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United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

JOSHUA SHEINKMAN, STAFF DIRECTOR
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September 22, 2022

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

Dear Commissioner Rettig:

On August 17, 2022, Treasury Secretary Yellen asked you to work with Treasury's Deputy Secretary to develop a detailed plan for spending nearly \$80 billion in newly enacted mandatory IRS funding, which was part of the Inflation Reduction Act (IRA).¹ The deadline for the plan is February 17, 2023.

American taxpayers have a right to know exactly how the IRS will spend their money and a right to fair tax administration. As Members of the authorizing Committee charged with oversight responsibilities over both the IRS and Treasury, we are compelled to ask: how will the IRS fix its numerous existing problems while satisfying the critical need for transparency and accountability?

Rather than vague plans by Treasury and the IRS on how it may spend \$80 billion delivered to it in partisan legislation, we request detailed answers on how the IRS will: (1) prioritize taxpayer services, (2) guard against partisan targeting, (3) protect taxpayer privacy, (4) modernize technology, and (5) track and publish timely and reliable metrics, timelines, and milestones to establish comprehensive transparency and accountability, and allow for meaningful independent oversight.

1. Prioritizing taxpayer service

Our tax system is in disarray. Statistics that display unacceptable IRS taxpayer service delivery include:

- Only 10 percent of taxpayer calls to the IRS were answered by IRS customer service

¹ Janet L. Yellen, Secretary of the Treasury, Memorandum for Commissioner Rettig, Aug. 17, 2022, <https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/yellen-requests-irs-plan-resource-implementation/2022/08/18/7dym5?highlight=yellen%20rettig>.

representatives during the 2022 filing season.²

- Taxpayers who did get through waited an average 29 minutes on hold during the 2022 filing season.³ Many others received what the IRS calls a “courtesy disconnect.”⁴
- There was a backlog of 21.3 million unprocessed paper tax returns at the end of May 2022, an increase of 1.3 million from May 2021.⁵ This increase happened despite the CARES Act, American Rescue Plan, and Consolidated Appropriations Act collectively giving the IRS nearly \$2.9 billion of *additional* multi-year funding.⁶
- From January 1 to May 21, 2022, the IRS processed five million taxpayer responses to proposed adjustments, and it took an average of 251 days to do so.⁷ This frequently means taxpayers are waiting nearly a year to get their tax issues addressed by the IRS.

These problems are serious and have lasted far too long. In 2021, taxpayers waited at length for their refunds⁸ and approximately 250 million calls to the IRS went unanswered.⁹ Millions of taxpayers should not wait well over a year for their refund or spend days trying to connect with the IRS.¹⁰ The situation is particularly dire for millions faced with 40-year high inflation and in need of their tax refund to support their families.

Service prioritization items to address

The IRS should use its additional funding to prioritize clearing the backlog of returns and correspondence, and expediently pay taxpayers who are owed a refund. The minimum performance standard should be refunds issued within four to six weeks after receipt of a qualifying paper tax return.¹¹

The IRS needs to answer its telephones and hold times should average five minutes or less. No taxpayer should ever experience a “courtesy disconnect” from the IRS.

These minimum performance standards need to be met to safeguard the integrity of our tax

² National Taxpayer Advocate, Fiscal Year 2023 Objectives Report to Congress, p.vii, <https://www.taxpayeradvocate.irs.gov/reports/2023-objectives-report-to-congress/full-report/>.

³ Id.

⁴ Internal Revenue Manual 21.1.1.6.1(4) (https://www.irs.gov/irm/part21/irm_21-001-001).

⁵ National Taxpayer Advocate, *supra* note 2, at v.

⁶ Pub. L. 116-136 sec. 2201(f); Pub. L. 116-260 sec. 272(f); Pub. L. 117-2 secs. 9601(d), 9611(b)(5).

⁷ National Taxpayer Advocate, *supra* note 2, at vi.

⁸ See IRS Filing Season Statistics (week ending Dec. 3, 2021) <https://www.irs.gov/newsroom/filing-season-statistics-for-weekending-december-3-2021> (showing the IRS has issued 129.8 million refunds out of 168.5 million returns processed).

⁹ National Taxpayer Advocate, Annual Report to Congress 2021, p.3, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_Full-Report.pdf.

