibition with serious criminal penalties.

On the morning of June 8, ProPublica published a report about a "vast cache of IRS information" about some of America's wealthiest and most powerful taxpayers.<sup>6</sup> ProPublica explained that it obtained the information from an "anonymous source" and that, notwithstanding the criminal prohibitions on the disclosure of the information, it was publishing the tax information "to explore how the nation's wealthiest people ... exploit the structure of our tax code to avoid the tax burdens borne by ordinary citizens."<sup>7</sup> It elaborated on the avowedly political purpose of the publication, claiming that it hoped to influence the "often contentious debate about the fairness of our tax system."<sup>8</sup> The timing of the publication was almost too uncanny to be a coincidence; mere hours after ProPublica released the information, the Senate Finance Committee held a hearing to consider the President's proposed 2022 budget for the IRS, including significant increases in funding for enforcement and proposals to reform the tax system.<sup>9</sup>

The immediate victims of this criminal disclosure are among America's richest and most powerful citizens. Although we are alarmed by this disclosure, we are far more alarmed by what it portends for everyday Americans, as well as for the public confidence necessary to make the tax system work. The unpunished violation of section 6103 to advance a political agenda related to tax policy will beget continued invasion of Americans' privacy to advance all manner of partisan objectives. Ordinary Americans who turn over their personal information to the IRS because they will go to jail if they don't have every reason to fear that they may too become a victim to the political machinations of activists inside and outside of the IRS.

That risk is not hypothetical. Conservatives in particular have reason to fear that their tax information will be weaponized against them because of their politics. In 2012, for example, someone gave ProPublica the tax information of a conservative social welfare organization in violation of Section 6103, and ProPublica

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<sup>3</sup> 26 U.S.C. § 7213(a)(1), (2).

<sup>4</sup> 26 U.S.C. § 7213(a)(3).

<sup>5</sup> Staff of the Joint Comm. on Taxation, Background Regarding the Confidentiality and Disclosure of Federal Tax Returns 5–6 (Feb. 4, 2019), available at <https://www.jct.gov/CMSPages/GetFile.aspx?guid=4c176272-a1d4-468e-ba68-1c1c51a11d61>; see also S. Rep. No. 94-938, pt. 1, at 317 (1976).

<sup>6</sup> Jessie Eisinger, Jeff Ernsthansen, and Paul Kiel, The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax, PROPUBLICA, (June 8, 2021, 5:00 AM), <https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax>.

<sup>7</sup> Stephen Engleberg and Richard Tofel, Why We Are Publishing the Tax Secrets of the .001%, PROPUBLICA (June 8, 2021, 4:59 AM), <https://www.propublica.org/article/why-we-are-publishing-the-tax-secrets-of-the-001>.

<sup>8</sup> *Id.*

<sup>9</sup> Senate Finance Comm., The IRS's Fiscal Year 2022 Budget (June 8, 2021), <https://www.finance.senate.gov/hearings/the-irss-fiscal-year-2022-budget>.

published it.<sup>10</sup> To our knowledge, the Obama Administration prosecuted no one for that criminal disclosure to ProPublica. That same year, a leak of private information related to donors to the National Organization for Marriage landed in the hands of a group opposed to its stance on traditional marriage, resulting in a settlement between the IRS and the conservative group.<sup>11</sup>

And, of course, some within the IRS under President Obama targeted conservative social welfare organizations for “heightened scrutiny and inordinate delays” when filing their required tax information *because of their conservative advocacy*.<sup>12</sup> Not only did the Obama Justice Department fail to prosecute anyone for this conduct, but the Biden Administration recently appointed to high-ranking positions two of the IRS executives whom a bipartisan Senate Finance Committee report identified as having been caught up in the targeting scandal.<sup>13</sup>

Also deeply troubling is the possibility that this disclosure is the result of a breach of IRS systems by an outside party, potentially even a hostile foreign entity. ProPublica asserts it has no idea who the anonymous source is.<sup>14</sup> Worse, the full scope of the information actually in ProPublica’s possession is unknown, meaning that the full universe of taxpayer information is at risk. If someone has hacked the IRS, the immediate identification and disruption of the responsible party must be a top priority for the FBI and Department of Justice. Further, such a breach would call for a comprehensive security review and overhaul of the systems and protocols in place for protecting Americans’ most sensitive data. Deliberate weaponization of such data by any individual or individuals from within the IRS would certainly be a betrayal of the public trust. But theft of those data by an external malicious actor is not a comforting alternative.

