

March 9, 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: 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:

On September 28, 2011, Democracy 21 and the Campaign Legal Center called on the IRS to conduct an investigation into whether four groups claiming tax-exempt status under section 501(c)(4) of the Internal Revenue Code are ineligible for exemption under that provision because they are substantially engaged in campaign activities, not social welfare activities. The groups discussed in our letter are Crossroads GPS, Priorities USA, American Action Network and Americans Elect.

On December 14, 2011, we supplemented our request by providing additional information about the campaign activities conducted by three of these groups.

According to an article in *The New York Times* on March 6, 2012:

In recent weeks, the I.R.S has sent dozens of detailed questionnaires to Tea Party organizations applying for nonprofit tax status, demanding to know their political leanings and activities. The agency plans this year to press existing nonprofits like American Crossroads, on the Republican side, and Priorities USA, on the Democratic side, to justify their tax-protected status as “social welfare” organizations, a status that many tax professionals believe is being badly abused.¹

¹ J. Weisman, “Scrutiny of Political Nonprofits Sets Off Claim of Harassment,” *The New York Times* (March 6, 2012). We believe the reference in the article to American Crossroads, which is a

The *Times* article also stated that there is “pushback” against any investigation by the IRS of whether groups that may be engaged in campaign-related activities are entitled to 501(c)(4) tax-exempt status, and that such resistance is likely to be “fierce.” According to one attorney quoted in the article, the IRS is engaged in “‘McCarthyism’ tactics” and its investigation is “a coordinated effort by the I.R.S. . . . to stifle free speech activities.”

We strongly urge the IRS not to succumb to such arguments, or to any public or political pressure to back away from carrying out the agency’s statutory responsibilities to enforce the tax laws.

The IRS must enforce the law fairly and without partisan bias. The agency also must not shrink from enforcing the law against violations of the tax code by political groups. The stakes here – namely the integrity of our elections and of our tax laws – are much too high for the IRS to walk away from its responsibility to ensure that the tax laws are not being abused for political purposes.

The investigations we have urged the IRS to conduct involve organizations conducting substantial campaign activities that we believe are misusing the tax laws to keep secret from the American people the donors financing their campaign activities. We presented compelling evidence in our letters to show that these groups are primarily involved in campaign-related activities and, as such, do not qualify for exempt status under section 501(c)(4).

As we explained in our earlier letters, the law provides that section 501(c)(4) organizations are required to primarily engage in the promotion of social welfare in order to obtain tax-exempt status under section 501(c)(4). 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, including direct or indirect participation or intervention in elections.

The facts outlined in our earlier letters clearly demonstrate, we believe, that the four organizations we requested the IRS to investigate are engaged in far more than an “insubstantial” amount of campaign-related activities that do not qualify as “social welfare” activities. One of these organizations supports Democratic candidates, two of them support Republican candidates, and one of them is seeking to nominate and run its own candidate for President.

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

Absent enforcement of the law, the IRS will be countenancing an improper scheme that allows organizations engaged substantially in campaign activities to hide the sources of money being used to influence elections by claiming exempt status under section 501(c)(4). This is

section 527 group, is instead intended to be a reference to Crossroads GPS, an affiliated section 501(c)(4) organization.

contrary to the long established principle that citizens are entitled to know who is giving and spending money to influence their votes in order to protect the integrity of our elections and to safeguard against corruption. This principle is embodied in the Internal Revenue Code through the requirement that “political organizations” – those groups primarily organized and operated to influence elections – are subject to full disclosure of the sources of their funding. 26 U.S.C. § 527.

To the extent these organizations are operating improperly as section 501(c)(4) groups, the interests of the American people are being seriously harmed. The IRS has an obligation to enforce the tax laws as written and interpreted by the courts, and to ensure that tax-exempt groups substantially engaged in campaign activities are not allowed to misuse section 501(c)(4) to hide their donors from the public.

Such enforcement is not partisan, nor is it contrary to First Amendment values. Groups are free to obtain tax-exempt status and to engage in as much campaign activity as they wish – so long as they operate under section 527 and comply with its disclosure requirements.

We urge the IRS to move forward expeditiously to investigate the groups we have identified in our earlier letters and to conduct all other appropriate investigations to ensure proper compliance with the eligibility requirements of section 501(c)(4).

Sincerely,

/s/ Gerald Hebert

J. Gerald Hebert
Executive Director
Campaign Legal Center

/s/ Fred Wertheimer

Fred Wertheimer
President
Democracy 21