



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

February 4, 2021

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov) and First Class mail

Re: Supplement to Complaint against Prosperity Alliance, Inc.

Dear Commissioner Rettig:

On September 11, 2019, Citizens for Responsibility and Ethics in Washington (“CREW”) submitted to the Internal Revenue Service (“IRS”) a complaint against Prosperity Alliance, Inc. for operating primarily to influence political campaigns in violation of its tax-exempt status and for failing to properly disclose its political contributions.¹ CREW now writes to supplement its original complaint with additional information about Prosperity Alliance’s political activities and its failures to properly disclose them to the IRS.

CREW’s initial complaint was based on Prosperity Alliance’s 2017 Form 990, covering May 1, 2017 to April 30, 2018.² On March 14, 2020, Prosperity Alliance filed its 2018 Form 990, covering May 1, 2018 to April 30, 2019.³ Again, Prosperity Alliance falsely represented on this tax return that it did not engage in any political activities and failed to disclose on the IRS form used to report political expenditures hundreds of thousands of dollars it contributed to a political organization. In addition, it appears Prosperity Alliance spent even more money on political activity during the period covered by its 2017 Form 990 than CREW previously described.

In light of the information provided by both CREW’s initial complaint and this update, CREW again urges the IRS to investigate Prosperity Alliance’s failure to disclose its political activity, and whether it is operated primarily to influence political campaigns in violation of its tax-exempt status.

¹ Letter from Noah Bookbinder and Matthew Corley to IRS Commissioner Charles P. Rettig, Sept. 11, 2019, (“CREW 2019 Letter”), <https://bit.ly/3441Mic>.

² *Id.*; Prosperity Alliance Inc, 2017 Form 990, <https://bit.ly/3qOAYF5>.

³ Prosperity Alliance Inc, 2018 Form 990, <https://bit.ly/376IJ1Z>.

Prosperity Alliance, Inc.'s Additional Political Activity

As noted in CREW's prior's letter, Prosperity Alliance is a nonprofit corporation established in Virginia on May 8, 2017 and granted tax-exempt status on December 22, 2017.

2018 Tax Year

Between May 1, 2018 and January 14, 2019, Prosperity Alliance made 16 contributions totaling \$558,500 to Conservative Alliance PAC, a federal independent expenditure-only political committee, commonly known as a super PAC, according to Federal Election Commission ("FEC") records.⁴ Super PACs such as Conservative Alliance PAC are organized and operated primarily for the purpose of making independent political expenditures, and thus are political organizations under section 527 of the Code.⁵

As with the contributions Prosperity Alliance gave to Conservative Alliance PAC during its 2017 tax year, the nonprofit's contributions during its 2018 tax year were promptly used by the super PAC for political activity.⁶ For example:

- On May 1, 2018, Prosperity Alliance contributed \$30,000 to Conservative Alliance PAC.⁷ The following day, Conservative Alliance PAC spent \$20,000 on "direct mail (non-federal)."⁸
- Also on May 2, 2018, Prosperity Alliance contributed an additional \$36,000 to Conservative Alliance PAC, which was followed the next day by the super PAC making a \$38,000 expenditure to an ad-buying firm called GRP Buying LLC for a "non-federal IE."⁹ "IE" stands for "independent expenditure."
- On May 4, 2018, Prosperity Alliance gave \$110,000 to Conservative Alliance PAC and the super PAC spent \$105,000 on a "non-federal IE."¹⁰

A similar pattern of proximity between Prosperity Alliance's contributions and Conservative Alliance PAC's expenditures appeared throughout all of 2018 as the super PAC targeted state level races in Ohio and Oklahoma.¹¹ As CREW explained in its initial

⁴ Conservative Alliance PAC, Receipts, May 1, 2018 to May 1, 2019, Federal Election Commission, <https://bit.ly/2W4AtIk>.

⁵ 26 U.S.C. § 527(e)(1).

⁶ CREW 2019 Letter; Conservative Alliance PAC, Disbursements, May 1, 2018 to May 1, 2019, Federal Election Commission, <https://bit.ly/2K41uKH>.

⁷ Conservative Alliance PAC, FEC Form 3X 2018 July Quarterly Report, July 12, 2018, <https://bit.ly/380rDSJ>.

⁸ *Id.*

⁹ *Id.*; Russ Choma, This Group Is Raising Money for Donald Trump. Where Is It Going?, *Mother Jones*, Mar. 8, 2016, <https://bit.ly/3adVHwK>.

