BEFORE THE
FEDERAL ELECTION COMMISSION

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ProtectOurElections.org
ProsperityAgenda.us,
AmericanCrossroadsWatch.org,

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v. MUR No. 6396

Crossroads Grassroots Political Strategies ("Crossroads GPS")
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COMPLAINT

1. This complaint is filed pursuant to 2 U.S.C. § 437g(a)(1) and is based on information and belief that Crossroads GPS has violated provisions of the Federal Election Campaign Act (FECA), 2 U.S.C. § 431 *et seq.* Based on published reports, complainants have reason to believe that Crossroads GPS has violated the law by raising and spending significant amounts of money to influence the 2010 congressional elections without (1) registering as a political committee, as required by 2 U.S.C. § 433, (2) filing political committee financial

disclosure reports required by 2 U.S.C. § 434, and (3) complying with the political committee organizational requirements of 2 U.S.C. § 432.[1]

2. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission shall make an investigation of such alleged violation . . . ." 2 U.S.C. § 437g(a)(2); *see also* 11 C.F.R. § 111.4(a) ("Any person who believes that a violation . . . has occurred or is about to occur may file a complaint . . . .") (emphasis added).

3. Where there is reason to believe that an organization such as Crossroads GPS is violating FECA through its failure to register as a political committee and comply with political committee organizational and reporting requirements, investigation by the Commission is critical and necessary—because complainants and the public do not have access to all of the relevant information. As the Commission explained in its Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (hereinafter "SE&J on Political Committee Status"):

> The Federal courts' interpretation of the constitutionally mandated major purpose doctrine requires the Commission to conduct investigations into the conduct of specific organizations that may reach well beyond publicly available advertisements. *See, e.g., Malenick*, 310 F. Supp. 2d at 234–36 (examining organizations' materials distributed to prospective donors). The Commission may need to examine statements by the organization that characterize its activities and purposes. The Commission may also need to evaluate the organization's spending on Federal campaign activity, as well as any other spending by the

[1] Published reports suggest that Crossroads GPS is neither coordinating its expenditures with candidates nor making contributions directly to candidates—meaning that Crossroads GPS likely qualifies as an "independent expenditure only" committee under the Commission's Ad. Ops. 2010-09 and 2010-11 and, therefore, is not subject to the contribution restrictions of 2 U.S.C. §§ 441a and 441b. For this reason, complainant limits its allegations to violations of the political registration and reporting requirements of 2 U.S.C. §§ 433 and 434. However, in the event that Crossroads GPS makes contributions to candidates or coordinates its expenditures with candidates, it may also be in violation of 2 U.S.C. §§ 441a and 441b.

organization. In addition, the Commission may need to examine the organization's fundraising appeals.

SE&J on Political Committee Status, 72 Fed. Reg. at 5601 (emphasis added).

I. Background

4. In 2004, the first federal election cycle conducted under Bipartisan Campaign Reform Act of 2002 (BCRA) ban on national political party committee use of soft money, organizations claiming federal income tax exemption under sections 527 and 501(c)(4) took the national stage and illegally spent hundreds of millions of dollars to influence the 2004 federal elections. Many complaints were filed with the Commission regarding this illegal activity in 2004. More than two years after the election, the Commission began announcing its determinations that many tax-exempt organizations (principally 527 organizations, but at least one 501(c)(4) organization) had indeed violated federal campaign finance laws and that, consequently, the Commission was collecting record fines through conciliation agreements with these groups.[2]

5. The Supreme Court in *McConnell v. FEC*, 540 U.S. 93, 165 (2003), took specific note of "the hard lesson of circumvention" that is taught "by the entire history of campaign

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[2] *See, e.g.*, "FEC Collects $630,000 In Civil Penalties From Three 527 Organizations," http://fec.gov/press/press2006/20061213murs.html (Dec. 13, 2006); "Freedom Inc. Pays $45,000 Penalty for Failing to Registers as Political Committee," http://www.fec.gov/press/press2006/20061220mur.html (Dec. 20, 2006); "FEC to Collect $750,000 Civil Penalty From Progress For America Voter Fund," http://fec.gov/press/press2007/20070228MUR.html (Feb. 28, 2007); "FEC Collects $78,000 Civil Penalty From The National Association of Realtors 527 Fund," http://fec.gov/press/press2007/20070619NARMURs.shtml (June 19, 2007); "FEC to Collect $775,000 Civil Penalty From America Coming Together," http://fec.gov/press/press2007/20070829act.shtml (Aug. 29, 2007); "Club for Growth Agrees to Pay $350,000 Penalty for Failing to Register as a Political Committee," http://fec.gov/press/press2007/20070905cfg.shtml (Sept. 5, 2007); and "Media Fund to Pay $580,000 Civil Penalty," http://fec.gov/press/press2007/20071119mediafund.shtml (Nov. 19, 2007).

