

July 31, 2014

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By facsimile (without exhibits) (202) 622-5756 and First Class mail

Re: Complaint Against The 60 Plus Association Inc.

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the Internal Revenue Service (“IRS”) investigate whether the 60 Plus Association Inc. (“60 Plus”), a non-profit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“Code”), and its president, Amy Noone Frederick, violated federal law by intentionally failing to disclose more than \$11 million 60 Plus spent on political activity in 2010 and 2012.¹

60 Plus’s Political Activity

The Federal Election Campaign Act and Federal Election Commission (“FEC”) regulations require any person making an independent expenditure to disclose the expenditure to the FEC on periodic reports.² Independent expenditures are defined as expenditures “expressly advocating the election or defeat of a clearly identified candidate.”³ In reports signed under penalty of perjury by Ms. Frederick, 60 Plus reported to the FEC it made \$6,719,111 in independent expenditures in 2010, and \$4,615,957 in independent expenditures in 2012.⁴

Most of 60 Plus’s independent expenditures in 2010 and 2012 were spent on producing and broadcasting a series of television advertisements expressly advocating the election of Mitt Romney for president, the defeat of President Obama, or the defeat of Democratic candidates for Congress. In 2012, for example, 60 Plus spent at least \$3.2 million on independent expenditures in the presidential race,⁵ including millions on advertisements urging voters to “Vote for

¹ CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office.

² 2 U.S.C. § 434(c), (g); 11 C.F.R. §§ 104.4(e)-(f), 109.10(b)-(d).

³ 2 U.S.C. § 431(17); 11 C.F.R. § 100.16.

⁴ Open Secrets, 60 Plus Association, Outside Spending Summary, 2010, available at <https://www.opensecrets.org/outsidespending/detail.php?cycle=2010&cmte=60+Plus+Assn>; Open Secrets, 60 Plus Association, Outside Spending Summary, 2012, available at <https://www.opensecrets.org/outsidespending/detail.php?cycle=2012&cmte=60+Plus+Assn>. See also <http://docquery.fec.gov/cgi-bin/fecimg/?C90011685> (FEC reports of 60 Plus’s independent expenditures).

⁵ Open Secrets, 60 Plus Association, Targeted Candidates, 2012, available at <https://www.opensecrets.org/outsidespending/recips.php?cycle=2012&cmte=60%20Plus%20Assn>.

Hon. John Koskinen
July 31, 2014
Page 2

Romney” for president.⁶ 60 Plus also spent \$350,500 on two ads against Rep. Ron Barber (D-AZ), urging voters to “vote against Barber and Obama” or “vote against Ron Barber,”⁷ and \$326,972 on advertisements urging voters to “vote against” or “fire” Rep. Dan Maffei (D-NY).⁸ 60 Plus spent hundreds of thousands more on independent expenditure advertisements and other activities expressly advocating the election or defeat of candidates in other Senate and House races.⁹

60 Plus spent even more money expressly advocating against the election of Democratic House candidates in 2010. For example, 60 Plus spent \$103,575 on an ad urging voters to “vote against” former Rep. James Oberstar (D-MN),¹⁰ and \$156,260 on an ad urging voters to “vote no on” former Rep. Solomon Ortiz (D-TX).¹¹ 60 Plus further spent more than \$5.6 million to produce and broadcast a series of ads urging voters to vote against Democratic House candidates, including ads saying “this November . . . vote against” Democratic candidates, “this November, we’ll remember” Democratic candidates who purportedly “betrayed” voters, and that Democratic House candidates should be fired.¹²

In all, 60 Plus reported to the FEC under penalty of perjury it spent \$11,335,068 on independent expenditures expressly advocating the election or defeat of candidates for federal office.

⁶ <http://www.youtube.com/watch?v=lOKIwVtgCRc&feature=relmfu>; Transcript, 60 Plus Association, Pat Boone – “Strengthen”, October 25, 2012; Press Release, 60 Plus Association, 60 Plus Urges Voters to Defend their Freedoms, November 1, 2012 (describing a “\$4.1 million ad campaign in five battleground states”). 60 Plus’s press releases and printed transcripts of its 2012 political advertisements are attached as Exhibit A.

⁷ 60 Plus Association, FEC Form 5, 2012 Year-End Report, January 31, 2013; http://www.youtube.com/watch?v=8qOzN_wIM90&feature=youtu.be; Press Release, 60 Plus Association, Obama-Barber Agenda Hurts Middle Class, Says New 60 Plus Ad, October 31, 2012; <http://www.youtube.com/watch?v=Eyczavztdkk&feature=youtu.be>; Press Release, 60 Plus Association, New 60 Plus Ad Highlights Clear Differences in McSally-Barber Race, October 18, 2012.

