

April 17, 2012

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: Secret donations to “social welfare “ organizations making campaign expenditures

Dear Commissioner Shulman and Director Lerner:

Democracy 21 and the Campaign Legal Center again call on the IRS to investigate and take appropriate enforcement action against Crossroads GPS regarding its claimed status as a section 501(c)(4) tax-exempt “social welfare” organization.

We also again call on the IRS to similarly investigate and take appropriate enforcement action against Priorities USA, American Action Network and Americans Elect, other organizations which we believe are improperly claiming status under section 501(c)(4).

It appears clear that Crossroads GPS is engaging in substantial spending to influence elections and is accordingly not eligible for section 501(c)(4) tax status under existing tax law and court interpretations of the law. It is also appears clear that Crossroads GPS is raising numerous secret million dollar and multi-million dollar donations to fund these expenditures.

In an article dated April 13, 2012 (copy enclosed), *The Washington Post* reported that Crossroads GPS received a secret donation of \$10 million dollars to be used to make expenditures to attack President Obama’s campaign for reelection.

According to the report:

An anonymous donor has given \$10 million to run ads attacking President Obama and his policies, escalating the money race that is defining the 2012 presidential campaign. And in the new, freewheeling environment of independent political giving, the identity of this donor, like many others, is likely to remain a permanent mystery.

The donation went to Crossroads GPS, the conservative nonprofit group founded with support of political operative Karl Rove, which also reported another donor giving at least \$10 million over the past two years, according to draft tax returns released by the organization.

The group would not identify the donors, who could be individuals, groups or corporations, and under tax and campaign laws, is not required to disclose them.<sup>1</sup>

The new \$10 million secret contribution to Crossroads GPS to run attack ads against President Obama as he runs for re-election is a stark illustration of the problem caused by groups engaged in campaign spending claiming eligibility as “social welfare” organizations under section 501(c)(4).

The report in *The Washington Post* stated that Crossroads GPS and its affiliated Super PAC, American Crossroads, together plan to spend an estimated \$300 million in the 2012 elections. The expenditures by these two affiliated groups clearly appear to be for one overriding purpose: to elect and defeat candidates.

The *Washington Post* article also shows the huge size of the contributions from secret donors that are being used to finance campaign-related expenditures:

The tax returns show that Crossroads GPS has collected the vast majority of its donations from the super-rich. The forms show that nearly 90 percent of its contributions through the end of 2011 had come from as few as two dozen donors, each giving \$1 million or more.

In prior letters sent to you on October 5, 2010, September 28, 2011, December 14, 2011 and March 9, 2012, our organizations have called on the IRS to investigate and take appropriate enforcement action against Crossroads GPS and other similarly situated organizations improperly claiming tax-exempt status as section 501(c)(4) “social welfare” organizations.

In our earlier letters, we noted that the overriding purpose of these groups is to influence elections and that the groups are spending substantial amounts to do so. These groups appear to be spending far more to intervene and participate in campaigns than the law and court interpretations allow “social welfare” organizations to spend for such purposes.

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<sup>1</sup> T.W. Farnum, “Mystery donor gives \$10 million to Crossroads GPS group to run anti-Obama ads,” *The Washington Post* (April 13, 2012).

It is apparent that these groups are claiming section 501(c)(4) tax status in order to keep secret from the American people the donors financing their campaign-related expenditures. If these organizations are not eligible for tax status under section 501(c)(4), then they are improperly using the tax laws to shield their donors from public disclosure and improperly using secret contributions to influence the 2012 national elections.

As we have previously noted, it appears that the overriding purpose of Crossroads GPS is to influence elections. The ads run by Crossroads GPS are campaign-related under IRS standards. The standards provide that ads do not have to contain express advocacy in order to be treated as intervention and participation in campaigns for purposes of determining eligibility for tax-exempt status as a section 501(c)(4) organization.

As we have stated in our previous letters, 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) “social welfare” groups.

The ongoing harm to the public from the agency’s failure to act is that section 501(c)(4) groups are being used as vehicles to raise and spend secret contributions on a massive scale to influence the 2012 elections.

Unless the IRS acts, the public interest in transparent campaign finance activities – an interest that was strongly affirmed by the Supreme Court in the *Citizens United* case – will be greatly damaged by the agency allowing groups to misuse the tax laws to hide the identities of wealthy donors giving huge amounts to influence this year’s presidential and congressional elections.

Sincerely,

*/s/ Gerald Hebert*

J. Gerald Hebert  
Executive Director  
Campaign Legal Center

*/s/ Fred Wertheimer*

Fred Wertheimer  
President  
Democracy 21