It has become clear that bad actors are more than happy to weaponize Americans’ tax information for political purposes. It is further clear that this wanton and criminal abuse of the tax system disproportionately—indeed, exclusively—advances the objectives of the political left in this country. It is little wonder, therefore, that conservative charities have asked the Supreme Court to recognize a First Amendment right against compelled disclosure of their donors to the state,<sup>15</sup> or that 46 Senators—including the three signatories of this letter—have sponsored the Don’t Weaponize the IRS Act<sup>16</sup> to protect social-welfare groups from disclosing their donor lists to the IRS. Governments cannot be trusted to protect such information from misuse by the political left.

Ultimately, the only way to prevent these dangerous disclosures is to ensure that those who unlawfully disclose tax information go to jail. That’s why Congress imposed serious criminal penalties on illegal

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<sup>10</sup> Kim Barker, Karl Rove’s Dark Money Group Promised IRS It Would Spend ‘Limited’ Money on Elections, PROPUBLICA (Dec. 14, 2012, 11:19 AM), <https://www.propublica.org/article/what-karl-roves-dark-money-nonprofit-told-the-irs>.

<sup>11</sup> IRS agrees to \$50,000 settlement in leaking of conservative group’s donor records, FOX NEWS (last updated Dec. 20, 2015), <https://www.foxnews.com/politics/irs-agrees-to-50000-settlement-in-leaking-of-conservative-groups-donor-records>.

<sup>12</sup> Consent Order 11, *Linchpins of Liberty v. United States*, No. 1:13-cv-777-RBW (D.D.C. Oct. 25, 2017).

<sup>13</sup> *Compare* S. Rep. No. 114-119, pt. 1 (2015) (discussing the roles of Nikole Flax and Holly Paz in the targeting scandal during the Obama Administration), *with* I.R.S. News Release IR-2021-80 (Apr. 8, 2021), available at <https://www.irs.gov/newsroom/irs-announces-several-key-executive-changes-as-agency-gears-up-to-implement-the-taxpayer-first-act> (announcing appointments of Flax and Paz to positions within the Biden IRS).

<sup>14</sup> Stephen Engleberg and Richard Tofel, Why We Are Publishing the Tax Secrets of the .001%, PROPUBLICA (June 8, 2021, 4:59 AM), <https://www.propublica.org/article/why-we-are-publishing-the-tax-secrets-of-the-001>.

<sup>15</sup> Brief for Petitioner, *Thomas More Law Center v. Bonta*, No. 19-255 (U.S. Feb. 22, 2021); Brief for Petitioner, *Americans for Prosperity Found. v. Bonta*, No. 19-251 (U.S. Feb. 22, 2021).

<sup>16</sup> S. 1777 (2021).

disclosures like those published by ProPublica. We therefore demand that you do your jobs: Find those responsible for these disclosures and ensure they are punished as directed by law. Unless you do, ordinary Americans will fall victim to these politicized and criminal disclosures, and trust in the IRS and our tax system will continue to erode.

Sincerely,

A handwritten signature in black ink that reads "Mitch McConnell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mitch McConnell  
Senate Republican Leader

A handwritten signature in black ink that reads "Chuck Grassley". The signature is cursive and somewhat stylized.

Charles E. Grassley  
Ranking Member  
Senate Committee on the Judiciary

A handwritten signature in black ink that reads "Mike Crapo". The signature is cursive and clearly legible.

Mike Crapo  
Ranking Member  
Senate Committee on Finance