¹⁰ See, National Taxpayer Advocate, *supra* note 2, at vi (“When a math error or similar notice is generated in connection with a paper-filed tax return, the combination of the return processing delay and the correspondence processing delay may mean that the taxpayer must wait well over a year to get the issue resolved and receive the refund due.”)

¹¹ See, National Taxpayer Advocate, *supra* note 2, at iv.

system. It is a fundamental requirement that the IRS timely process returns and refunds, and promptly answer its telephones.

2. Stop biased targeting

Americans should be able to trust that the government will enforce the law without regard to political beliefs, religion, or party affiliation. Compared to other government agencies, the IRS has a broad and powerful reach into Americans' daily lives. The American people have a right to expect the IRS will exercise its power in a fair, neutral, and impartial manner. There should be no hint of religious or political bias or partisanship; the IRS must take this responsibility seriously.

Unfortunately, there has been and continues to be greater IRS scrutiny of conservative groups applying for tax-exempt status.¹² This happened in 2010 and 2012, which led to the IRS paying a settlement of \$3.5 million to Tea Party Groups.¹³ As recently as May 18, 2021, a religious organization was incorrectly denied 501(c)(3) tax-exempt status because it was, according to the IRS, "engaged in prohibited political campaign intervention." Shockingly and inappropriately, the IRS wrote to the organization that "The bible teachings are typically affiliated with the [Republican] party and candidates. This disqualifies you from exemption under IRC Section 501(c)(3)."¹⁴ The IRS reversed its rejection, but only after significant scrutiny.¹⁵ Such additional scrutiny should be unnecessary if the IRS applies the law in a neutral, unbiased way. Attention by the IRS must also be paid to prohibition of indiscriminate targeting based on financial status.¹⁶

No-targeting items to address

The IRS should never exercise its authority to chill the First Amendment rights of any American. Given the IRS has received extra appropriations of nearly \$80 billion, and with the continuous line of IRS targeting problems, the agency must ensure partisanship is eliminated.

We remind the IRS of the prohibition of financial status exams and the history that led to enactment of section 7602(e). Thus, if the IRS intends to draw artificial scrutiny thresholds based on arbitrary income thresholds, it must at least provide metrics to allow independent analysis of whether and how the political thresholds established are enforced.

Relatedly, please provide details of the IRS's plans for implementation of the unenforceable directive by the Treasury Secretary not to use the supersized near-\$80 billion of additional appropriations to increase audit chances for households earning \$400,000 per year or less, or

¹² Fred Stokeld, Christian Group That Battled IRS Receives Exemption After All, Tax Notes, Jul. 8, 2021, <https://www.taxnotes.com/tax-notes-today-federal/exempt-organizations/christian-group-battled-irs-receives-exemption-after-all/2021/07/08/76rng?highlight=Christians%20Engaged>.

¹³ *NorCal Tea Party Patriots v. IRS*, 2018 BL 296202, S.D. Ohio, No. 1:13cv341, 8/17/18.

¹⁴ First Liberty Institute, IRS Denies Religious Group Tax Exempt Status; States "Bible teachings" are "affiliated with the Republican party," GlobalNewswire, Jun. 16, 2021 <https://www.globenewswire.com/en/news-release/2021/06/16/2248428/0/en/IRS-Denies-Religious-Group-Tax-Exempt-Status-States-Bible-teachings-are-affiliated-with-the-Republican-party.html>.

¹⁵ Internal Revenue Service, Letter to Christians Engaged, TaxProf Blog, Jul. 7, 2021, <https://taxprof.typepad.com/files/irs-exemption-letter.pdf>.

¹⁶ See, section 7602(e).

small businesses, “relative to historic levels.” We request information regarding:

- What exactly is “audited relative to historic levels” taken to mean by the IRS?
- What does IRS take “small businesses” to mean, in terms of a precise, measurable, definition?
- How are the prescribed “historic levels” measured?
- From what span of history will historic levels be derived, and what is the reason for that particular span?
- How can IRS adherence, or not, to historic levels of auditing and the unenforceable directive be independently monitored?
- How is the \$400,000 threshold measured: will it be gross income, adjusted gross income, taxable income or something else?
- How does the IRS plan to build strong guardrails to defend the promise not to use its added funding for heightened, greater than historic levels, of auditing for households with taxable incomes under \$400,000 and as-yet undefined small businesses?