finance regulation." The deployment of section 501(c)(4) organizations in 2010 as a vehicle for undisclosed money to pay for partisan activities to influence federal elections is simply the latest chapter in the long history of efforts to evade and violate federal campaign finance laws.

6. The Supreme Court in *McConnell* took specific—and repeated—note of the central role of the FEC in improperly creating the soft money loophole that was used by federal candidates and political parties to circumvent federal campaign finance laws. The massive flow of soft money through the political parties into federal elections was made possible by the Commission's allocation rules, which the Court described as "FEC regulations [that] permitted more than Congress, in enacting FECA, had ever intended." 540 U.S. at 142 n.44. Indeed, the Court noted that the existing Federal Election Campaign Act (FECA), which had been upheld in *Buckley*, "was subverted by the creation of the FEC's allocation regime," which allowed the parties "to use vast amounts of soft money in their efforts to elect federal candidates." *Id.* (emphasis added). The Court flatly stated that the Commission's rules "invited widespread circumvention" of the law. *Id.* at 145.

7. It is critically important that the Commission not repeat this history here. The Commission must ensure that it does not once again subvert and invite "widespread circumvention" of the law by licensing the spending of massive amounts of undisclosed money to influence federal elections, through section 501(c)(4) groups whose major purpose is to influence federal elections.

II. Political Committee Status

8. FECA defines the term "political committee" to mean "any committee, club, association or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000

during a calendar year." 2 U.S.C. § 431(4); *see also* 11 C.F.R. § 100.5(a). "Contribution," in turn, is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office . . . ." 2 U.S.C. § 431(8)(A). Similarly, "expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office . . . ." 2 U.S.C. § 431(9)(A).

9. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term "political committee" to "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. at 79 (emphasis added). Again, in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Court invoked the "major purpose" test and noted, in the context of analyzing the activities of a 501(c)(4) group, that if a group's independent spending activities "become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee." 479 U.S. at 262 (emphasis added). In that instance, the Court continued, it would become subject to the "obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns." *Id.* (emphasis added). The Court in *McConnell* restated the "major purpose" test for political committee status as iterated in *Buckley*. 540 U.S. at 170 n.64.

10. As the Commission explained in its SE&J on Political Committee Status:

> Therefore, determining political committee status under FECA, as modified by the Supreme Court, requires an analysis of both an organization's specific conduct—whether it received $1,000 in contributions or made $1,000 in expenditures—as well as its overall conduct—whether its major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate). Neither FECA, its subsequent amendments, nor any judicial decision interpreting either, has substituted tax status as an acceptable proxy for this conduct-based determination.

SE&J on Political Committee Status, 72 Fed. Reg. at 5597 (emphasis added).

11. For the reasons set forth above, there is a two prong test for "political committee" status under the federal campaign finance laws: (1) whether an entity or other group of persons has a "major purpose" of influencing the "nomination or election of a candidate," as stated by *Buckley*, and if so, (2) whether the entity or other group of persons receives "contributions" or makes "expenditures" of $1,000 or more in a calendar year.

12. Prong 1: The "major purpose" test. The Commission takes a case-by-case approach to applying the "major purpose" test. The Commission explained this approach in its SE&J on Political Committee Status.

