



Contact: Mary Boyle (202)736-5770

**Testimony by Common Cause
House Ways and Means Hearing
Internal Revenue Service Targeting of Conservative Groups
May 17, 2013**

Thank you for the opportunity to submit written testimony for today's hearing on Internal Revenue Service treatment of 501(c)(4) organizations and their political spending. Common Cause is a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest, and accountable government that works for the public interest, and empowering ordinary people to make their voices heard.

All organizations, regardless of political affiliation and ideological leaning, deserve to be treated fairly, justly, and equally under the law. The IRS did not use these standards in its review of 501(c)(4) applications, and the employees and those with knowledge of what was happening should be held accountable. In addition, an independent, credible investigation must occur to ensure that these guidelines are strictly adhered to in the future.

Common Cause's founder, John Gardner – a Republican, by the way – once said: “We share the conviction that as citizens we have every right to raise hell when we see injustice done, or the public interest betrayed, or the public process corrupted.” The people are right to raise hell over biased treatment and unnecessary harassment by the IRS. At the same time, Common Cause intends to raise issue against another injustice at the heart of this story – the injustice of a

major federal agency wasting energy on small, grassroots groups while completely ignoring the blatant violations of law by political heavyweights on both the right and left.

We are deeply disappointed that the actions IRS employees, and the failure of IRS supervisors to uphold fair and sensible standards and priorities, now undermine the credibility of an agency that *must* crack down on the rising flood of new 501(c)(4)s after the Supreme Court's misguided decision in *Citizens United* and Congress' subsequent failure to enact a common sense disclosure law. Immediate action is needed to set up strong and effective standards of review for 501(c)(4)s that engage in political activity, along with a process for monitoring compliance with these standards.

The number of groups that sought tax-exempt status as social-welfare groups under Section 501(c)(4) of the tax code increased from about 1,500 in 2010 to roughly 3,400 in 2012, Lois Lerner, who oversees the tax-exempt section of the IRS, reportedly said in a press call on May 10. Reported political spending by 501(c)(4)s surged to \$254m in 2012, almost matching spending by political parties (\$255m), according to the Center for Responsive Politics. The vast majority of that spending – 85 percent – came from conservative organizations, with Crossroads GPS and Americans for Prosperity leading the pack. Part of the task facing Congress and the Administration will be to determine if the current controversy at the IRS is a case of overwhelmed IRS employees making poor judgments at a time when they face an increased workload with fewer resources, or if this was more of a concerted effort to specifically target certain organizations based solely on their ideology.

The current crisis is a product of the fuzzy “primary purpose” test, based on a case-by-case assessment of facts and circumstances that the IRS has used for over half a century to

determine if a 501(c)(4) is violating its nonprofit social welfare status. Vague standards don't work in the world of campaign finance and, given the increased politicization of non-profits in the wake of *Citizens United*, ambiguous standards are ill-suited to the world of tax law as well. To reduce uncertainty Congress and the IRS should adopt a bright-line test for deciding when political activity by non-profits requires a group to form a "527" political organization and disclose its donors. By doing so, all organizations will understand how to comply with the law. Common Cause looks forward to working with Members of Congress and the IRS to help clarify treatment of such 501(c)(4) organizations.

The irony is not lost on American voters that, while the IRS was struggling to implement appropriate criteria to evaluate 501(c)(4) applications by scores of small groups, experienced political operatives were blatantly using 501(c)(4)s to hide millions in election spending. The "social welfare" group that made the biggest independent expenditures during the 2012 elections – Karl Rove's Crossroads GPS – spent more than \$70 million on communications explicitly calling for the election or defeat of specific candidates. Campaign finance watchdogs, including the Campaign Legal Center, Democracy 21, and Common Cause, filed IRS complaints against Crossroads GPS and others like American Action Network, PrioritiesUSA, and Liberty Central, whose primary purpose clearly was to influence elections, with no response or results.

The bigger problem facing our democracy after the Supreme Court's disastrous decision in *Citizens United* is the dramatic surge in the misuse of nonprofits to hide political spending by billionaires and corporations from American voters and the lack of any meaningful enforcement response. Targeting groups that have applied for tax-exempt status for additional scrutiny because they appear to have an electoral motive is proper – as long as the same criteria are applied to all groups regardless of their political viewpoints. We need more enforcement, not

less, based on clear and viewpoint- neutral criteria, to prevent evasion of campaign, disclosure, and tax laws.

Beyond the IRS, Congress and the FEC also remain culpable for the lack of enforcement. Senate Republicans used a filibuster to block the DISCLOSE Act, even though it passed the House and had the support of 59 senators, a clear majority; this common sense disclosure legislation would have prevented “social-welfare” organizations from hiding the identity of political donors. Additionally, the politically-deadlocked FEC has failed to adopt post-*Citizens United* rules or enforce current regulations. We call on Congress to immediately pass disclosure legislation to de-incentivize organizations from claiming 501(c)(4) status to hide their donors in the first place. Special interests should not be permitted to use front groups to evade disclosure laws designed to inform voters and prevent corruption.

Thank you again for allowing Common Cause to submit written testimony. We look forward to working together to improve the integrity and effectiveness of federal tax and election laws, and to restore transparency and honesty to American elections.