

August 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: Petition for rulemaking on candidate election activities by Section 501(c)(4) groups

Dear Commissioner Shulman and Director Lerner:

According to news reports, Senator Orrin Hatch (R-UT) and other Republican Senators have sent a letter to the IRS urging the agency to delay undertaking any effort to revise IRS regulations that govern the extent to which a group eligible for tax-exempt status as a section 501(c)(4) “social welfare” organization can engage in candidate campaign activity.

The letter from the Republican Senators is apparently in response to the letter you sent to our organizations dated July 17, 2012 in which you said you would consider changes in this area.

In your July 17 letter, you acknowledged receipt of our earlier letters to the IRS in which we submitted and then supplemented a petition for rulemaking that challenges as inadequate and contrary to law the existing IRS regulations which set eligibility criteria for section 501(c)(4) tax-exempt status.

As we have noted in a series of letters to the IRS, groups that clearly have an overriding purpose to influence elections are claiming status as “social welfare” organizations in order to keep secret the donors whose funds they are spending to influence the 2012 presidential and congressional elections.

Your July 17 letter to us recognized that the existing regulations in this area were put in place more than a half century ago, that you “are aware of the current public interest” in this matter and that you “will consider proposed changes in this area.”

We consider the letter you recently received from the Republican Senators to be a partisan effort to pressure the IRS to back away from the position you correctly took in your July 17 letter to look at new regulations to govern eligibility for section 501(c)(4) tax-exempt status.

We believe the Republican Senators' letter is intended to preserve the ability of groups with an overriding purpose to support Republican candidates to continue to improperly claim tax-exempt status as "social welfare" organizations in order to keep secret the donors financing their campaign expenditures.

We urge you in the strongest possible terms to ignore this partisan pressure or any other partisan attempts to dissuade the IRS from carrying out its responsibilities to properly interpret the tax laws and protect the interests of American taxpayers and voters.

As you know, in addition to the petition we submitted to the IRS we have also filed complaints with the IRS to challenge improper claims of eligibility for section 501(c)(4) tax-exempt status by pro-Republican, pro-Democratic and independent groups. We have called on the IRS to investigate and take appropriate enforcement action against these groups.

These groups include Crossroads GPS, the brainchild of Republican Party operative Karl Rove, whose purpose is to support Republican candidates, and Priorities USA, formed by two former Obama White House officials, whose purpose is to support President Obama's reelection.

These groups are campaign operations, not "social welfare" organizations, and they are not entitled to section 501(c)(4) tax-exempt status.

Recent published reports, for example, overwhelmingly document what is obvious – Crossroads GPS is all about electing Republican candidates and defeating Democratic candidates for federal office.

According to a May 22, 2012 *New York Times* article,¹ a \$25 million advertising campaign by Crossroads GPS in 10 swing states, "is expected to become one of the most heavily broadcast political commercials of this phase of the general election." Crossroads GPS conducted "18 different focus groups" that took place "over nearly a year" and that provided "a clear rationale for voters to deny Mr. Obama a second term."

We do not believe that "social welfare" organizations conduct 18 focus groups over nearly a year to determine a clear rationale for defeating a presidential candidate. That is what campaign operations do.

Last week, Karl Rove proudly wrote in *The Wall Street Journal*² that in response to the Obama campaign's recent ads, outside groups had spent \$107.4 million on "ads attacking Mr. Obama's

¹ Peters, Jeremy W. "Masters of Attack Ads Take Subtle Shot at Obama." *The New York Times*. 22 May 2012. <<http://www.nytimes.com/2012/05/22/us/politics/new-crossroads-gps-ad-takes-a-soft-shot-at-obama.html?pagewanted=all>>.

² Rove, Karl. "Rove: The Obama Ad Blitz Isn't Working." *The Wall Street Journal*, 1 Aug. 2012. <http://online.wsj.com/article/SB10000872396390443687504577563002812933574.html?mod=WSJ_Opinion_LEADTop>.

policies or boosting Mr. Romney,” with “Crossroads GPS, a group I helped found, providing over half” of that total.

With this statement, Rove has confirmed that more than \$50 million in ads run by Crossroads GPS are campaign ads intended to damage President Obama and boost Mitt Romney in the 2012 presidential campaign. Again, this is not what “social welfare” organizations do. It is what campaign operations do.

The letter from the Republican Senators to the IRS seeking to delay and discourage any action by the agency to correct flawed regulations is not about determining the proper interpretation and enforcement of the tax laws. The letter instead is a partisan effort to allow pro-Republican campaign groups like Crossroads GPS to continue hiding their donors from the American people by posing as section 501(c)(4) “social welfare” organizations.

As we have discussed at length in our previous submissions, the existing IRS regulations do not properly define and limit the amount of candidate campaign activity that a section 501(c)(4) “social welfare” organization may permissible conduct. As we have also documented, the regulations do not comply with court decisions on the eligibility requirements for section 501(c)(4) tax-exempt status.

It is a matter of urgent public importance for the IRS to undertake all appropriate efforts to fix its rules. Because of the existing flawed regulations, massive amounts of secret contributions are being spent in federal elections by groups that are improperly claiming status as “social welfare” organizations. This abuse of the tax laws to hide political donors is contrary to the Internal Revenue Code, to court interpretations of that Code and to the longstanding national policy of providing citizens with transparency for campaign finance contributions and expenditures.

It is vitally important for the IRS not to be swayed or deterred on this matter by partisan pressure. The IRS must carry out its statutory responsibilities to oversee and enforce the tax laws.

The IRS needs to conform its regulations with the requirements of the tax laws and court decisions which hold that in order to be eligible for tax-exempt status as a section 501(c)(4) “social welfare” organization, an organization may not engage in more than an “insubstantial amount” of non-social welfare activity, such as candidate campaign activity.

We appreciate your July 17 letter stating that you will consider changes in this area. We strongly urge you to continue these efforts without delay.

Sincerely,

/s/ Gerald Hebert

/s/ Fred Wertheimer

J. Gerald Hebert
Executive Director
Campaign Legal Center

Fred Wertheimer
President
Democracy 21