

December 14, 2011

Hon. Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
Room 3000 IR  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Lois Lerner  
Director of the Exempt Organizations Division  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Re: Request for IRS investigation into whether certain section 501(c)(4) organizations are operating in violation of tax exempt status

Dear Commissioner Shulman and Director Lerner:

We are writing to supplement our letter to the Internal Revenue Service of September 28, 2011.

In the September 28<sup>th</sup> letter, Democracy 21 and the Campaign Legal Center called on the IRS to investigate whether four organizations – Crossroads GPS, the American Action Network, Americans Elect and Priorities USA – are operating in violation of their claimed tax-exempt status under section 501(c)(4) of the Internal Revenue Code because each organization is engaging in far more political activity than the Code allows for “social welfare” organizations.

These groups are claiming section 501(c)(4) tax status in order to keep secret from the American people the donors financing their expenditures to influence federal elections

We previously wrote to the IRS on October 5, 2010 asking for an investigation of Crossroads GPS and its eligibility to receive section 501(c)(4) tax status. We also wrote to the IRS on July 27, 2011 challenging the IRS regulations on eligibility for section 501(c)(4) tax status as not properly implementing the law.

We are writing today to provide additional information on the political activities of three of the four groups addressed in our September 28<sup>th</sup> letter, the American Action Network, Americans Elect and Crossroads GPS that further demonstrates that these groups are not entitled to section 501(c)(4) tax-exempt status.

As you are aware, section 501(c)(4) “social welfare” organizations are not required to disclose their donors to the public. If the four organizations discussed in our September 28<sup>th</sup> letter are not eligible for the tax status they claim under section 501(c)(4), then they are improperly shielding their donors from public disclosure and improperly using secret contributions to influence the 2012 national elections.

We are deeply concerned about the failure of the IRS to take any public steps to show that the agency is prepared to enforce the tax laws applicable to section 501(c)(4) tax-exempt groups.

Since bringing these abuses of the tax laws to your attention, beginning more than a year ago, we have seen no evidence that the IRS is prepared to address what appear to be blatant abuses in order to keep secret from the American people the sources of money being spent to influence federal elections.

The failure of the IRS to carry out its statutory enforcement responsibilities to prevent the abuse of the tax laws could have a major impact on the 2012 elections, as we have stated in our previous letters to the IRS.

We urge the IRS in the strongest possible terms to expeditiously examine the matters we have brought to its attention and to address any possible abuses and violations of the tax laws before it is too late.

As our prior letters state, section 501(c)(4) “social welfare” organizations are required to primarily engage in the promotion of social welfare in order to obtain tax exempt status. Federal court decisions have established that in order to meet this requirement, section 501(c)(4) organizations cannot engage in more than an *insubstantial* amount of any non-social welfare activity, such as directly or indirectly participating or intervening in elections.

In our letter of September 28, 2011, we provided voluminous information demonstrating that each of the four organizations discussed in the letter are engaging in *substantial* campaign-related activity. Indeed, the facts relating to the formation and activities of the four organizations show that each group was organized and is operated for the overriding purpose of participating or intervening in elections.

By claiming tax-exempt status under section 501(c)(4), these groups allow their donors to evade public disclosure requirements that would apply if the organizations were registered under section 527 as “political organizations.” In fact, it appears that avoiding disclosure of their donors is the reason that these groups have claimed section 501(c)(4) tax status.

### **American Action Network**

An article from the Center for Public Integrity’s *iWatch News* (October 31, 2011) reported that American Action Network spent \$30 million in 2010. According to the article and federal campaign finance reports, \$26 million of the \$30 million spent by American Action

Network in 2010 was spent for “independent expenditures” and “electioneering communications,” as defined by federal campaign finance laws. The article states:

The conservative American Action Network, a leading independent player in last year’s election, poured \$26 million – out of some \$30 million in spending – from secret donors into political ads and activities to help Republican candidates. . . .

As required by law, the network reported the \$26 million it spent on political activities to the Federal Election Commission before Election Day.<sup>1</sup>

This means that 87 percent of American Action Network’s expenditures in 2010 were made for campaign-related activities reported to the FEC under the nation’s campaign finance laws. The article states:

“If over 80 percent of a group’s expenditures are for political purposes that require reporting to the FEC, then that organization will not qualify for tax-exempt status under section 501(c)(4),” Marc Owens, who was director of the IRS exempt organizations division for a decade, told *iWatch News*.

Under no one’s understanding of the tax laws is an organization eligible for section 501(c)(4) tax-exempt status if 87 percent of its expenditures are made for campaign-related activities reported under the nation’s campaign finance laws.

Based on these facts, the IRS must move promptly in order to stop American Action Network from again abusing the tax laws in the 2012 elections.

According to the *iWatch News* article, former Senator Norm Coleman, the chairman of American Action Network, is quoted as stating that the group will be heavily involved in spending to influence the 2012 congressional campaign. If the IRS does not take action, it could be responsible for allowing campaign-related expenditures by American Action Network that are improperly financed with secret contributions to influence and possibly decide the outcome of targeted House and Senate races.

### **Americans Elect**

Americans Elect, which we also addressed in our September 28<sup>th</sup> letter, continues to qualify for ballot access as a political party in states throughout the nation in order to run a presidential/vice-presidential candidate ticket in 2012. The organization is claiming section 501(c)(4) status in order to keep its donors secret from the American people.

A recent news story stated that Americans Elect “has raised \$22 million and is likely to place a third presidential candidate on the ballot in every state next year.”<sup>2</sup> According to this

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<sup>1</sup> P. Stone, “Fine line between politics and issues spending by secretive 501(c)(4) groups,” *iWatch News* (Oct. 31, 2011).

article, Americans Elect “has ballot slots in Florida, Michigan, Nevada, Ohio and five other states, with certifications pending in several others.”

