

December 3, 2012

Steven T. Miller  
Acting 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: Political Activities by section 501(c)(4) organizations

Dear Acting Commissioner Miller and Director Lerner:

The IRS last week released its 2012-2013 Priority Guidance Plan (Nov. 19, 2012), which “contains 317 projects that are priorities for allocation of the resources of our offices during the twelve-month period from July 2012 through June 2013 (the plan year).”

Inexplicably, however, nowhere on this list of 317 agency “priorities,” which includes a list of 13 priorities specifically relating to exempt organizations, is there any mention of a project to revise and clarify the rules dealing with political activities by section 501(c)(4) groups.

There simply is no basis for the IRS to ignore, as it apparently has done, the widespread abuses that occurred in the 2012 election by groups claiming section 501(c)(4) tax-exempt status and the role that the IRS’s flawed regulations played in contributing to these abuses.

An estimated \$400 million in secret contributions were laundered into the 2012 elections through section 501(c) organizations. A large portion of these funds was spent by groups improperly claiming tax-exempt status as section 501(c)(4) “social welfare” organizations in order to hide the identities of their donors from the American people.

In the absence of any action by the IRS to address this problem, even greater abuses of the tax laws are expected to occur in future elections by groups improperly claiming to be “social welfare” organizations. The failure of the IRS to act on this matter is doing great harm to the American people and to their fundamental right to know who is providing the money to influence their votes.

Democracy 21 and the Campaign Legal Center wrote to the IRS on ten occasions during 2011 and 2012 to request the agency to investigate and take action on serious abuses of the tax laws by groups that were improperly claiming tax-exempt status under section 501(c)(4).

These groups had an overriding purpose to influence federal elections and engaged in campaign activities that failed to meet the eligibility requirements of section 501(c)(4) and court interpretations of the law.

On July 27, 2011, we submitted a petition for rulemaking in which we requested the IRS to initiate a proceeding to clarify and bring into compliance with the law the IRS regulations that govern campaign activity by groups claiming status as “social welfare” organizations.

On July 17, 2012, almost one year later, we received a letter from Ms. Lerner which acknowledged that “the IRS is aware of the current public interest in this issue,” recognized that the existing regulations were more than a half-century old and stated that the IRS would “consider proposed changes in this area.”

It is an indefensible abdication of responsibility for the IRS, after stating in the July 17, 2012 letter to us that the agency would “consider proposed changes in this area,” to fail to include the section 501(c)(4) regulations dealing with political activity on the agency’s Priority Guidance Plan.<sup>1</sup>

Since “social welfare” organizations are not required to disclose their donors to the public, such groups can serve as vehicles for secretly injecting huge contributions into federal elections. Just one such group claiming status as a “social welfare” organization – Karl Rove’s Crossroads GPS – spent \$70 million on electioneering communications and independent expenditures in the 2012 campaign.

Not one of the sources of the \$70 million spent by Crossroads GPS was disclosed to the public.

As we have previously demonstrated in our letters to the IRS, Crossroads GPS does not meet the eligibility requirements for a 501(c)(4) “social welfare” organization. Rather, it is a campaign organization whose primary purpose in 2012 was to elect Republican candidates.

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<sup>1</sup> We note that at page 37 of the Guidance, the IRS states that in January 2013 it will publish a “Revenue Procedure updating procedures for issuing determination letters and rulings on the exempt status of organizations under §§501 and 521.” Since this proposed publication will address only “procedures for issuing determination letters,” it does not appear to have relevance to the standards an organization must satisfy in order to qualify for exempt status under section 501(c)(4). The fact that this proposed publication is not listed in the portion of the Guidance document that relates to substantive rules for exempt organizations (pp. 10-11) also supports the view that this will be a non-substantive issuance.

Crossroads GPS is similar to a number of other groups masquerading as “social welfare” organizations that operated in the 2012 elections to support candidates of both parties. The contributions spent by these groups for campaign activities were shielded from public disclosure because of their claim for exemption under section 501(c)(4).

Our previous letters to the IRS also challenged the eligibility of Priorities USA, a group formed to support the re-election of President Obama, American Action Network and Americans Elect to receive tax-exempt status under section 501(c)(4).

It is a matter of urgent public importance for the IRS to move promptly to fix its rules.

The existing flawed regulations are playing a key role in the massive amounts of secret money being spent in federal elections by groups that are improperly claiming status as “social welfare” organizations. This large-scale abuse of the tax laws to hide political donors is contrary to the Internal Revenue Code, to court interpretations of the Code and to the longstanding national policy of transparency for campaign finance contributions and expenditures.

Prompt and effective action by the IRS to address this matter is essential to prevent a repeat in 2014 of campaign operatives using phony “social welfare” organizations as conduits to inject secret money into federal campaigns and thereby to frustrate the public’s right to know the sources of money spent to influence our elections.

In that light, the refusal of the IRS even to list the regulations governing eligibility for section 501(c)(4) tax-exempt status in its Priority Guidance Plan for 2012-2013 is indefensible, unacceptable and in direct conflict with the interests of the American people.

The November 19 Guidance states that the IRS will periodically update its work plan “to reflect additional items that have become priorities. . . .”

We strongly urge you to add the section 501(c)(4) regulations to the agency’s regulatory priorities and to take timely and effective steps to address the fundamental flaws in these regulations prior to the 2014 campaign. The IRS must ensure that the widespread abuses of laundering secret money into federal elections through section 501(c)(4) organizations does not repeat itself in the future, to the great detriment of the American people and our democracy.

We request a meeting with you as soon as possible to discuss our concerns and the urgent need for a rulemaking proceeding to address the problems that exist.

Sincerely,

*/s/ Gerald Hebert*

J. Gerald Hebert  
Executive Director  
Campaign Legal Center

*/s/ Fred Wertheimer*

Fred Wertheimer  
President  
Democracy 21