

May 6, 2014

Honorable John Koskinen, Commissioner  
Tamera Ripperda, Director of Exempt Organizations  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

Re: Application for section 501(c)(4) status by Crossroads GPS

Dear Commissioner Koskinen and Director Ripperda:

Democracy 21 and the Campaign Legal Center are writing again to urge the Internal Revenue Service (IRS) to deny tax exempt status as a “social welfare” organization to Crossroads GPS.

Crossroads GPS submitted an application for tax exemption under section 501(c)(4) of the Internal Revenue Code (IRC) in September 2010. To the best of our knowledge, Crossroads GPS has been operating as a “social welfare” organization for more than three and a half years without being granted section 501(c)(4) tax-status by the IRS.

We believe the record is clear, as we have stated in numerous letters to the IRS, that Crossroads GPS, which was founded by Republican operative Karl Rove, is a campaign operation formed to hide the donors who are financing the campaign expenditures the group makes.

Beginning in October 2010, Democracy 21 and the Campaign Legal Center have written to the IRS on ten occasions, urging the IRS to deny tax exemption under section 501(c)(4) to Crossroads GPS because the organization is primarily engaged in campaign activities. As such, it is not a “social welfare” organization and does not qualify for tax exemption under section 501(c)(4). We urge the IRS to take expeditious action to deny the application filed by the organization.

Our letters to the IRS on this subject are dated [October 5, 2010](#), [December 14, 2011](#), [September 28, 2011](#), [September 27, 2012](#), [July 23, 2012](#), [May 24, 2012](#), [April 17, 2012](#), [March 22, 2012](#), [March 9, 2012](#), and [January 2, 2013](#). In those letters, we thoroughly document the extent of the campaign activity that Crossroads GPS has engaged in and presented the legal case as to why Crossroads GPS fails to qualify as a “social welfare” organization.

Our prior letters also raised similar complaints about Priorities USA, a pro-Obama group, Americans Elect, a group that supported independents, and American Action Network, a group supporting Republicans. We continue to urge the IRS to take enforcement actions against these organizations as well by denying their section 501(c)(4) tax-status.

The basis for our views about the eligibility requirements applicable to section 501(c)(4) groups and about the proper interpretation of section 501(c)(4) is set forth in two sets of comments we submitted to the IRS on February 27, 2014. The submissions were made in the ongoing rulemaking to review IRS regulations that implement section 501(c)(4). These comments are attached for your information.

We are writing to bring to your attention a report issued by the General Counsel of the Federal Election Commission. The report concluded, consistent with what we have argued in our letters to the IRS, that Crossroads GPS has a major purpose to influence federal elections. First General Counsel's Report, MUR 6396 (Nov. 21, 2013) (copy attached).

The General Counsel's report was prepared following review of a complaint filed with the FEC alleging that Crossroads GPS had violated the campaign finance laws by failing to register and report as a "political committee" under the Federal Election Campaign Act, as well as review of information submitted by Crossroads GPS to the FEC in response to the complaint, and reports of political spending filed by Crossroads GPS with the FEC.

The General Counsel's report confirms our position that Crossroads GPS is a political group, not a "social welfare" organization. The report concluded that there "is reason to believe that Crossroads GPS had as its major purpose the nomination or election of federal candidates." Report at 3. The General Counsel stated that the amount of campaign-related spending by Crossroads GPS in 2010 "is alone sufficient to establish that its major purpose in 2010 was the nomination or election of federal candidates." Report at 17.

The General Counsel examined the campaign-related spending by Crossroads GPS in the 2010 election and concluded:

In short, taking into account all of its spending in 2010, Crossroads GPS appears to have spent approximately \$20.8 million on the type of communications that the Commission considers to be federal campaign activity—approximately \$15.4 million on express advocacy communications and \$5.4 million on non-express advocacy communications that criticize or oppose a clearly identified federal candidate. This total of \$20.8 million represents approximately 53 percent of the \$39.1 million Crossroads GPS reported spending during 2010. Therefore, Crossroads GPS's spending by itself shows that the group's major purpose during 2010 was federal campaign activity (i.e., the nomination or election of a federal candidate.)

Report at 26-27. (emphasis added.)

By a divided 3-3 vote on December 3, 2013, the Commission did not adopt the General Counsel's recommendation to find reason to believe Crossroads GPS had violated the law. Under FEC precedents, a tie vote means the FEC itself takes no formal position, one way or the other, on the report. The three Commissioners who supported the General Counsel's recommendation wrote in a statement:

Crossroads GPS's spending on campaign activity is vast, both in absolute terms and as a proportion of its total spending. In 2010, the organization spent at least \$15,445,039 on independent expenditures—that is, communications expressly advocating the election or defeat of a clearly identified federal candidate. Additionally, Crossroads GPS spent approximately \$5.4 million on communications that did not contain express advocacy, but that nonetheless criticized or opposed a clearly identified federal candidate. . . . Combined, these communications total approximately \$20.9 million, 53 % of what Crossroads GPS reported spending in 2010—and that is without making any judgments about whether any of the other activity engaged in by Crossroads GPS may have constituted federal campaign activity.

Statement of Reasons of Vice Chair Ann M. Ravel, Commissioner Steven T. Walther, and Commissioner Ellen L. Weintraub, MUR 6396 (Jan. 1, 2014) at 4.

The FEC's failure to move forward with an enforcement action against Crossroads GPS due to an evenly divided vote has been challenged as contrary to law. *Public Citizen, et al. v. FEC*, No. 1:14-cv-00148 (D.D.C. filed Jan. 31, 2014). That case is pending in federal district court.

Notwithstanding the FEC's tie vote on the issue of whether to pursue an enforcement action, the IRS should take cognizance of the factual analysis of the FEC's General Counsel, and of his conclusion that Crossroads GPS has a major purpose to engage in campaign activity. The General Counsel's conclusion is amply supported by the analysis set forth in his report, and confirms the position we have taken, and the documentation we have provided, in our previous letters to the IRS about Crossroads GPS.

Crossroads GPS continues to engage in campaign activity as the 2014 election season unfolds and continues to do so under a claim of tax exempt status as a "social welfare" organization. This allows the organization to continue to improperly hide the identity of its donors who are funding the campaign activities it is conducting.

The IRS has permitted Crossroads GPS to operate through two elections, and now well into a third election, as a campaign operation masquerading as a "social welfare" organization. Since Crossroads GPS is one of the major "dark money" operations in the country, the failure by the IRS to act has denied the public basic campaign finance information that they have a right to know.

The IRS should deny section 501(c)(4) exempt status to Crossroads GPS, which is being used to funnel huge amounts of secret money into federal elections, and end its phony claim of being a "social welfare" organization.

Sincerely,

/s/ *Gerald Hebert*

/s/ *Fred Wertheimer*

J. Gerald Hebert  
Executive Director  
Campaign Legal Center

Fred Wertheimer  
President  
Democracy 21