¹⁰ Conservative Alliance PAC, FEC Form 3X 2018 July Quarterly Report, July 12, 2018.

¹¹ Conservative Alliance PAC, Receipts, 2017-2018, Federal Election Commission, <https://bit.ly/34eV7v3>; Conservative Alliance PAC, Disbursements, May 1, 2018 to May 1, 2019, Federal Election Commission, <https://bit.ly/3a7j3E1>; Jim Siegel, Fisticuffs, sexting, lawsuits: Welcome to Ohio House GOP primaries, *Columbus Dispatch*, Apr. 20, 2018, <https://bit.ly/2HOqH19>; Jon Baker, Brett Hillyer, Shane Gunnoe spar over endorsement from Ohio House speaker, *Times-Reporter*, Apr. 11, 2018, <https://bit.ly/2VcxbSf>; Rory Ryan, Political mailer shows devious side of politics, *Highland County Press*, Apr. 9, 2018, <https://bit.ly/2OG54IP>; Sean Murphy, Oklahoma Republicans targeted by colleague, dark money, *Associated Press*, Sept. 27, 2018, <https://bit.ly/3gKMWeM>; Trevor

complaint, the close connection in timing between Prosperity Alliance's contributions to Conservative Alliance PAC's expenditures raised questions for outside observers. As *The Daily Beast* noted, Prosperity Alliance's contributions to Conservative Alliance PAC were "in near perfect synchronicity with the super PAC's expenditures, suggesting close coordination between the two, and an effort to route [Conservative Alliance PAC]'s funds through a non-disclosing entity rather than have its donors provide those funds directly."¹²

2017 Tax Year

As CREW explained in the initial complaint, during its 2017 tax year Prosperity Alliance made six contributions totaling \$475,000 to Conservative Alliance PAC, expenditures that accounted for 78.4% of its total spending during the year.

In addition to those contributions, it appears that some of Prosperity Alliance's other spending was dedicated to influencing elections. For instance, in July 2018, Ohio state legislature candidate Jim Trakas sued Conservative Alliance PAC over its campaign attacks against him.¹³ As part of the case, Conservative Alliance PAC filed an expert declaration that included as an exhibit a research report that was used to make the ads criticizing Mr. Trakas.¹⁴ The cover of the "Research Findings Report," which focused on Mr. Trakas and the political office he sought, suggests that it was "prepared for" Prosperity Alliance rather than Conservative Alliance PAC. The report is dated March 14, 2018, during Prosperity Alliance's 2017 tax year.

On its tax return that year, Prosperity Alliance reported that part of its program services included "research into state-level public policy proposals and their impact on state and national prosperity," which may refer to the research into Mr. Trakas and possibly other candidates.¹⁵ If Prosperity Alliance paid for political opposition research and provided it to Conservative Alliance PAC for free, it likely would be an in-kind contribution, which the FEC defines as "a non-monetary contribution" such as "when a person or entity pays for services" on behalf of a political committee.¹⁶ The total amount of this additional

Brown, 'Dark Money' Spending Hits Record in Oklahoma, With Surge to Come, *Oklahoma Watch*, Sept. 14, 2018, <https://bit.ly/3mkU9TY>.

¹² Lachlan Markay, *Secrecy Shrouds Conservative PAC Pouring Money Into State Races*, *Daily Beast*, Aug. 30, 2018, <https://bit.ly/2YErC1a> and attached as Exhibit A.

¹³ Andrew J. Tobias, *Second Ohio state legislative candidate sues 'dark money' PAC over primary ads*, *Cleveland.com*, July 31, 2018, <http://bit.ly/3qEW0px>.

¹⁴ Declaration of James E. Tyrrell III, Exhibit B-10, Case No. 1:18-cv-01798-DCN (N.D. Ohio), Nov. 1, 2019, <http://bit.ly/39KWvHz>.

¹⁵ Prosperity Alliance Inc, 2017 Form 990, Part III, Line 4a.

