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Dear President Biden,

We are tax law professors who are writing to urge you to commute the sentence of Mr. Charles Littlejohn, who is serving a five-year prison sentence for unauthorized disclosure of tax information, to the maximum sentence he was supposed to receive under the federal sentencing guidelines, namely ten months. Mr. Littlejohn worked at the IRS as a government contractor. Out of a sincere belief in the public`s right to know, Mr. Littlejohn in 2019 and 2020 leaked tax return information of President Trump and some of the wealthiest individual taxpayers in the US to the New York Times and to ProPublica, who published articles based on this information.

A presidential tax return contains highly relevant information to the voting public, and President Trump broke decades of tradition by refusing to disclose his returns. When President Nixon`s tax return was leaked in the 1970s, the IRS leaker was not indicted.

As for the super-rich, information about how little tax they pay is even more important because it reveals the deep policy flaws of an income tax system that allows, e.g., Warren Buffett to pay a lower tax rate than his secretary. As economist Gabriel Zucman wrote recently,

In the 1960s, the 400 richest Americans **paid more than half of their income** in taxes. Higher tax rates for the wealthy kept inequality in check and helped fund the creation of social safety nets like Medicare, Medicaid and food stamps. Today, the superrich control a greater share of America's wealth than during the Gilded Age of Carnegies and Rockefellers. That's partly because taxes on the wealthy have cratered. In 2018, America's top billionaires **paid just 23 percent of their income** in taxes. For the first time in the history of the United States, billionaires had a **lower effective tax rate than working-class Americans.**

It is only by examining tax returns that the public can understand why this happens and what can be done about it. That is why when the income tax only applied to the rich, Congress enacted tax return information disclosure provisions in the 1860s, 1920s and 1930s, and why in countries with a stronger sense of egalitarianism but significant inequality like Finland, Norway and Sweden most tax information is public, despite the concerns about privacy.

Under current law, disclosing tax returns is a crime, and Mr. Littlejohn pled guilty. Under the sentencing guidelines, his maximum sentence was **ten months**, but federal district judge Ana Reyes sentenced him to **five years**, or six times the maximum sentence, on the grounds that others must be deterred from doing the same.

But is deterrence necessary in this case? Not really. There is a reason why IRS workers almost never leak tax information: They know that (like Mr. Littlejohn) they will likely be caught, because it is easy to discover who accessed the relevant returns, and that they will lose their jobs and probably go to jail. Ten months in jail is a sufficient deterrent, and most IRS employees do not value the public`s right to know over their own personal freedom.

Mr. Littlejohn`s sentence is particularly harsh in comparison with some recent sentences meted out to blatant tax evaders.

There are many cases that involve massive tax evasion and do not lead to a criminal indictment. Consider for example the case of Alon Farhy, who transferred more than $2 million to a sham foreign entity, which then transferred the funds to a bank account in the name of a Belize-based corporation Mr. Farhy created solely for that purpose. Mr. Farhy's scheme violated a variety of tax-related obligations beyond his duty to correctly report and pay the income tax he owed. The DOJ entered into a non-prosecution agreement with Mr. Farhy immunizing him from criminal prosecution in exchange for paying his taxes plus interest and penalties.

Many other cases involving tax evasion do not result in jail time. For example, Raj Mukhi ran a business that manufactured and sold professional uniforms in many countries. He was indicted in 2014 for hiding the proceeds in a private bank based in Zurich. He pleaded guilty to one count of filing a false tax return and one count of failing to disclose a foreign bank account and was sentenced to three years of supervised release.

Even if there is a prison sentence, it is usually much shorter than five years. To mention just some cases from this year, an Oklahoma man who instructed a payroll company working with his business to falsely characterize over $2.6 million as reimbursements rather than income was sentenced to 30 months. An Indiana woman who electronically filed false income tax returns for clients that reported fictitious businesses and also filed a false tax return for herself that underreported gross receipts from her business was sentenced to 21 months. A New Jersey man was sentenced to 29 months for evading taxes and not filing income tax returns while earning over $2.5 million in wages. All of these cases involve conduct that is much more culpable and less public spirited than Mr. Littlejohn`s.

There are several reasons why tax evaders should be punished more severely than leakers, not less severely like in the cases mentioned above.

First, tax evaders cause actual revenue loss to the government, and the severity of the sentence is linked to the size of the loss. Tax leakers like Mr. Littlejohn do not cause any revenue loss.

Second, prison sentences for tax evaders have a deterrence value because unlike leaking tax returns, it is hard for the IRS to discover the conduct. Small businesses are particularly hard to audit because there is no withholding or information reporting on their income, and even when there is information reporting like in some of the above cases, it is not easy for the IRS to detect false W2s and W4s. Prison sentences where the IRS does discover the conduct may have an effect in persuading other taxpayers not to do the same.

There is a big difference between leaking tax information and tax evasion in the size of the universe of potential violations and the number of violators escaping punishment. The universe of potential violators leaking tax information is infinitesimal compared to the universe of potential tax evaders. And the number of potential violators escaping punishment for leaking tax information is close to zero, whereas the number of evaders escaping punishment is huge.

Third, from a fairness perspective, it is important that the IRS combat tax evasion by the rich because it bolsters public perception that the system is fair and therefore that they should pay their taxes. Going after Mr. Littlejohn, on the other hand, creates the perception that the system protects the interests of the super-rich taxpayers whose returns he leaked.

Finally, lighter sentences are also common in cases involving massive leaks of private information. If what we care about is harms to individual privacy interests, the former Chief Security Officer of Uber was sentenced in 2023 to 3 years of probation for covering up data breaches that involved the user records of millions. In addition, in January, three DHS employees were sentenced for stealing personally identifying information from government databases and disclosing it to software companies overseas. They were sentenced to shorter terms of imprisonment (4 and 18 months) or probation (2 years).

For these reasons, we ask that you commute Mr. Littlejohn`s sentence to the maximum sentence he was supposed to receive under the federal sentencing guidelines, namely ten months.

Sincerely,

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