3. Privacy protection

The IRS must hold taxpayer information securely in order to preserve its confidentiality. The law protecting taxpayer information rests on sound principles that evolved from adverse experiences with the misuse of tax information.¹⁷

More than 15 months after the news and advocacy outlet ProPublica began disclosing confidential, private, and legally protected taxpayer information and named particular individuals in an ongoing series of articles, and despite announcements of various inquiries and investigations, nothing is known about the source of the massive leak or hack.

In response to Senate Finance Committee inquiries made to the IRS Commissioner of this major data-security breach, the Commissioner responded, “We do not yet know whether there has been a data breach or a threat of a breach.”¹⁸ It is remarkable to learn that the IRS and Treasury do not believe there has even been *a threat* of a breach in light of numerous unchallenged public claims to the contrary by ProPublica.

During a recent Senate Finance Committee hearing, when asked about the ProPublica leak, the Secretary of the Treasury replied that the administration had no new developments to report, the

¹⁷ See, Michael J. Saltzman, IRS Practice and Procedure §4.08 (WG&L, June 2022) (“Where that [confidentiality] expectation is compromised, the prevailing thinking has been that taxpayers concerned about the public dissemination of their private information may be reluctant to file complete and honest tax returns, thereby posing a challenge to the system of voluntary compliance that lies at the heart of the tax system”).

¹⁸ Commissioner Charles Rettig, Letter to Senators Michael Crapo, Sept. 13, 2021, https://www.finance.senate.gov/imo/media/doc/irs_response_to_crapo_grassley.pdf.

leak has been “very damaging,” and the Treasury Department is doing “everything in our power to make sure there is not inappropriate access to such data.”¹⁹ To date, everything in Treasury’s power seems limited to announcements of ongoing investigations.

There have been many reasons for concern another leak will happen. Indeed, the IRS and Treasury recently revealed yet another lapse in safeguarding confidential, legally protected private taxpayer information on around 120,000 filers.²⁰ The Government Accountability Office (GAO) and the Treasury Inspector General for Tax Administration (TIGTA) have also recently published reports with specific details on how taxpayer information held by the IRS might be at risk for a data breach from outside or inside.

- **External threats.** TIGTA recently concluded the IRS’s cybersecurity program was not effective in 17 of 20 metrics.²¹ TIGTA recommended, *inter alia*, that: “The IRS needs to take further steps to improve its security program deficiencies and fully implement all security program components in compliance with FISMA requirements; otherwise, taxpayer data could be vulnerable to inappropriate and undetected use, modification, or disclosure.”²²
- **Internal threats.** GAO reported the IRS investigated and closed 1,694 cases of willful unauthorized access, attempted access, inspection, or disclosure of federal tax information by IRS employees between fiscal years 2012 and 2021.²³ According to GAO, over 27 percent were substantiated as violations. An additional 22 percent of those cases were “unresolved.”²⁴ Also, TIGTA continues to document multiple examples of nefarious government employees, including contractors, accessing confidential taxpayer information for their personal gain.²⁵

Privacy protection items to address

ProPublica Leak: The American people remain in the dark about who was responsible and how it was allowed to happen. Although we understand TIGTA is investigating the leak to

¹⁹ Alexander Rifaat, Yellen: ProPublica Data Leak ‘Very Damaging’ to IRS, May 11, 2022, <https://www.taxnotes.com/tax-notes-today-federal/tax-policy/yellen-propublica-data-leak-very-damaging-irs/2022/05/11/7dgy?highlight=%E2%80%9Cvery%20damaging%E2%80%9D%20yellen>.

²⁰ Internal Revenue Service, IRS statement on Forms 990-T, Sept. 2, 2022, <https://www.irs.gov/newsroom/irs-statement-on-forms-990-t>. See also, Richard Rubin, IRS Says It Exposed Some Confidential Taxpayer Data on Website, Sept. 2, 2022, https://www.wsj.com/articles/irs-says-it-exposed-some-confidential-taxpayer-data-on-website-11662145232?mod=Searchresults_pos3&page=1.