⁸ 60 Plus Association, FEC Form 5, 2012 Year-End Report, January 31, 2013; <http://www.youtube.com/watch?v=v1khzHucQXQ&feature=youtu.be>; Press Release, 60 Plus Association, Dan Maffei’s Record Challenged in New 60 Plus Ad, October 31, 2012; <http://www.youtube.com/watch?v=l9LNDArp8Ws>; Press Release, 60 Plus Association, 60 Plus Highlights Dan Maffei’s Big Spending Record in New Ad, October 18, 2012.

⁹ 60 Plus Association, FEC Form 5, 2012 Year-End Report, January 31, 2013; Open Secrets, 60 Plus Association, Targeted Candidates, 2012.

¹⁰ 60 Plus Association, FEC Form 5, 2010 Year-End Report, Amended, November 15, 2011; http://www.youtube.com/watch?v=v_ICySd_RKQ&list=UUcX-wx627-WaOL50cd_HIOQ; Press Release, 60 Plus Association, New 60 Plus Ad Targets Oberstar’s Record, October 28, 2010. 60 Plus’s press releases and printed transcripts of its 2010 political advertisements are attached as Exhibit B.

¹¹ 60 Plus Association, FEC Form 5, 2010 Year-End Report, Amended, November 15, 2011; http://www.youtube.com/watch?v=sTYVoxmnpvg&list=UUcX-wx627-WaOL50cd_HIOQ; Press Release, 60 Plus Association, New 60 Plus Ad Puts Spotlight on Ortiz’s Record, October 28, 2010.

¹² Exhibit B. Videos of these advertisements are available on 60 Plus’s YouTube page, <http://www.youtube.com/user/60PlusAssociation/videos>.

60 Plus's Representations to the IRS

Despite these representations to the FEC and the content of the advertisements, 60 Plus claimed – also under penalty of perjury – that it spent only \$103,136 on political activity during the same time period in 2010, and just \$35,000 on political activity during the same time in 2012.¹³

As a section 501(c)(4) tax-exempt organization, 60 Plus is required to file annual Form 990 tax returns. Tax-exempt organizations engaged in any “direct or indirect political campaign activities on behalf of or in opposition to candidates for public office” also must file a Schedule C with their tax returns, which requires disclosure of the amount spent on “political expenditures.”¹⁴ “Political expenditures” includes all “political campaign activities” – defined as “[a]ll activities that support or oppose candidates for elective federal, state, or local public office.”¹⁵ When an advertisement explicitly advocates the election or defeat of an individual to public office, the expenditure unquestionably is political campaign activity.¹⁶

60 Plus filed its initial 2010 Form 990 tax return, covering the period from July 1, 2010 to June 30, 2011, on May 15, 2012.¹⁷ Ms. Frederick signed the tax return that day under penalty of perjury.¹⁸ 60 Plus acknowledged on the tax return it engaged in “direct or indirect political activities” and thus filed a Schedule C.¹⁹ On this Schedule C, 60 Plus declared it had spent \$7,238,845 on political campaign activities, and explained this money was used for “expenditures on TV ads, mail and phone solicitation.”²⁰

A year and a half later, 60 Plus amended its 2010 tax return, which Ms. Frederick again signed under penalty of perjury.²¹ The most significant change to the tax return was on Schedule C. This time, 60 Plus asserted it spent only \$103,136 on political campaign activities.²² The organization’s only explanation for the change was that “Schedule C is now properly completed to reflect the organization’s political activities.”²³

60 Plus filed its 2012 Form 990 tax return, covering the period from July 1, 2012 to June 30, 2013, on May 15, 2014.²⁴ Ms. Frederick also signed this tax return under penalty of

¹³ The discrepancies between 60 Plus’s FEC reports and the amount of political campaign activity it claimed on its tax returns was first reported by the Center for Public Integrity. Michael Beckel, Koch-Backed Seniors Group Low-Balling Election Spending?, *Center for Public Integrity*, July 30, 2014 (attached as Exhibit C).

¹⁴ Form 990, Part IV, Question 3; 2013 Instructions for Form 990, at 12; 2013 Instructions for Schedule C, at 1, 3.

¹⁵ *Id.* at 1; 2013 Instructions for Form 990, at 64.

¹⁶ Rev. Rul. 2004-06; *see also* Election Year Issues, 2002 EO CPE Text at 349, 388.

¹⁷ 60 Plus 2010 Form 990 (excerpts attached as Exhibit D).

¹⁸ *Id.*, Part II.

¹⁹ *Id.*, Part IV, Question 3 & Schedule C.

²⁰ *Id.*, Schedule C.

²¹ 60 Plus 2010 Form 990, Amended (excerpts attached as Exhibit E); *id.*, Part II.

²² *Id.*, Schedule C.

²³ *Id.*, Schedule O.

