May 22, 2013

Dear Senator,

The IRS is currently facing two scandals that must be investigated and addressed by Congress to prevent the same abuses in the future.

The first scandal involves the wrongful targeting by the IRS of conservative groups seeking section 501(c)(4) tax-status. The second scandal involves the failure of the IRS to act to prevent groups from improperly claiming section 501(c)(4) tax-status in order to launder secret contributions into federal elections.

Our organizations believe it is essential for Congress to enact legislation that deals with both of these scandals: legislation that prevents improper targeting of groups and also prevents groups from improperly using the tax code to hide donors financing their campaign activities.

The organizations include Americans for Campaign Reform, the Campaign Legal Center, Citizens for Responsibility and Ethics in Washington, Common Cause, Democracy 21, Demos, Public Citizen and Sunlight Foundation.

Both of the current IRS scandals stem directly from flaws in the existing IRS rules that define eligibility for section 501(c)(4) tax-exempt status. The rules have been interpreted to permit section 501(c)(4) groups to engage in substantial campaign activities, while the statute governing section 501(c)(4) groups explicitly states that such groups are required to engage "exclusively" in social welfare activities.

Campaign activities are not "social welfare" activities under the tax laws.

By legislating appropriate changes to address the flaws in the regulations, Congress will restore the original intent to the statutory provisions governing eligibility for section 501(c)(4) tax status.

The IRS has effectively admitted that the agency wrongfully targeted conservative groups for review based on inappropriate criteria, and its actions are currently being investigated by several congressional committees.

The improper targeting actions by the IRS must not be allowed to serve as cover for sweeping under the rug blatant abuses of the tax laws by pro-Democratic, pro-Republican and independent groups who have improperly claimed section 501(c)(4) tax status in recent elections. These abuses played a central role in more than $250 million in secret contributions being spent by section 501(c)(4) groups in the 2012 federal elections.

At the same time the IRS wrongfully selected for heightened review small groups based on their names or identified interests, the agency failed to prevent prominent campaign operations from improperly posing as section 501(c)(4) "social welfare" groups in order to hide the donors financing their campaign activities.

Even taking into account that the IRS regulations were flawed, these political groups did not comply with the existing regulations and the statute, and were not entitled to section 501(c)(4) tax status.

Section 501(c)(4) of the tax laws was created to provide tax-exempt status for groups "exclusively" engaged in social welfare activities. Section 501(c)(4) was never intended to be a vehicle for groups to conduct substantial campaign activities.

Instead, section 527 of the tax laws provides tax-exempt status to groups that engage in campaign activities. Section 527 groups are required to disclose their campaign donors and expenditures while section 501(c)(4) groups do not publicly disclose their donors.

Congress must take remedial action to prevent both of the scandals at the IRS from recurring.

We strongly urge Congress either to prohibit section 501(c)(4) groups from engaging in *any* campaign activity or to establish a bright-line test that permits such groups to engage only in a *de minimis,* insubstantial amount of campaign activity.

If "social welfare" groups want to engage in campaign activities, they can form separate section 527 organizations. This would allow them to engage in campaign activities as tax-exempt organizations. It would also require them to publicly disclose their campaign contributions and expenditures.

The existing IRS rules governing eligibility for section 501(c)(4) tax-status were adopted in 1959, more than a half century ago. The rules are antiquated and in conflict with the statutory requirement that section 501(c)(4) groups engage "exclusively" in social welfare activities. They also are in conflict with court cases interpreting this statutory requirement.

Furthermore, the rules do not take account of the explosion in groups claiming to be section 501(c)(4) organizations that followed the *Citizens United* decision.

Citizens United for the first time permitted corporations, including nonprofits, to make expenditures to influence federal elections. As a result, a number of new groups claimed the right to operate under section 501(c)(4) in order to function as vehicles for keeping secret the donors financing their expenditures in federal elections. Examples of such groups have been widely reported in the media and brought directly to the attention of the IRS.

