

January 2, 2013

Steven T. Miller
Acting 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: Application for section 501(c)(4) status by Crossroads GPS

Dear Acting Commissioner Miller and Director Lerner:

ProPublica, a news organization, recently received and publicly disseminated the Form 1024, "Application for Recognition of Exemption under Section 501(a), filed by Crossroads GPS on September 3, 2010, seeking recognition as a "social welfare" organization under section 501(c)(4) of the Internal Revenue Code. So far as we are aware, the IRS has yet to grant the application.

In its application, Crossroads GPS states that 50 percent of its activities will be devoted to "public education," 30 percent will be devoted to "influenc[ing] legislation and policymaking," and 20 percent will be devoted to "research." Application at 2. Thus, when asked to provide a "detailed narrative description of all the activities of the organization – past, present and planned," Crossroads GPS fails to mention any activities devoted to influencing federal elections, and instead describes 100 percent of its activities as involving efforts other than electioneering.

Inconsistently, in response to a different question on the application, Crossroads GPS states that it plans to spend funds "to distribute independent political communications," but such activity "will be limited in amount, and will not constitute the organization's primary purpose." *Id.* at 4.

We have written to you on a number of occasions in the past two years regarding the enormous sums of money spent by Crossroads GPS to influence the 2010 and 2012 federal

elections. In those letters, we have challenged the organization's eligibility for section 501(c)(4) tax-exempt status.

According to the Center for Responsive Politics (CRP), Crossroads GPS spent \$70 million on independent expenditures to elect Republican candidates or defeat Democratic candidates in the 2012 elections. This is an extraordinary amount of money to be spent on influencing elections by a group which claims it is a "social welfare" organization.

Indeed, Crossroads GPS and its affiliated Super PAC, American Crossroads, together spent a total of \$175 million on independent expenditures and electioneering communications to influence the 2012 elections—far more than any other outside spender, according to CRP.

The \$70 million in campaign expenditures attributed to Crossroads GPS consists overwhelmingly of ads reported to the Federal Election Commission as "independent expenditures," *i.e.*, ads that contain "express advocacy."

As we have discussed at length in our prior correspondence with you, the IRS uses a different test to define activity that constitutes intervention or participation in elections, and additional ads by Crossroads GPS that may not be subject to reporting to the FEC may nonetheless fall well within the test used by the IRS to determine what constitutes campaign spending by a tax-exempt group.

In continuing any ongoing review of the application submitted by Crossroads GPS for status as a section 501(c)(4) organization, we believe it is essential that you not accept at face value either the obviously self-serving statement on its application that Crossroad GPS's campaign spending will not constitute its "primary purpose" or any self-serving claims by the organization that communications were "issue ads."

The IRS should closely scrutinize the spending that Crossroads GPS engaged in during the 2012 campaign. This includes both the spending that was reported to the FEC as "independent expenditures" because it included "express advocacy," and any other spending on communications that may well have constituted intervention or participation in campaigns under IRS rules, even if the ads did not contain "express advocacy."

In particular, we strongly urge you not to accept at face value any claim by Crossroads GPS that any or all of its ads that mention federal candidates and did not contain express advocacy were "public education ads" or "issue ads." These ads, and the context in which they were run, must be reviewed by the IRS to determine whether in fact any or all of the ads constituted ads to intervene or participate in elections, within the IRS definition of that standard. *E.g.*, Revenue Ruling 2004-6, 2004-1 C.B. 328.

In our letter to you of September 27, 2012, we submitted transcripts of the ads run by Crossroads GPS from January 1, 2012 through September 24, 2012. We urged the IRS to review each of these ads, and to apply the agency's standards to determine whether the ads constituted intervention or participation in campaigns. We again urge you to conduct such a review.

In any event, we submit that the \$70 million spent by Crossroads GPS just on campaign ads reported to the FEC in 2012 is *prima facie* evidence that the organization does have a “primary purpose” to engage in campaign activities. The statement made by Crossroads GPS two years ago on its application for tax-exempt status that its campaign activities will be “limited in amount, and will not constitute the organization’s primary purpose” are simply not credible, in light of the actual practices of the organization and the tens of millions of dollars Crossroads GPS spent on campaign ads since then.

As we have stated in previous letters, the misuse of “social welfare” organizations as vehicles for campaign spending results in direct and serious harm to the American people because it hides from public scrutiny the identity of the donors funding the campaign spending.

Crossroads GPS itself reported on its Form 990s filed with the IRS for 2010 and 2011 that it received 23 separate donations of \$1 million or more in 2010 and 2011 – including two contributions of \$10 million each. But Crossroads GPS used its claim to section 501(c)(4) tax-exempt status as the basis for not publicly disclosing the identity of any of these million-dollar and multi-million dollar donors. It is very likely the case that the organization received additional seven- or eight-figure donations in 2012.

It is also very likely that some, if not most, of the undisclosed contributions raised by Crossroads GPS were spent for campaign ads to influence the 2012 elections. Thus, the tactic of directing campaign money through the form of an entity claiming to be a “social welfare” organization has enabled tens of millions of dollars of “dark” money to be spent to influence federal elections.

It is the responsibility and obligation of the IRS to stop this kind of abuse of the tax laws. It is imperative that the IRS closely and critically review the assertions made by Crossroads GPS in its application for tax-exempt status, and in its tax returns, in light of its massive, campaign spending in the 2012 federal elections.

Crossroads GPS served as little more than a campaign operation in 2012. Crossroads GPS has no business being treated as a “social welfare” organization and the IRS should deny its application for tax-exempt status as a section 501(c)(4) organization.

Sincerely,

/s/ *Gerald Hebert*

/s/ *Fred Wertheimer*

J. Gerald Hebert
Executive Director
Campaign Legal Center

Fred Wertheimer
President
Democracy 21