

June 3, 2013

Representative Dave Camp, Chairman
Representative Sander Levin, Ranking Member
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Camp and Ranking Member Levin:

The House Committee on Ways and Means is holding a hearing on Tuesday, June 4, to continue the Committee's investigation into whether the IRS improperly targeted certain groups for heightened scrutiny as part of their application process for tax exempt status.

Democracy 21 and the Campaign Legal Center urge the Committee to also examine the failure 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 that 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 any remedial steps the Committee may consider in order to address the targeting scandal 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 failure of enforcement by the IRS 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.

Indeed, a recent story in *The New York Times* indicated that several small conservative groups applying for tax exempt status may have plainly warranted close scrutiny by the IRS because of their apparently political activities. 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 in the same article, the Wetumpka Tea Party from Alabama, "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.” A third group, the Ohio Liberty Coalition, “sent out e-mails to members about Mitt Romney campaign events and organized members to distribute Mr. Romney’s presidential campaign literature.”

Simply because these groups were conservative or Tea Party organizations does not mean that it was improper for the IRS to closely review their applications if the groups were apparently engaging in, or planning to engage in, an amount of campaign activity that could result in their being ineligible for section 501(c)(4) tax status. The story in *The Times* noted that “a close examination of these groups and others reveals an array of election activities that tax experts and former I.R.S. officials said would provide a legitimate basis for flagging them for closer review.”

As *The Times* also 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.”

This problem has been most acute and most harmful to the public with regard to large, multi-million dollar political operations that have improperly used section 501(c)(4) status in order to hide their donors from public scrutiny.

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.

Attached are copies of the letters we sent to the IRS to assist the Committee’s investigation of the activities of the IRS with regard to administration and proper enforcement of section 501(c)(4) of the tax code.

Although our letters to the IRS presented strong 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.

Along with our requests for IRS investigations, Democracy 21 and the Campaign Legal Center also filed a petition with the IRS in July 2011, calling on the IRS to institute a rulemaking to repair its deeply flawed regulations implementing section 501(c)(4). Attached are a copy of that petition and the subsequent letters we sent in regard to it.

As the petition sets forth, the existing IRS rules, which provide that a social welfare organization must be “primarily engaged” in social welfare activities, is contrary to the language of section 501(c)(4), which provides that such groups must be “exclusively” engaged in social welfare, and also contrary to court cases construing the statute, which conclude that such groups may engage in no more than an “insubstantial” amount of non-social welfare activity.

Although the IRS itself has never clearly defined what is meant by its “primarily engaged” standard, this rule has been widely interpreted to allow a social welfare organization to spend up to 49 percent of its funds on campaign activity, contrary to the law. This standard, and the lax interpretation of it, combined with a lack of enforcement, has been a central contributing factor to the massive growth in the use of section 501(c)(4) groups as vehicles to hide the true source of funds being spent to influence federal elections.

It is essential that any remedial measures that may be proposed by the Committee not be so broad or restrictive that they 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.

Any action taken by the Committee 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 Committee 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:

Members of the House Committee on Ways and Means