> The Supreme Court has made it clear that an organization can satisfy the major purpose doctrine through sufficiently extensive spending on Federal campaign activity. *See MCFL*, 479 U.S. at 262 (explaining that a section 501(c)(4) organization could become a political committee required to register with the Commission if its "independent spending become[s] so extensive that the organization's major purpose may be regarded as campaign activity").
>
> An analysis of public statements can also be instructive in determining an organization's purpose. Because such statements may not be inherently conclusive, the Commission must evaluate the statements of the organization in a fact-intensive inquiry giving due weight to the form and nature of the statements, as well as the speaker's position within the organization.
>
> The Federal courts' interpretation of the constitutionally mandated major purpose doctrine requires the Commission to conduct investigations into the conduct of specific organizations that may reach well beyond publicly available advertisements. *See, e.g., Malenick*, 310 F. Supp. 2d at 234–36 (examining organizations' materials distributed to prospective donors). The Commission may need to examine statements by the organization that characterize its activities and purposes. The Commission may also need to evaluate the organization's spending on Federal campaign activity, as well as any other spending by the organization. In addition, the Commission may need to examine the organization's fundraising appeals.
>
> Because *Buckley* and *MCFL* make clear that the major purpose doctrine requires a fact-intensive analysis of a group's campaign activities compared to its activities unrelated to campaigns, any rule must permit the Commission the flexibility to apply the doctrine to a particular organization's conduct.

SE&J on Political Committee Status, 72 Fed. Reg. at 5601-02 (footnotes omitted) (internal citations omitted) (emphasis added).

13. The Commission has explicitly rejected the notion that an organization's self-proclaimed tax status (*e.g.*, as a 501(c)(4) organization) determines whether such an organization has a "major purpose" of influencing federal elections. The Commission has found both 501(c)(4) and 527 organizations to have violated FECA by failing to register as political committees in recent years. As the Commission explained in its SE&J on Political Committee Status:

> [T]he Commission's enforcement experience illustrates the inadequacy of tax classification as a measure of political committee status. The Commission recently completed six matters, including five organizations that were alleged to have failed to register as political committees. The Commission reached conciliation agreements with five of these organizations—four 527 organizations and one 501(c)(4) organization—in which the organizations did not contest the Commission's determination that they had violated FECA by failing to register as political committees. . . . The Commission has demonstrated through the finding of political committee status for a 501(c)(4) organization and the dismissal of a complaint against a 527 organization, that tax status did not establish whether an organization was required to register with the FEC. Rather, the Commission's findings were based on a detailed examination of each organization's contributions, expenditures, and major purpose, as required by FECA and the Supreme Court.

SE&J on Political Committee Status, 72 Fed. Reg. at 5598-99 (footnote omitted) (internal citations omitted).

14. As the Commission further explained in its SE&J on Political Committee Status:

> Courts have cautioned the Commission against assuming "the compatibility of the IRS's enforcement * * * and FECA's requirements." The Commission is instead obligated to perform a detailed review of differences in tax and campaign finance law provisions rather than adopting the former as a proxy for the latter. The U.S. District Court recently reminded the Commission: "It is the FEC, not the IRS, that is charged with enforcing FECA." The detailed comparison of the Internal Revenue Code and FECA provisions required by *Shays I* demonstrates that the "exempt function" standard of section 527 is not co-extensive with the "expenditure" and "contribution" definitions that trigger political committee

status. Therefore, the use of the Internal Revenue Code classification to interpret and implement FECA is inappropriate.

SE&J on Political Committee Status, 72 Fed. Reg. at 5599 (internal citations omitted).

15. Consistent with this approach to analyzing political committee status, the Commission in 2006 announced a conciliation agreement with the 501(c)(4) organization Freedom Inc., having determined that the organization had a major purpose of influencing federal elections and that the organization had received contributions and made expenditures exceeding $1,000 in a calendar year. *See* "Freedom Inc. Pays $45,000 Penalty for Failing to Registers as Political Committee," http://www.fec.gov/press/press2006/20061220mur.html (Dec. 20, 2006).

16. Prong 2: Contributions or Expenditures of $1,000. The second prong of the definition of "political committee" is met if an entity that meets the "major purpose" test also receives "contributions" or makes "expenditures" aggregating in excess of $1,000 in a calendar year. Both "contributions" and "expenditures" are defined to mean funds received or disbursements made "for the purpose of influencing" a federal election. 2 U.S.C. § 431(8), (9).

17. This second prong test—whether a group has made $1,000 in "expenditures"—should not be limited by the "express advocacy" standard when applied to a "major purpose" group, such as Crossroads GPS. Rather, the test for "expenditure" in this case is the statutory standard of whether disbursements have been made "for the purpose of influencing" any federal election, regardless of whether the disbursements were for any "express advocacy" communication. The Supreme Court made clear in *Buckley* that the "express advocacy" standard does not apply to an entity, like Crossroads GPS, which has a major purpose to influence candidate elections and is thus not subject to concerns of vagueness in drawing a line between issue discussion and electioneering activities.