²⁴ 60 Plus 2012 Form 990 (excerpts attached as Exhibit F).

perjury.²⁵ 60 Plus acknowledged it engaged in political campaign activities and filed a Schedule C, asserting it spent only \$35,000 on these activities.²⁶

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.²⁷ By failing to accurately report the amount it spent on political campaign activities on its amended 2010 Form 990 and its 2012 Form 990, 60 Plus violated 26 U.S.C. § 6652 and should be subject to monetary penalties.

26 U.S.C. § 7206

Under the Code, any person who “[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter,” is guilty of a felony and subject to up to three years in prison and a fine of up to \$100,000.²⁸ The money spent on political campaign activities a tax-exempt organization reports to the IRS on its Schedule C is material for several reasons, including: (1) the amounts reported can be used by the IRS to determine whether the organization is complying with its tax-exempt status; (2) the amount an organization expended on section 527 exempt activities in part determines exempt function taxes the organization must pay;²⁹ and (3) accurate public disclosure of the amount of political activity conducted by tax-exempt organizations is critical to the objective of transparency that underlies the reporting required on Form 990.³⁰

60 Plus’s amended 2010 Form 990 and 2012 Form 990 were signed by Ms. Frederick under written declarations that each was made under penalty of perjury, and that Ms. Frederick had examined the returns and each was true, correct, and complete to the best of her knowledge.³¹ The tax returns, however, appear to be false and incorrect as to the material matter of the amount 60 Plus spent on political campaign activities in those tax years.

Ms. Frederick and 60 Plus’s representations appear to be willful. 60 Plus’s initial 2010 tax return asserted the organization spent more than \$7.2 million on political campaign activities, but 60 Plus amended the tax return specifically to reduce that to only \$103,176. This was the only significant change made in the amendment, and it represents nearly 40 percent of 60 Plus’s

²⁵ *Id.*, Part II.

²⁶ *Id.*, Part IV, Question 3 & Schedule C.

²⁷ 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); *see also* 2012 Instructions for Form 990, at 7.

²⁸ 26 U.S.C. § 7206(1).

²⁹ 26 U.S.C. § 527(f)(1).

³⁰ IRS, Background Paper, Summary of Form 990 Redesign Process, August 19, 2008, at 1.

³¹ 60 Plus 2010 Form 990, Amended, Part II; 60 Plus 2012 Form 990, Part II.

Hon. John Koskinen
July 31, 2014
Page 5

total expenditures. 60 Plus's explanation – that the amended Schedule C is now “properly completed to reflect the organization's political activities” – further demonstrates Ms. Frederick was aware of this significant change and she and 60 Plus made it purposefully.

18 U.S.C. § 1001

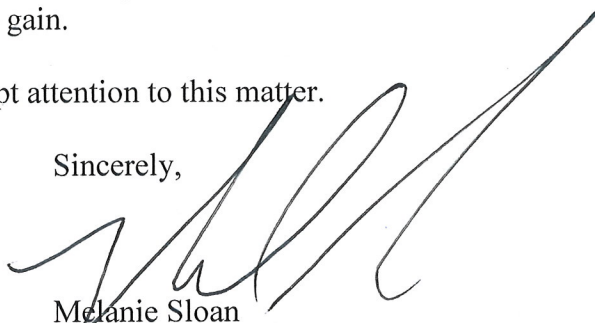
Federal law further prohibits anyone from “knowingly and willfully” making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the jurisdiction of the executive, legislative, or judicial branch.³² Violations are punishable by up to five years in prison.³³ By falsely stating the amount of political campaign activity on 60 Plus's amended 2010 Form 990 and 2012 Form 990, Ms. Frederick and 60 Plus appear to have violated 18 U.S.C. § 1001.

Conclusion

For unknown reasons, 60 Plus and Ms. Frederick appear to have intentionally omitted more than \$11 million in spending on political campaign activity from 60 Plus's amended 2010 tax return and its 2012 tax return.³⁴ The IRS should investigate 60 Plus and Ms. Frederick and, should it find they made false or incomplete statements on 60 Plus's tax returns, take appropriate action, including but not limited to referring this matter to the Department of Justice for prosecution. Only vigorous enforcement by the IRS will deter other organizations from violating our nation's tax laws for political gain.

Thank you for your prompt attention to this matter.

Sincerely,



Melanie Sloan
Executive Director
Citizens for Responsibility and Ethics in Washington

Encls.

cc: IRS-EO Classification
Tamara W. Ashford, Acting Assistant Attorney General,
Tax Division, Department of Justice

³² 18 U.S.C. § 1001(a)(2).

³³ *Id.*

³⁴ 60 Plus did not respond to the Center for Public Integrity's repeated requests for comment or explanation. Beckel, *Center for Public Integrity*, July 30, 2014.