

May 24, 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: Crossroads GPS

Dear Commissioner Shulman and Director Lerner:

On April 13, 2012, Crossroads GPS filed Form 990 tax returns for the periods June 1, 2010 through May 31, 2011 and June 1, 2011 through December 31, 2011. Both of these tax returns noted that the group's application for tax-exempt status under section 501(c)(4) of the Internal Revenue Code (IRC) is "pending." More information as to why that application should be denied continues to surface and is set forth in this letter.

We have written to you a number of times about the overtly campaign-related activities of Crossroads GPS and other similarly-situated groups claiming tax-exempt status under section 501(c)(4). *See* letters from Democracy 21 and Campaign Legal Center dated October 5, 2010, September 28, 2011, December 14, 2011, March 9, 2012 and March 22, 2012.

These letters have provided information that raises serious questions about whether Crossroads GPS is primarily engaged in activities that constitute participation or intervention in campaigns, and for that reason is ineligible for tax-exempt status under section 501(c)(4).

New information strongly supports the conclusion that Crossroads GPS is not eligible for tax-exempt status as a "social welfare" organization, and is using its claim for status under section 501(c)(4) in order to hide from the public the identity of the donors who are financing its overtly campaign-related activities.

We strongly urge you to move promptly to deny the application of Crossroads GPS for section 501(c)(4) tax-exempt status and to make clear that they (and other similarly situated groups) cannot use this section of the IRC as the basis for refusing to disclose donors funding their campaign activities.

An article about Crossroads GPS in *The New York Times* this week strongly reinforces the conclusion that the organization, which was founded by Republican political operative Karl Rove, is, in essence, operating as a campaign arm of the Republican Party. J. Peters, “Subtler Entry From Masters of Attack Ads,” *The New York Times* (May 22, 2012).

The article discusses a new anti-Obama campaign commercial by Crossroads GPS, entitled “Basketball,”¹ that is the “centerpiece” of a \$25 million ad campaign “in 10 swing states” and that “is expected to become one of the most heavily broadcast political commercials of this phase of the general election.”

According to the article, the anti-Obama ad is the result of “one of the greatest challenges for Republicans in this election: how to develop a powerful line of attack against a president who remains well liked even by people who are considering voting against him.” The article notes that the “concept” for the ad “and even some of the lines” were “culled directly from focus groups of undecided and sometimes torn voters” as part of “18 different focus groups and field tests” conducted by Crossroads GPS “over nearly a year.”

The article states, “In interviews with voters, Crossroads strategists picked up on some common sentiments that they concluded could provide a clear rationale for voters to deny Mr. Obama a second term.” The article quotes Steven J. Law, the president of Crossroads GPS, as stating, “There are some who believe [Obama] made things worse; then there’s a larger group of people who are upset at him because he hasn’t fixed these problems. . . . And the larger point of these ads is that the agenda he’s pursued has not made things better.”

Similarly, a recent article in *The Los Angeles Times* stated that “Crossroads GPS—along with its sister “super PAC,” American Crossroads—is the biggest among a network of conservative groups that have led the charge against Obama on the airwaves. Together, the two

¹ The script of the “Basketball” ad states:

Woman: “I always loved watching the kids play basketball. I still do, even though things have changed. It’s funny, they can’t find jobs to get their careers started and I can’t afford to retire and now we are all living together again. I supported President Obama because he spoke so beautifully. He promised change, but things changed for the worse. Obama started spending like our credit cards have no limit. His health care law made health insurance even more expensive. We’ve had stimulus and bailouts. Obama added over \$16,000 in debt for every American. How will my kids pay that off when they can’t even find jobs? Now, Obama wants more spending and taxes. That won’t fix things. I had so many hopes. Cutting taxes and debt and creating jobs. That’s the change we need. Tell President Obama to cut the job killing debt and support the new majority agenda at newmajorityagenda.org.

The ad can be viewed at: http://www.youtube.com/watch?v=PdIKr_zX7FE.

Crossroads groups aim to spend \$300 million for the 2012 campaign.” M. Gold, “Crossroads GPS Fires Back at Obama with \$25-million Ad Buy,” *The Los Angeles Times* (May 16, 2012).