18. The Commission has incorrectly narrowly construed the term "expenditure" to encompass only express advocacy even with respect to "major purpose" groups. *See* SE&J on Political Committee Status, 72 Fed. Reg. at 5604. The U.S. District Court for the District of Columbia in *Shays v. FEC*, 511 F. Supp. 2d 19, 26-27 (D.D.C. 2007), rejected the Commission's application of the express advocacy standard to "major purpose" groups in a section of its opinion entitled "FEC's Misinterpretation of *Buckley*."[3]

19. If the Commission continues to incorrectly apply the "express advocacy" test to "major purpose" groups such as Crossroads GPS, the Commission regulations define "express advocacy" to include not only a communication that uses so-called "magic words" phrases such as "vote for" and "vote against," 11 C.F.R. § 100.22(a), but also a communication that "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more candidates because the electoral portion of the communication is unmistakable, unambiguous and suggestive of only one meaning and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates or

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[3] The Shays court explained:

> [T]he FEC believes that there is an "express advocacy requirement for expenditures on communications made independently of a candidate," which applies to all organizations regardless of whether they satisfy the "major purpose" test.
>
> As plaintiffs contend, this is a misreading of *Buckley*. . . .
>
> [T]he Court imposed the narrowing gloss of express advocacy on the term "expenditure" only with regard to groups other than "major purpose" groups. The Court has since reaffirmed this position. . . . Therefore, having misinterpreted *Buckley*, the FEC is applying the express advocacy requirement to expenditures in cases where it is unnecessary.

Shays v. FEC, 511 F. Supp. 2d at 26-27.

encourages some other kind of action." 11 C.F.R. § 100.22(b). This "could only be interpreted by a reasonable person" standard is often referred to as "Subpart (b)" express advocacy.

20. The Commission explained in its SE&J on Political Committee Status its application of the Subpart (b) express advocacy standard to nonprofit organizations active in 2004:

> The Commission applied a test for express advocacy that is not only limited to the so-called "magic words" such as "vote for" or "vote against," but also includes communications containing an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and about which "reasonable minds could not differ as to whether it encourages actions to elect or defeat" a candidate when taken as a whole and with limited reference to external events, such as the proximity to the election.
>
> The Commission was able to apply the alternative test set forth in 11 CFR 100.22(b) free of constitutional doubt based on *McConnell's* statement that a "magic words" test was not constitutionally required, as certain Federal courts had previously held.

SE&J on Political Committee Status, 72 Fed. Reg. at 5604.

21. Furthermore, numerous court decisions in recent years, including the Supreme Court's decision in *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 469-70 (2007), have made clear that the Subpart (b) standard is constitutional. *See also Real Truth About Obama v. FEC*, 2008 WL 4416282 (E.D. Va. 2008) ("Because section 100.22(b) is virtually the same test stated by Chief Justice Roberts in the majority opinion of *WRTL* . . . , the test enumerated in section 100.22(b) to determine express advocacy is constitutional."); *affirmed, Real Truth About Obama v. FEC*, 575 F.3d 342 (4th Cir. 2009) ("The 'language [of Subpart (b)] corresponds to the definition of the functional equivalent of express advocacy given in *Wisconsin Right to Life*. . . . By limiting its application to communications that yield no other interpretation but express advocacy as described by *Wisconsin Right to Life*, § 100.22(b) is likely constitutional.") (vacated for consideration of mootness by 130 S. Ct. 2371 (2010)).

III. Political Committee Registration, Organizational and Reporting Requirements

22. Any entity that meets the definition of a "political committee" must file a "statement of organization" with the Federal Election Commission, 2 U.S.C. § 433, must comply with organizational and recordkeeping requirements of 2 U.S.C. § 432, and must file periodic disclosure reports of its receipts and disbursements, 2 U.S.C. § 434. In addition, a "political committee" that does not confine its activities to "independent expenditures" is subject to contribution limits, 2 U.S.C. §§ 441a(a)(1), 441a(a)(2), and source prohibitions, 2 U.S.C. § 441b(a), on the contributions it may receive. 2 U.S.C. § 441a(f).