²¹ TIGTA, Fiscal Year 2022 IRS Federal Information Security Modernization Act Evaluation, Jul. 18, 2022, <https://www.treasury.gov/tigta/auditreports/2022reports/202220040fr.pdf>

²² Id. See also, See, TIGTA, The Internal Revenue Service Did Not Identify and Assist All Individuals Potentially Affected by the ‘Get Transcript’ Application Data Breach, Jun. 8, 2016, https://www.treasury.gov/tigta/press/press_tigta-2016-16.htm and Wyden Statement Following Treasury and IRS Briefing on SolarWinds Hack, Dec. 21, 2020, <https://www.finance.senate.gov/ranking-members-news/wyden-statement-following-treasury-and-irs-briefing-on-solarwinds-hack>.

²³ GAO, IRS Security of Taxpayer Information: Characteristics of Employee Unauthorized Access and Disclosure Cases, May 19, 2022, p.9, <https://www.gao.gov/assets/gao-22-105872.pdf>.

²⁴ Id. at p.13.

²⁵ See e.g., TIGTA, Semiannual Report to Congress October 1, 2020 – March 31, 2021, p.23, https://www.treasury.gov/tigta/semiannual/semiannual_mar2021.pdf.

ProPublica, the IRS is not a bystander in this “very damaging” event. ProPublica is explicit, it received a “vast trove of **Internal Revenue Service data**” (emphasis added).

Congress and the American people deserve answers from the IRS. We want to know:

- What is the IRS doing to identify the source of the leak?
- What steps is the IRS taking to make sure such a leak never happens again?
- Has anyone in the Executive branch asked or subpoenaed ProPublica for *data it claims is sourced from the IRS*, to verify or negate the claim, or are purported journalists only asked for information if they are conservative?

External threats: The IRS must place a high priority on implementing comprehensive security controls to protect confidential information. TIGTA’s July 18, 2022 annual report provides a valuable starting point.²⁶

Internal threats: Protecting taxpayer privacy must be a top priority for the IRS.

- As recommended by TIGTA, the IRS must devote meaningful resources to create effective audit trails that monitor IRS employee use of confidential taxpayer information.²⁷ In its report, TIGTA found that of 67 IRS applications that “store or process taxpayer data and Personally Identifiable Information,” only six (9 percent) were providing accurate and complete audit trails.²⁸ The status quo on audit trails is unacceptable in light of recent leaks and seeming inability to timely find sources.
- We ask that the current 22 percent of unresolved cases related to unauthorized access, attempted access or inspection of taxpayer records (UNAX) will be eliminated. A typical UNAX violation involves an IRS employee exceeding the scope of their job by willfully accessing someone’s tax return and using the legally protected information for personal benefit (e.g., identity theft or curiosity). We also ask that the average of 464 days to investigate and close a UNAX case will be significantly reduced.²⁹
- Regardless of funding level, the IRS should not allow employees to access confidential taxpayer information until passing all security clearance protocols.³⁰
- Privacy safeguards should be updated and strengthened to account for information

²⁶ TIGTA, *supra* note 20.

²⁷ TIGTA, Most Internal Revenue Service Applications Do Not Have Sufficient Audit Trails to Detect Unauthorized Access to Sensitive Information, Jul. 31, 2020, <https://www.treasury.gov/tigta/auditreports/2020reports/202020033fr.pdf>.

²⁸ *Id.*

²⁹ GAO, IRS Security of Taxpayer Information: Characteristics of Employee Unauthorized Access and Disclosure Cases, May 19, 2022, <https://www.gao.gov/products/gao-22-105872>.

³⁰ TIGTA, Fingerprinting and Employment Eligibility Verification Delays Due to the COVID-19 Pandemic May Increase Taxpayer Data Exposure Risks, Jul. 7, 2022, <https://www.treasury.gov/tigta/auditreports/2022reports/202216039fr.pdf>.

technology personnel, including contractors, sub-contractors and researchers specially hired by the IRS under agreements made possible by the Intragovernmental Personnel Act of 1970 (5 U.S.C. 3371-3376).

4. Information Technology (IT) modernization

Considering technology's importance and potential, the IRA allocates \$4.75 billion, or six percent of its total funding, to "business systems modernization." Returns on technological upgrades, which are presumably productivity enhancing, do not factor into Treasury or IRS discussions of funding and headcount requests for the IRS, at least not in analytically balanced ways.