A legitimate section 501(c)(4) “social welfare” organization does not “engage in focus groups of undecided and sometimes torn voters” to determine the electoral weaknesses of a presidential candidate in order to run a \$25 million ad campaign “in 10 swing states” five months before the presidential election.

A legitimate section 501(c)(4) “social welfare” organization does not participate in a combined campaign with its affiliated “super PAC” to spend “\$300 million for the 2012 campaign.”

There is little doubt that the \$25 million ad campaign being conducted by Crossroads GPS constitutes intervention and participation in the presidential campaign under IRS standards. Even though the ad contains no express advocacy (it instead ends by saying “Tell President Obama to cut the job killing debt and support the new majority agenda”), the electoral message of the ad is clear and the circumstances surrounding the creation and placement of the ad plainly demonstrate its campaign purposes.

The IRS does not use an “express advocacy” test for judging whether an ad constitutes intervention or participation in a campaign. *See* Rev. Rul. 2004-06, Rev. Rul. 2007-41. Thus, any claim by Crossroads GPS that the “Basketball” ad is “issue advocacy,” not campaign intervention, simply because it omits a tag line like “vote against Obama,” is irrelevant for purposes of IRS review.

Any such argument also denies the reality of the ads run by Crossroads GPS, as well as the obvious purpose of the organization to influence federal elections.

While section 501(c)(4) groups are not prohibited from engaging in campaign activities, the law does impose a ceiling on the extent to which they can do so. In particular, the primary purpose of a section 501(c)(4) group must be to further its “social welfare” activities, which the IRS has determined do not include campaign activities. Under applicable court rulings, section 501(c)(4) groups cannot participate in political campaigns to more than an “insubstantial amount,” as we have discussed at length in our previous letters.

As we have also previously noted, some believe that the IRS applies a “49 percent” test that permits a “social welfare” organization to spend up to nearly half of its resources on campaign-related activities. This test is contrary to law. But even if the IRS did apply this standard, Crossroads GPS would still not meet it. We believe that a review of the activities, operations and spending by Crossroads GPS will demonstrate that its overriding purpose is to participate in political campaigns. As such, Crossroads GPS is not eligible for section 501(c)(4) tax-exempt status.

Crossroads GPS has an affiliated section 527 group, American Crossroads, that is free to engage in an unlimited spending to influence political campaigns. Thus, American Crossroads

could use its funds without restriction to pay for anti-Obama campaign ads, such as the “Basketball” ad discussed above.

But there is a critical distinction between conducting campaign activities through a section 527 group, such as American Crossroads, and conducting such activities through a section 501(c)(4) group, such as Crossroads GPS.

While American Crossroads is subject to disclosure requirements under the federal campaign finance laws, Crossroads GPS takes the position that it need not make its donors public because of its claim to status as a “social welfare” organization. In its two recently filed tax returns, Crossroads GPS listed 23 separate donations of \$1 million or more (with the largest being a single donation of \$10.1 million), and did not disclose to the public the identity of any of these donors. Crossroads GPS is using these secret contributions to fund its campaign advertising and it is providing a shelter for donors who want to fund campaign ads, but seek to do so secretly by evading the disclosure requirements of the law.

According to the tax returns recently filed by Crossroads GPS, the IRS has not yet granted its application for tax-exempt status under section 501(c)(4).

In your continuing review of that application, we call on the IRS to act as promptly as possible. We also urge the IRS to conduct a thorough and searching examination of all spending by Crossroads GPS, and in particular its spending on political advertisements, such as the one discussed above. The IRS needs to obtain transcripts of all ads sponsored by Crossroads GPS and review the ads to determine whether they constitute participation or intervention in political campaigns under IRS standards, without regard to an express advocacy test. In light of that, the IRS must determine whether Crossroads GPS is engaged in more than an insubstantial amount of campaign activity, and whether its primary purpose is campaign intervention rather than social welfare activities.

Crossroads GPS is serving as a vehicle to funnel tens of millions of dollars of secret funds into the 2012 federal elections. By the end of the year, this may be hundreds of millions of dollars of secret contributions.

The IRS should deny the pending application submitted by Crossroads GPS to obtain section 501(c)(4) tax status. Crossroads GPS is anything but a “social welfare” organization. It must not be allowed to play fast and loose with the tax laws in order to deny the American people full disclosure of the money it is 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