23. The reports required by FECA must disclose to the Commission and the public, including complainants, comprehensive information regarding such committee's financial activities, including the identity of any donor who has contributed $200 or more to the committee within the calendar year. *See* 2 U.S.C. § 434(b). The Supreme Court has repeatedly recognized the importance of campaign finance disclosure to informing the electorate. *See, e.g., Citizens United v. FEC*, 130 S. Ct. 876, 915 ("[T]he public has an interest in knowing who is speaking about a candidate shortly before an election.").

IV. Applying FECA to Crossroads GPS

24. Crossroads GPS was organized in July 2010 as a nonprofit organization under section 501(c)(4) of the Internal Revenue Code, *see* Crossroads GPS website, *at* https://www.icontribute.us/crossroadsgps (last visited Oct. 6, 2010).

25. Crossroads GPS has not registered as a federal political committee with the FEC. However, Crossroads GPS shares office space and staff with American Crossroads, a registered federal political committee (Committee I.D. #C00487363).

26. According to published reports, both were "conceived of" by Karl Rove, "the veteran GOP strategist who helped put George W. Bush in the White House," and "Ed Gillespie, another Republican strategist and former Republican National Committee chairman." *See* Amanda Paulson, "*Karl Rove Group Spending Big in Election 2010, But Is It Legal?*," CHRISTIAN SCIENCE MONITOR (Oct. 5, 2010). According to the article, "[t]o date, the two groups—American Crossroads and Crossroads GPS—have spent about $18 million on campaigns, most of it on ads." *Id.* According to the *Los Angeles Times*, both "Crossroads GPS and its affiliate, American Crossroads, . . . receive advice and fundraising support from Rove." M. Reston and A. York, *Karl Rove-linked group launches new hit against Boxer*, THE LOS ANGELES TIMES (Aug. 25, 2010).

27. Crossroads GPS assures its donors that, though "[a]ny person or entity that contributes more than $5,000 to a 501(c)(4) organization must be disclosed to the Internal Revenue Service on Form 990[,] . . . the IRS does not make these donor disclosures available to the general public [and] Crossroads GPS's policy is to not provide the names of its donors to the general public." *See* Crossroads GPS website, *at* https://www.jcontribute.us/crossroadsgps (last visited Oct. 6, 2010).

28. Although Crossroads GPS is not registered as a political committee, based on public information, complainants have reason to believe the organization is, in fact, a federal political committee: (1) complainants have reason to believe that Crossroads GPS has a "major purpose" to influence federal candidate elections, and (2) Crossroads GPS has reported to the Commission expenditures of more than $1,000 this calendar year to influence the 2010 Congressional elections. As explained above, a federal political committee is required to register with the Commission, to comply with specific organizational and recordkeeping requirements,

and to file periodic reports with the Commission, disclosing all receipts and disbursements. 2 U.S.C. §§ 432, 433 and 434. Crossroads GPS has not complied with these legal requirements.

29. Crossroads GPS Major Purpose: Complainants have reason to believe that Crossroads GPS's major purpose is to influence the 2010 federal elections and to elect Republicans to federal office. As explained below, ¶¶ 36-46, complainants believe Crossroads GPS satisfies the major purpose test "through sufficiently extensive spending on Federal campaign activity." SE&J on Political Committee Status, 72 Fed. Reg. at 5601.

30. Furthermore, an "analysis of public statements" is also instructive in determining Crossroads GPS's purpose. SE&J on Political Committee Status, 72 Fed. Reg. at 5601. "Because such statements may not be inherently conclusive, the Commission must evaluate the statements of the organization in a fact-intensive inquiry giving due weight to the form and nature of the statements, as well as the speaker's position within the organization." SE&J on Political Committee Status, 72 Fed. Reg. at 5601.

31. Chairman of the board of American Crossroads, Mike Duncan, told the *Washington Times* that American Crossroads, together with Crossroads GPS, plan to raise more than $52 million and "plan to plow more than $49 million of it into 11 Senate races in anticipation that the Republican Party is within reach of a Senate majority." R. Hallow, *Pro-GOP Nonprofits Kick in Millions; Cash to target 11 Senate races*, THE WASHINGTON TIMES (Aug. 19, 2010).

32. Karl Rove, on Fox News, explained that American Crossroads and Crossroads GPS are simply avenues for donors who have "maxed out" to federal Republican political committees to funnel money into the 2010 elections.

> HOST: Some suggest that the money that goes to American Crossroads might otherwise go to an organization like the RNC.