¹⁶ How to Report, In-kind contributions, Federal Election Commission, <http://bit.ly/3sFxXbF>. This apparent in-kind contribution is not part of the \$475,000 donated to Conservative Alliance PAC. Prosperity Alliance reported on both of its tax returns that its contributions to Conservative Alliance PAC were cash grants, Prosperity Alliance Inc., 2017 and 2018 Form 990s, Schedule I, and Conservative Alliance PAC did not report making any payments to Prosperity Alliance and did not report any contributions it received as in-kind contributions. Conservative Alliance PAC, Disbursements, Federal Election Commission. <http://bit.ly/3qEXZdt>; Conservative Alliance PAC, *FEC Form 3X, 2018 July Quarterly Report*, July 12, 2018; Conservative Alliance PAC, *FEC Form 3X, 2018 October Quarterly Report*, Oct. 13, 2018, <https://bit.ly/3sJ0v4i>; Conservative Alliance PAC, *FEC Form 3X, 2018 Post-General Report*, Dec. 3, 2018, <https://bit.ly/2XT60Pl>; Conservative Alliance PAC, *FEC Form 3X, 2019 Mid-Year Report*, July 27, 2019, <https://bit.ly/2NgilX7>; Conservative Alliance PAC, *FEC Form 3X, 2019 Termination Report*, Aug. 22, 2019, <https://bit.ly/2XYDxaQ>.

contribution is unclear, but it adds to Prosperity Alliance's political spending total for its 2017 tax year.

Prosperity Alliance's Representations to the IRS

As a section 501(c)(4) tax-exempt organization, Prosperity Alliance is required to file annual Form 990 tax returns and disclose its political activity, including contributions to federal super PACs, on Schedule C.

On its 2018 Form 990, Prosperity Alliance asserted the group did not engage in any "direct or indirect political campaign activities on behalf of or in opposition to candidates for public office" and failed to file a Schedule C reporting the amount it spent on political expenditures with its tax return.¹⁷ Prosperity Alliance did report giving \$513,500 to Conservative Alliance PAC on a Schedule I, which is used to disclose grants to other organizations, and described the money as being given to a "[section] 527" organization for "general support."¹⁸ Even this disclosure appears inaccurate – Conservative Alliance PAC reported to the FEC receiving \$45,000 more in contributions from Prosperity Alliance than the nonprofit reported giving on Schedule I.¹⁹

In addition, as CREW noted in its original complaint, on its 2017 Form 990, Prosperity Alliance similarly asserted the group did not engage in any political campaign activities and failed to file a Schedule C.

Violations

26 U.S.C. § 6652

Under the Code, a tax-exempt organization that, without reasonable cause, fails to include any of the information required on a Form 990 tax return or fails to provide the correct information, is liable for civil penalties.²⁰ By falsely representing on its 2018 Form 990 that it did not engage in any political campaign activity and by failing to report those activities on Schedule C, when it in fact contributed \$558,000 to the Conservative Alliance PAC, Prosperity Alliance appears to have violated 26 U.S.C. § 6652 and should be subject to monetary penalties. In addition, if, as it appears, Prosperity Alliance failed to report in-kind contributions to Conservative Alliance PAC on its 2017 Form 990, it further violated 26 U.S.C. § 6652.

26 U.S.C. § 501(c)(4)

IRS regulations interpret the Code to mean a section 501(c)(4) organization must be "primarily engaged in promoting in some way the common good and general welfare of the people of the community" and further provide that "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public

¹⁷ Prosperity Alliance Inc., 2018 Form 990, Part IV, Question 3.

¹⁸ *Id.*, Schedule I.

¹⁹ Conservative Alliance PAC, Receipts, May 1, 2018 to May 1, 2019, Federal Election Commission.

²⁰ 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); *see also* 2017 Instructions for Form 990, at 6.

office” does not promote social welfare.²¹ Contributions to political organizations are direct or indirect participation or intervention in political campaigns.


As CREW discussed in the initial complaint, Prosperity Alliance’s political activity in its 2017 tax year exceeded the amount permitted in violation of its tax-exempt status. Prosperity Alliance’s reported cash contributions to Conservative Alliance PAC accounted for 78.4% of its total expenditures on political activity between May 1, 2017 and April 30, 2018. Prosperity Alliance further appears to have made additional in-kind contributions to Conservative Alliance PAC, making political activity an even greater percentage of its spending.

Conclusion

As CREW previously explained, Prosperity Alliance’s activities do not comport with its claimed status as a section 501(c)(4) tax-exempt organization. Further, it appears Prosperity Alliance falsely represented that it did not engage in any political activity in both its 2017 and 2018 tax years and omitted a total of more than a million dollars in spending on political activity from its 2017 and 2018 tax returns. The IRS should investigate Prosperity Alliance and, should it find Prosperity Alliance violated its tax-exempt status or made false or incomplete statements on its tax returns, take appropriate action.

Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director



Matthew Corley
Chief Investigator

Encl.

cc: IRS-EO Classification

²¹ Treas. Reg. § 1.501(c)(4)-1(a)(2)(i-ii).