According to a recent *POLITICO* article, “Americans Elect this week announced that it qualified for the ballot in Colorado and Mississippi, bringing the total number of states in which it has access to 11 – including Alaska, Arkansas, Arizona, Kansas, Nevada, Michigan, Florida, Ohio and Utah. Certification is pending in California and Hawaii.”<sup>3</sup>

The notion that this group qualifies as a section 501(c)(4) “social welfare” organization is absurd.

A group legally qualified in states as a political party in order to obtain ballot access to run a candidate for president cannot simultaneously be a tax-exempt “social welfare” organization under section 501(c)(4).

In this particular case, the failure of the IRS to act could have enormous consequences.

Just as third party candidates decided the 2000 presidential race, a third party candidate representing Americans Elect could decide the outcome of the 2012 presidential election. If that were to happen and the IRS has failed to take action here, the agency would be responsible for allowing secret money and a secretly financed organization to decide who is elected to be our next president.

The IRS must not allow this to happen. The agency must move immediately to address the apparent abuses of the tax laws.

### **Crossroads GPS**

As we demonstrated in our September 28<sup>th</sup> letter, the overriding purpose of Crossroads GPS is to influence elections. In engaging in its campaign-related activities, Crossroads GPS works in tandem with American Crossroads, a so-called Super PAC, to elect Republicans and defeat Democrats running for federal office. That is the organization’s purpose and that is what the organization is spending its money to do.

According to published reports, American Crossroads and its affiliated organization Crossroads GPS plan to spend a combined \$240 million to influence the 2012 presidential and congressional elections.

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<sup>2</sup> K. Thompson, “Moderate Americans Elect group hoping to add third candidate to 2012 election ballot,” *The Washington Post* (November 24, 2011).

<sup>3</sup> T. Mak, “Christine Todd Whitman to Jon Huntsman: Run third party,” *POLITICO* (December 2, 2011)

Based on the Internal Revenue Code, court decisions and even the flawed IRS regulations, Crossroads GPS is not entitled to the section 501(c)(4) tax-exempt status it has claimed in order to hide its donors. This is another clear case that demands prompt action.

A recent article in *The New York Times* shows that Crossroads GPS is continuing to spend substantial amounts of money to influence federal elections. According to the article:

Crossroads GPS, a conservative advocacy group founded by Mr. Rove and other Republican strategists, has placed the biggest bet so far on negative messages. By its own count, it has spent about \$20 million this year on political advertising. Much of it was broadcast during the debt-ceiling debate this summer, when it singled out members of Congress with advertisements that portrayed Democrats and Mr. Obama as fiscally irresponsible and unable to fix the economy.

In recent weeks, the group has taken on Mr. Obama and his economic agenda, spending \$2.6 million on a commercial that criticizes his support for an upper-income tax increase and suggests a split on the issue between Mr. Obama and former President Bill Clinton. . . .

Many of the Crossroads advertisements have been running in swing states like Colorado, Florida, Ohio and Pennsylvania and have been timed to coincide with presidential trips.

“It creates a scenario where the president’s visit is greeted with a strong counterpoint to the argument he’s making,” said Jonathan Collegio, communications director for Crossroads GPS.

“And in battleground states where the issue framing is going to impact 2012, it’s critical to be making your point there early and often,” Mr. Collegio said. “There may be some value in advertising now that will be impossible to achieve toward the end of the campaign, when virtually all of the advertising on television and radio is political.”<sup>4</sup>

Similarly, a recent article in *National Journal* reported that Crossroad GPS has recently “reserved more than \$500,000 on air time in Nebraska’s two largest media markets,” to run ads that are for the purpose of dissuading Senator Ben Nelson (D-NE) from running for reelection.<sup>5</sup> According to the article:

“We want Ben Nelson to recognize that 2012 will be an extraordinarily grueling proposition in the case he decides to run,” said Jonathan Collegio, a Crossroads spokesman, in confirming the buy.

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<sup>4</sup> J. Peters, “TV Attack Ads Aim at Obama Early and Often,” *The New York Times* (November 26, 2011) (emphasis added).

<sup>5</sup> R. Wilson, “Crossroads Will Drop Half Million Against Nelson,” *National Journal* (Dec. 12, 2011).

Crossroads began the two-week blitz last week with a spot blasting Nelson's vote in favor of health care reform legislation. *Id.*

The statement by the spokesman for Crossroads GPS makes clear that it is intending to make Senator Nelson's year "grueling," should he decide to run for re-election. The campaign focus of Crossroads GPS's activities could not be more overt.

In failing to properly enforce the tax laws that apply to section 501(c)(4) groups, the IRS is failing the American people.

The IRS is also creating the potential for this illegal activity to play a major role in influencing and possibly determining the outcome of the 2012 presidential election and individual congressional races.

We reiterate our request that the IRS move promptly to address whether the organizations detailed in our September 28<sup>th</sup> letter are improperly claiming tax-exempt status under section 501(c)(4) and are improperly using that status to keep secret the donors to these groups whose contributions are being spent to influence federal elections.

The IRS has an obligation to the American people to properly enforce the tax laws and thereby to protect the integrity of our elections. Democracy 21 and the Campaign Legal Center strongly urge the IRS to meet its obligation.

Sincerely,

*/s/ Gerald Hebert*

J. Gerald Hebert  
Executive Director  
Campaign Legal Center

*/s/ Fred Wertheimer*

Fred Wertheimer  
President  
Democracy 21