> ROVE: Well that's not correct, because American Crossroads is collecting money in excess of the individual contribution limits the RNC has allowed to give. What we've essentially said, is if you've maxed out the to senatorial committee, the congressional committee or the RNC and would like to do more, under the Citizens United decisions, you can give money to the American Crossroads 527, or Crossroads GPS, so we're not tapping the people who — if you've giving to American Crossroads, you're fully capable, in all likelihood, of giving the maximum to one of the national committee organizations.

Alex Seitz-Wald, *Rove Admits His 'Shadow RNC' Attack Group Functions Largely Because of the Citizens United Decision*, THINK PROGRESS (July 6, 2010), *at* http://thinkprogress.org/2010/07/06/rove-citizens-united-crossroads (last visited Oct. 6, 2010) (emphasis added).

33. According to a published report, Crossroads GPS is focusing its "micro-targeting effort" on seven states—Colorado, Florida, Missouri, New Hampshire, Nevada, Ohio and Washington—states with hotly contested Senate races in 2010. Kenneth P. Vogel, *Rove-linked group uses secret donors to fund attacks*, POLITICO (July 20, 2010).

34. On Tuesday, October 5, Crossroads GPS announced a "massive $4.2 million ad buy," together with American Crossroads. According to the report, the "combined media buy targets hotly contested Senate races in eight states—Colorado, Florida, Illinois, Kentucky, Missouri, Nevada, Pennsylvania and Washington—where either the Democratic incumbent is viewed as vulnerable or there is an open seat considered attainable for Republicans." The report highlights the fact that "nearly 75 percent of the buy [was] paid for by undisclosed donors[.]" Kenneth P. Vogel, *Secret Donors Fuel American Crossroads Media Buy*, POLITICO (Oct. 5, 2010).

35. Finally, with respect to Crossroads GPS's major purpose, "[t]he Federal courts' interpretation of the constitutionally mandated major purpose doctrine requires the Commission to conduct investigations into the conduct of specific organizations that may reach well beyond

publicly available advertisements. . . . [T]he Commission may need to examine the organization's fundraising appeals." SE&J on Political Committee Status, 72 Fed. Reg. at 5601. Based on convincing available information, a full investigation of Crossroads GPS is warranted.

36. Crossroads GPS "Expenditures": Crossroads GPS has reported more than $2.5 million in express advocacy expenditures to the Commission since September 20, 2010 (filer I.D. # C90011719). Clearly these expenditures meet and surpass the $1,000 "political committee" expenditure threshold. Furthermore, complainants believe the enormity of Crossroads GPS's express advocacy expenditure activity establishes Crossroads GPS's "major purpose" as influencing the 2010 federal elections.

37. Below are examples of ads produced and disseminated by Crossroads GPS that meet the statutory "for the purpose of influencing" definition of "expenditure," 2 U.S.C. § 431(9)(A)(i), which the Commission should be applying to Crossroads GPS. *See* ¶¶ 17-18. Most of these ads likewise meet the Subpart (b) express advocacy standard, 11 C.F.R. § 100.22(b), because the ads can only be interpreted by a reasonable person as advocating the election or defeat of particular candidates for federal office. Therefore, payments by Crossroads GPS to produce and disseminate the ads constitute "expenditures." Crossroads GPS has established a channel on YouTube, http://www.youtube.com/user/CrossroadsGPSChannel (last visited Oct. 6, 2010), containing 22 ads obviously produced "for the purpose of influencing" the 2010 Congressional elections, *see* 2 U.S.C. § 431(9)(A)(i), with all or most also expressly advocating the election or defeat of candidates for federal office. Though the posting of ads on YouTube free of charge does not constitute an "expenditure," production costs, as well as any costs incurred to distribute these advertisements via broadcast, cable or satellite television do constitute "expenditures."

38. Crossroads GPS posted the following ad regarding Senate candidate Joe Sestak on its website:

> With Joe Sestak, the reckless spending adds up fast. There's Sestak's earmarks—over 100 in just three years. Sestak backed bailouts for automakers and banks. He voted for Pelosi's failed stimulus and Obama's massive healthcare takeover. Trillion's of dollars wasted, while Sestak voted repeatedly to increase the national debt limit—adding trillions of dollars. Joe Sestak: reckless spending, higher debt, killing jobs. Wrong for Pennsylvania. Crossroads GPS is responsible for the contents of this advertising.