For example, Priorities USA was created by two former Obama Administration officials shortly after leaving the White House with the overriding purpose of supporting President Obama in the 2012 presidential election.

Crossroads GPS was created by Karl Rove with the overriding purpose of electing Republican candidates and defeating Democratic candidates. Rove himself made clear that Crossroads GPS is a political operation, not a "social welfare" group, in a *Wall Street Journal* op-ed he published on August 1, 2012. Rove said in the op-ed that Crossroads GPS had spent more than $53 million for ads "attacking Mr. Obama's policies or boosting Mr. Romney."

American Action Network, a pro-Republican group, reported *70 percent* of its expenditures in 2010 to the FEC as "independent expenditures" and "electioneering communications." Under any interpretation of the IRS rules, this group does not qualify as a section 501(c)(4) "social welfare" organization.

Americans Elect, a group established to nominate and run an independent candidate for President in 2012, registered as a political party on state ballots all across the country. There is no way that a political party registered on state ballots can also qualify as a section 501(c)(4) "social welfare" group.

These groups were campaign operations, not "social welfare" organizations. It appears clear that the groups were improperly claiming section 501(c)(4) tax-status so that donors could secretly finance their campaign expenditures in federal elections.

In the case of Priorities USA and Crossroads GPS, they also had affiliated Super PACs. Donors supporting their campaign activities were given the choice: give your contribution to the section 527 Super PAC and the contribution will be publicly disclosed or give your contribution to the section 501(c)(4) "social welfare" organization and you can remain anonymous.

There is no indication that the IRS has taken any action to prevent these four groups or any other groups playing prominent roles in the past two federal elections from improperly claiming section 501(c)(4) tax status.

It is a cardinal rule of our political system that campaign expenditures and the sources of the contributions used to finance them should be disclosed to the American people.

The Supreme Court has long recognized the constitutionality and importance of requiring disclosure to inform citizens about campaign finance activities. In 2010, the Supreme Court in the *Citizens United* case by a vote of 8 to 1 upheld the constitutionality of requiring corporations making independent expenditures, including nonprofit groups, to disclose their campaign activities. (Citizens United itself is a section 501(c)(4) group.)

Recognizing the vital role that campaign finance disclosure plays in informing citizens and providing accountability, Justice Anthony Kennedy wrote in the *Citizens United* decision:

> With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. … [D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

The *Citizens United* decision also noted that the Supreme Court had earlier upheld campaign finance disclosure laws to address the problem that "independent groups were running election-related advertisements while hiding behind dubious and misleading names."

In an even more recent Supreme Court case, *Doe v. Reed*, Justice Antonin Scalia vigorously defended the role disclosure plays in a democracy. In a concurring opinion supporting the constitutionality of disclosure for ballot measure signatories, Justice Scalia said, "Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."

The IRS has a statutory responsibility to ensure that groups claiming the tax benefits provided to section 501(c)(4) organizations are in fact entitled to this tax-status and are not misusing the tax laws. It is the responsibility of the IRS to protect the integrity of the tax laws and the interests of American taxpayers.

The twin scandals at the IRS now lie before Congress.

If Members are really interested in solving the two IRS scandals regarding section 501(c)(4) tax status – wrongful IRS targeting of groups and blatant abuse by some groups of the tax laws – Congress can do so promptly.

We strongly urge Congress to enact new rules to govern eligibility for section 501(c)(4) tax status that eliminate, or minimize through a bright line test, the ability of such groups to engage in campaign activity. This would restore the original intention of section 501(c)(4) to apply only to "social welfare" groups, and not to campaign operations. It would also prevent any recurrence of the current scandals at the IRS.

Americans for Campaign Reform
Campaign Legal Center
Citizens for Responsibility and Ethics in Washington
Common Cause
Democracy 21
Demos
Public Citizen
Sunlight Foundation