The IRS must carefully manage its investments in its technology infrastructure and make every effort to avoid the problems it has experienced in the past, including.³¹ Such failures include:

- IT spending of \$347 million related to the FATCA compliance program.³² According to TIGTA, the \$347 million "investment" resulted in revenues of \$14 million, and not the \$8 billion that was estimated.³³ Such results should be kept in mind when speculative return-on-investment (ROI) estimates are provided by the IRS, Treasury, and other advocates of oversized IRS funding.
- IT deficiencies and outdated IRS mail processing technology during 2019 to 2021 contributed to a loss of \$442 million.³⁴ TIGTA reported it would have cost roughly \$10 million to replace the machines, and that employees brought this problem to the IRS's attention and management ignored them.³⁵ Such deficiencies reflect poor planning or lack of adherence to better planning.
- IT deficiencies, in our assessment, led to the IRS paying \$3.3 billion in interest to taxpayers in FY 2021 because the IRS did not timely process returns.³⁶ Specifically, the significant interest costs could have been avoided had the IRS implemented broadly-adopted and relatively inexpensive technology to accelerate processing of paper returns.³⁷

IT items to address

³¹ Michael Mirsky, 40 Years of Failure: IRS Unable to Fix Computer System, ATR.org, Mar. 5, 2022, <https://www.atr.org/40-years-of-failure-irs-unable-to-fix-computer-system/>.

³² TIGTA, Additional Actions Are Needed to Address Non-Filing and Non-Reporting Compliance Under the Foreign Account Tax Compliance Act, Apr. 7, 2022, <https://www.treasury.gov/tigta/auditreports/2022reports/202230019fr.pdf>

³³ Id.

³⁴ TIGTA, Plans to Close the Austin Tax Processing Center Should Be Halted Until Hiring Challenges and Substantial Backlogs at Remaining Centers Are Addressed, Feb. 7, 2022, p. 14 <https://www.treasury.gov/tigta/auditreports/2022reports/202240015fr.pdf>.

³⁵ Id. at p.15.

³⁶ GAO, Tax Filing 2021 Performance Underscores Need for IRS to Address Persistent Challenges, Apr. 2022, <https://www.gao.gov/assets/gao-22-104938.pdf>.

³⁷ Nina Olson, How Did We Get Here? 2-D Barcoding and the Paper Return Backlog—A Missed Opportunity, Procedurally Taxing, Feb. 24, 2022, <https://procedurallytaxing.com/how-did-we-get-here-2-d-barcoding-and-the-paper-return-backlog-a-missed-opportunity/>.

Modernizing the IRS’s technology infrastructure must be a top priority. With an additional \$4.75 billion of the supersized IRS funding allocated to technological improvements, and with the IRS’s Integrated Modernization Business Plan³⁸ providing loose sketches of what the IRS wants to do and how it plans on doing it, there is room for realizing productivity gains and accompanying improved taxpayer service.

Nevertheless, experience dictates a need for vigilance and multiple avenues of oversight because mistakes, such as FATCA IT, mail machines, and return processing, can quickly absorb the \$4.75 billion and become another story in the 40-year history of the IRS being unable to modernize its technology.

Refinement and clear articulation of metrics and milestones that independent overseers can objectively use for monitoring any IRS IT and/or business plan modernization are required.

5. Transparency and accountability

In an August 17 letter, Treasury Secretary Yellen acknowledged the necessity for accountability mechanisms by stating the requested plan on utilization of supersized IRS funding “must include metrics for areas of focus and targets over the course of the coming years.”³⁹ We agree that the IRS needs to be measurable, held accountable and, we would add, independently overseen. However, an IRS funding plan cannot be produced solely for the benefit and interests of one political party, administration, or class of taxpayer. The IRS should be transparent and accountable to *all* Americans.

The IRS needs to report to Congress and the American people clear, reliable metrics for monitoring productivity improvements and related customer service improvements facilitated by its supersized budget.

The IRS must be accountable by providing performance metrics that can be independently reproduced and verified by Congress, watchdogs and taxpayers.

The IRS should report performance metrics regularly at meaningful intervals. The objectives, milestones, and timelines must be clear so that Congress can regularly monitor progress and quickly identify problems.

The IRS must be open, transparent, and responsive in a timely way with oversight from Congress, TIGTA, the National Taxpayer Advocate, and the Comptroller General of the United States.