Crossroads GPS website, *at* http://www.crossroadsgps.org/ (last visited Oct. 6, 2010).

39. Crossroads GPS posted the following ad regarding Senate candidates Marco Rubio and Charlie Crist on its YouTube channel:

> The choice is clear. Marco Rubio stood up for taxpayers by saying no to the failed Obama stimulus. Charlie Crist embraced it. Marco Rubio opposed Obamacare, with its $500 billion Medicare cuts. Charlie Crist has flip flopped. Marco Rubio says no to Obama's job killing cap and trade energy tax, but Crist was pushing it even before Obama was elected. Florida needs a strong leader to put a check on Obama's agenda. That's Marco Rubio. Crossroads GPS is responsible for the contents of this advertising.

Crossroads GPS YouTube Channel, *at* http://www.youtube.com/user/CrossroadsGPSChannel#p/u/6/J1pXntOkoE4 (last visited Oct. 6, 2010).

40. Crossroad GPS reports that the following ad regarding Senate candidate Barbara Boxer began running in the last week of August 2010:

> California seniors are worried. Barbara Boxer voted to cut spending on Medicare benefits by $500 billion. Cuts so costly to hospitals and nursing homes that they could stop taking Medicare altogether. Boxer's cuts would sharply reduce benefits for some and could jeopardize access to care for millions of others. And millions of American won't be able keep the plan or doctor they already have. Check the facts and take action. Call Boxer. Stop the Medicare cuts.

See Crossroads GPS launches new issue ads in Pennsylvania, California and Kentucky, Crossroads GPS (Aug. 25, 2010) at http://www.crossroadsgps.org/news/crossroads-gps-

launches-new-issue-ads-pennsylvania-california-and-kentucky (last visited Sept. 30, 2010); *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/worried.

41. Crossroad GPS reports that the following ad regarding Senate candidate Joe Sestak began running in the last week of August 2010:

> We're hurting, but what are they doing in Washington? Congressman Joe Sestak voted for Obama's big government health care scheme, billions in job-killing taxes, and higher insurance premiums for hard-hit families. Even worse, Sestak voted to gut Medicare, a $500 billion cut. Reduced benefits for 850,000 Pennsylvania seniors. Higher taxes and premiums, fewer jobs, Medicare cuts. The Sestak-Obama plan costs us too much. Tell Congressman Sestak stop the Medicare cuts.

See Crossroads GPS launches new issue ads in Pennsylvania, California and Kentucky, Crossroads GPS (Aug. 25, 2010) at http://www.crossroadsgps.org/news/crossroads-gps-launches-new-issue-ads-pennsylvania-california-and-kentucky (last visited Sept. 30, 2010); *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/worried.

42. It was reported that Crossroad GPS began running the following ad regarding Senate candidate Jack Conway on August 31, 2010:

> Obamacare is the wrong way for Kentucky. And Jack Conway is going the wrong way too. Obamacare means $525 billion in job killing taxes. It means higher insurance premiums. $500 billion cut from Medicare. Reduced benefits for 113,000 Kentucky seniors. And intrusive big-government government mandates. It's the wrong way, Conway. Crossroads GPS is responsible for the contents of this advertising.

Jeremy P. Jacobs, *Crossroads GPS Targets Obama in KY*, Hotline on Call (Aug. 31, 2010) *at* http://hotlineoncall.nationaljournal.com/archives/2010/08/american_crossr_1.php.

43. It was reported on August 17, 2010 that Crossroads GPS was broadcasting the following ad regarding Senate candidate Michael Bennett:

> Michael Bennett's spending spree. Since his appointment, Bennett has voted to spend $2.5 billion every single day. Spending billions of your tax dollars on everything—from the failed stimulus, billions in government pork, even cash-for-

clunkers. And to pay for some of it, Bennett voted twice in 35 days to increase the national debt. Bennett's way? Spend more, borrow more, and then raise our taxes. Michael Bennett's spending spree. Call Senator Bennett, stop the spending.

Jeremy P. Jacobs, *American Crossroads Airs Ads in OH, CO*, Hotline on Call, (August 17, 2010), at http://hotlineoncall.nationaljournal.com/archives/2010/08/american_crossr.php (although the article initially references the political committee American Crossroads, the article goes on to make clear that Crossroads GPS paid for the ad, which is confirmed by the "paid for by" disclaimer at the end of the ad); *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/harnet-calendar.

