

May 30, 2013

Representative Ander Crenshaw, Chairman  
Representative Jose Serrano, Ranking Member  
Subcommittee on Financial Services  
and General Government  
House Committee on Appropriations  
B-300 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Crenshaw and Ranking Member Serrano:

According to published reports, the Financial Services and General Government Subcommittee is holding a hearing next Monday, June 3, that is intended to examine “how the upcoming appropriations bills can help prevent the targeting” of conservative groups by the Internal Revenue Service. B. Becker, “New IRS chief’s first hearing is Monday,” *The Hill* (May 28, 2013).

Democracy 21 and the Campaign Legal Center urge the Subcommittee not to adopt any measures that would prevent or undermine the ability of the IRS to enforce the tax laws against groups that claim to be “social welfare” organizations under section 501(c)(4) of the tax code, but primarily engage in campaign activities and use their improper claim of “social welfare” status in order to keep secret the donors funding their campaign expenditures.

To the extent that the IRS has selectively targeted conservative groups based only on their names and identified interests for heightened scrutiny in reviewing applications for tax-exempt status under section 501(c)(4), such targeting was wrong.

But in taking any remedial steps to address the targeting scandal, the Subcommittee, and the Congress as a whole, should pay equal heed to the other IRS scandal—that the IRS has failed to properly carry out its statutory enforcement responsibilities to ensure that groups claiming status as “social welfare” organizations do not function as campaign operations. This IRS failure contributed to more than \$300 million of secret contributions being spent to influence the 2012 federal elections, a large amount of which flowed through section 501(c)(4) groups that were improperly used as vehicles to hide the sources of money being spent to influence federal elections.

Starting in October 2010, Democracy 21 and the Campaign Legal Center have sent a total of 15 letters to the IRS challenging these abuses of the tax laws and requesting investigations, and also requesting a rulemaking to replace regulations governing eligibility for section 501(c)(4) tax-status that are in conflict with the statute and with court decisions interpreting the

law.

Our letters presented evidence to the IRS regarding the abuse of section 501(c)(4) by pro-Republican, pro-Democratic and independent groups—including Crossroads GPS, Priorities USA, Americans Elect and American Action Network. These groups claimed section 501(c)(4) tax status to shield their donors from disclosure, even though the groups appeared to be engaged primarily in campaign activities, in contravention of the requirements for section 501(c)(4) tax status.

Although our letters to the IRS presented evidence regarding the extent of the campaign activities by these groups, to date the IRS has taken no public action against these groups, and they continue to function as section 501(c)(4) “social welfare” groups.

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, and spent tens of millions of dollars for that purpose. 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 wrote 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,” an amount spent on campaign activities that is plainly in excess of IRS standards for “social welfare” organizations.

Americans Elect, a group established for the sole purpose of nominating an independent candidate for President in 2012, sought recognition as a political party in numerous states. It is plainly improper for a political party that is registered as such under state law to also qualify as a section 501(c)(4) “social welfare” group.

These groups were campaign operations, not “social welfare” organizations, and they, as well as others operating similarly, have improperly claimed section 501(c)(4) tax-status in order to allow donors to secretly finance their campaign expenditures made to influence federal elections.

It is essential that any remedial measures proposed by the Subcommittee to address the problem of improper targeting of groups by the IRS not be so broad or restrictive that it also serves to interfere with the ability of the IRS to properly enforce the agency’s regulations, which prohibit “social welfare” organizations from being “primarily” engaged in campaign activities.

Indeed, the problem is not that the IRS regulations are too restrictive but that they are far too lax: the statute itself says that section 501(c)(4) groups must be engaged “exclusively” in

social welfare activities, which by definition do not include any campaign activities. Effective enforcement of this law is necessary in order to ensure that “social welfare” organizations do not serve as campaign operations that use undisclosed money to influence federal elections, thereby frustrating the important goal of providing transparency to the American people about the funding of our national election campaigns.

As indicated by a recent report in *The New York Times*, the improper use of section 501(c)(4) by groups engaged in campaign activities is even more widespread than originally indicated. One group cited by *The Times*, “CVFC, a conservative veterans’ group in California,” applied for tax-exempt status when “its biggest expenditure that year was several thousand dollars in radio ads backing a Republican candidate for Congress.” N. Confessore and M. Luo, “Groups Targeted by I.R.S. Tested Rules on Politics,” *The New York Times* (May 28, 2013). Another group referenced by *The Times* in the same article “sponsored training for a get-out-the-vote initiative dedicated to the ‘defeat of President Barack Obama’ while the I.R.S. was weighing its application.”

As *The Times* noted about such section 501(c)(4) groups, “They are often favored by strategists and donors not for the tax benefits—they typically do not have significant income subject to tax—but because they do not have to reveal their donors, allowing them to pour hundreds of millions of dollars into elections without disclosing where the money came from.”

Any action taken by the Subcommittee must not hamper proper IRS enforcement of the restrictions on campaign activities by section 501(c)(4) groups. While the IRS should be required to enforce the law free from improper targeting, it should also be required to enforce the law effectively to prevent the abuse of section 501(c)(4) by groups spending money primarily on campaign activities.

No action should be taken by the Subcommittee that interferes with the statutory responsibility of the IRS to ensure that groups claiming section 501(c)(4) tax status are not campaign operations that are used to conceal the donors who are financing their spending to influence federal elections.

Sincerely,

*/s/ Gerald Hebert*

J. Gerald Hebert  
Executive Director  
Campaign Legal Center

*/s/ Fred Wertheimer*

Fred Wertheimer  
President  
Democracy 21

Copy to:

Representative Hal Rogers, Chairman, House Appropriations Committee  
Representative Nita Lowey, Ranking Member, House Appropriations Committee  
Members of the Subcommittee on Financial Services and General Government