We are concerned about whether the IRS will voluntarily comply with accountability and transparency standards.

For example, on September 22, 2021, we learned through TIGTA, not the IRS, that IRS

³⁸ Internal Revenue Service, IRS Integrated Modernization Business Plan, April 2019, <https://www.irs.gov/pub/irs-pdf/p5336.pdf>.

³⁹ Yellen, *supra*, note 1.

management destroyed 30 million paper-filed information returns without first processing them. Another example was learning from TIGTA about the underwhelming result of the \$347 million FATCA IT “investment” discussed above.

With an infusion of \$80 billion of new funding, the IRS must be accountable, and accountability requires transparency and timely communication with its authorizing Committees. In the interest of learning of and helping shape IRS plans, we must know:

- How does the IRS propose it will show Congress and the American people that it will proceed by transparently using resources in a fair, neutral and optimal manner, rather than allocating resources in accord with politicized prioritization and policy goals, especially given that funding derived from a partisan legislative process?
- How will the IRS devote resources across various possible uses with various possible estimated ROIs, and how reliable are those estimates?
- What are the IRS’s current estimates of ROIs, ranked from highest to lowest, associated with “investing” in increased auditing and/or enforcement related to:
 1. Non-filing taxpayers;
 2. Cash economy tax evasion;
 3. So-called gig economy workers;
 4. COVID-relief fraud and improper payments;
 5. FATCA enforcement;
 6. Earned income tax credits;
 7. American opportunity tax credits;
 8. Low-income housing tax credits;
 9. Net premium tax credits;
 10. Child tax credits (including the enhanced CTC);
 11. Sick and paid family leave tax credit; and
 12. Employee retention tax credit.

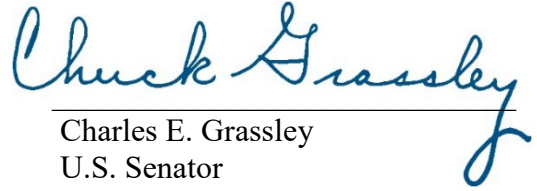
We respectfully request prompt responses, by October 28, 2022, to all of our questions and information requests posed above with attention and details required in your response.

We require timely responses, and expect that further inquiries regarding utilization of supersized IRS funding will be forthcoming, as oversight must commensurately increase relative to the outsized IRS funding increase.

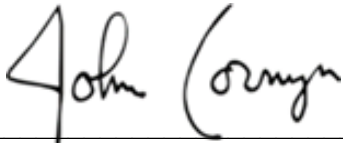
Sincerely,



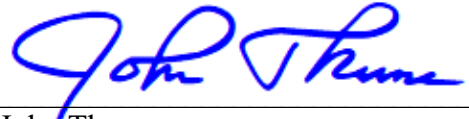
Mike Crapo
U.S. Senator



Charles E. Grassley
U.S. Senator



John Cornyn
U.S. Senator



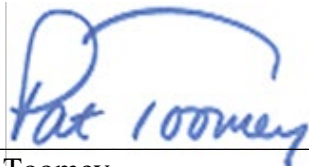
John Thune
U.S. Senator



Richard Burr
U.S. Senator



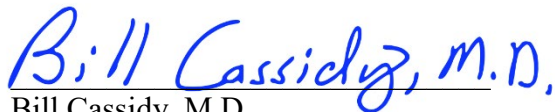
Rob Portman
U.S. Senator



Pat Toomey
U.S. Senator



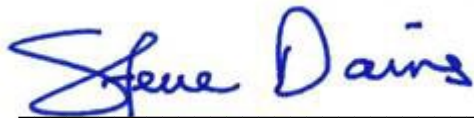
Tim Scott
U.S. Senator



Bill Cassidy, M.D.
U.S. Senator



James Lankford
U.S. Senator



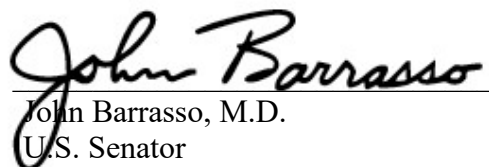
Steve Daines
U.S. Senator



Todd Young
U.S. Senator



Ben Sasse
U.S. Senator



John Barrasso, M.D.
U.S. Senator