44. Crossroads GPS was reported to have begun running the following ad regarding Senate candidate Robin Carnahan in mid-August 2010:

> Male announcer: The message is clear. Seventy-one percent of Missouri voters don't want government mandated health care. We want to make our own health care decisions.
>
> Female announcer: But Robin Carnahan disagrees, while seventy-one percent of us voted no, Carnahan sided with lobbyists, big unions, and Washington insiders to force Obamacare on us.
>
> Male announcer: Missouri's Lieutenant Governor is suing the federal government so we can keep our health care.
>
> Female announcer: Tell Carnahan to get in touch with Missourians and support the health care challenge.

See Peter H. Stone, *American Crossroads Spin-off Launches New Ads in Missouri, Nevada* (August 20, 2010), at http://www.publicintegrity.org/blog/entry/2359/ (last visited Sept. 30, 2010); *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/issue-ad-robin-carnahan.

45. Crossroads GPS was reported to have begun running following ad regarding Senate candidate Harry Reid in mid-August 2010:

> Obamacare is bad for healthcare in America. And worse for Nevada. Because when Senator Harry Reid needed votes to push Obamacare, he cut sweet deals across the country—to help Nebraska, to help Louisiana, to even help Florida. What has Nevada gotten from Senator Reid? Record foreclosures and the highest unemployment rate in the nation. And Reid's still pushing for even more government control of your healthcare. Really, Harry? How 'bout some help for Nevada.

See American Crossroads Spin-off Launches New Ads in Missouri, Nevada, supra; *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/thanks-harry.

46. Crossroads GPS posted the following ad regarding Senate candidate Joe Sestak on its website:

> Over half a million Pennsylvanians unemployed. And what's Congressman Joe Sestak done? He voted to gut Medicare, slashing benefits for Pennsylvania seniors. The Obama-Sestak scheme could jeopardize access to care for millions. Sestak even voted to raise taxes over $525 billion, devastating small businesses, killing jobs, gutting Medicare, hurting seniors, killing jobs. Pennsylvania can't afford Joe Sestak. Crossroads GPS is responsible for the contents of this advertising.

Crossroads GPS website, at http://www.crossroadsgps.org/ (last visited Sept. 30, 2010).

47. In sum, there is reason to believe that Crossroads GPS has a "major purpose" to support or oppose the election of particular federal candidates, and it has made "expenditures" for this purpose far in excess of the statutory $1,000 threshold amount. The Commission accordingly should find reason to believe that Crossroads GPS has violated FECA political committee registration, organization and recordkeeping, and reporting requirements established by 2 U.S.C. §§ 432, 433 and 434. Pursuant to 2 U.S.C. § 437g(a)(2), the Commission should "make an investigation of such alleged violation . . . ."

V. Prayer For Relief

48. Wherefore, the Commission should find reason to believe that Crossroads GPS has violated 2 U.S.C. §§ 432, 433, 434 (and, potentially, 441a and 441b) and conduct an immediate investigation under 2 U.S.C. § 437g(a)(2). Further, the Commission should

determine and impose appropriate sanctions for any and all violations, should enjoin the respondent from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with FECA.

October 12, 2010

Respectfully submitted,

Kevin Zeese Esq.
PO Box 9576
Washington, DC 20016

Prosperity Agenda, Protect Our Elections,
American Crossroads Watch
Kevin Zeese Esq.
POB 9576

Craig Holman, Ph.D.
Government Affairs Lobbyist
Public Citizen
215 Pennsylvania Avenue SE
Washington DC 20003

Verification

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

For Complainant Prosperity Agenda, Protect Our Elections, American Crossroads Watch,

Kevin Zeese
PO Box 9576
Washington, DC 20016

Sworn to and subscribed before me this 12th day of October, 2010.

Notary Public

SEONG HEE SHIN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires September 24, 2011

For Complainant Public Citizen

Craig Holman, Ph.D.
Government Affairs Lobbyist
Public Citizen
215 Pennsylvania Avenue SE
Washington DC 20003

Sworn to and subscribed before me this 13 day of October, 2010.

Notary Public

MARY F. VINCENT
Notary Public, District of Columbia
My Commission Expires March 31, 2013

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