

June 15, 2016

Paul Abbate
Assistant Director in Charge
FBI Washington Field Office
601 4th Street, N.W.
Washington, DC 20535

Caroline D. Ciralo
Acting Assistant Attorney General, Tax Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

By electronic mail (washington.field@ic.fbi.gov, tax.mail@usdoj.gov) and First Class mail

Re: Complaints Against American Dream Initiative, Arizona Future Fund, Jobs and Progress Fund, Inc., Michigan Citizens for Fiscal Responsibility, Mid America Fund, Inc., and Rule of Law Project

Dear Assistant Director in Charge Abbate and Acting Assistant Attorney General Ciralo:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the Federal Bureau of Investigation (“FBI”) and the Department of Justice (“DOJ”) investigate whether the American Dream Initiative, the Arizona Future Fund, the Jobs and Progress Fund, Inc., Michigan Citizens for Fiscal Responsibility, the Mid America Fund, Inc., and the Rule of Law Project (“the groups”), all non-profit organizations exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“Code”), violated federal law by falsely representing the amount of money they spent on political activity in 2014.

The Groups’ Political Activity and Representations to the IRS

As section 501(c)(4) tax-exempt organizations, these groups are 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.”¹ “Political expenditures” include all “political campaign activities” – defined as “[a]ll activities that support or oppose candidates for elective federal, state, or local public office.”² Reflecting this definition, Schedule C specifically requires disclosure of “all section 527 organizations to which the filing organization made payments.”³

¹ Form 990, Part IV, Question 3; 2014 Instructions for Form 990, at 12; 2014 Instructions for Schedule C, at 1, 3.

² *Id.* at 1; 2014 Instructions for Form 990, at 64.

³ Form 990, Schedule C, Part I-C, Line 5.

As explained in further detail in the complaints CREW filed today with the Internal Revenue Service (“IRS”),⁴ all of these groups spent significantly more money on political activity in 2014 than they represented they did to the IRS on their tax returns:

- American Dream Initiative (“ADI”) spent more than half a million dollars in May 2014 on a television advertisement attacking a candidate to be the Republican nominee for Texas attorney general that ran just before a runoff election in the race. ADI told the IRS, however, that it did not participate in any political activity in 2014.
- In the weeks before the 2014 Arizona Republican primary for governor, Arizona Future Fund (“AFF”) spent \$315,575 to run television, newspaper, digital, and billboard advertisements promoting Mesa Mayor Scott Smith’s candidacy, saying he was a “better choice” than his rivals and that “Governor Scott Smith sounds just right.” After complaints were filed with Arizona campaign finance authorities alleging AFF failed to report its spending on the ads, AFF acknowledged in a settlement that the advertisements were independent expenditures with no reasonable meaning other than to advocate for Mayor Smith’s election. Nevertheless, AFF told the IRS it did not participate in any political activity in 2014.
- Jobs and Progress Fund, Inc. (“JPF”) admitted on its 2014 tax return contributing more than \$1.8 million to super PACs in 2014. JPF also spent another \$400,000 on television advertisements attacking a candidate for the Georgia Republican Senate nomination a month before a runoff election in the race, but failed to report the spending as political activity.
- Michigan Citizens for Fiscal Responsibility made \$290,000 in contributions to two political action committees during 2014, according to reports filed with the Federal Election Commission and the IRS, but represented on its tax return that it spent no money on political activity that year.
- Mid America Fund, Inc. (“MAF”) acknowledged on its 2014 tax return it spent \$874,920 on political activity that year. MAF also spent hundreds of thousands of dollars on television and radio advertisements attacking three candidates for the Illinois Republican gubernatorial nomination weeks before the primary election. Those ads also were political, but MAF failed to report the spending as political activity.
- Rule of Law Project (“ROLP”) spent nearly \$200,000 in October and November 2014 on a television advertisement attacking the Democratic candidate and praising the

⁴ The complaints are available on CREW’s website, www.citizensforethics.org.

Republican candidate in Wisconsin's attorney general election. ROLP told the IRS, however, it did not participate in any political activity in 2014.

Political Activity Under Section 501(c)(4)

All of the activities described above constituted political activity.

Advertisements and other communications that support or oppose a candidate but stop short of expressly advocating for or against the candidate's election can constitute political campaign intervention. In Revenue Ruling 2007-41, the IRS promulgated guidance on the distinction between issue advocacy and political campaign intervention. The IRS takes into consideration all the facts and circumstances of a particular communication and identified the key factors as: (1) whether the statement identifies one or more candidates; (2) whether the statement expresses approval or disapproval for a candidate's position; (3) whether the statement is delivered close to an election; (4) whether the statement makes reference to voting or an election; (5) whether the issue addressed has been raised as an issue distinguishing candidates for an office; (6) whether the communication is part of an ongoing series of communications by the organization on the issue that are made independent of the timing of any election; and (7) whether the timing of the communication is related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder running in an election.⁵

As discussed in detail in the IRS complaints, the advertisements at issue run by the groups all constituted political activity under these standards.

Contributions to political organizations also are direct or indirect participation or intervention in political campaigns. "Contributions to political campaign funds . . . clearly violate the prohibition on political campaign intervention" for section 501(c)(3) organizations,⁶ and prohibited political intervention for section 501(c)(3) organizations constitutes political activity for section 501(c)(4) groups.⁷ The contributions made by the groups to super PACs therefore also constituted political activity.

⁵ Rev. Rul. 2007-41; *see also* Rev. Rul. 2004-06.

⁶ IRS, Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations, FS-2006-17, February 2006; *see also, e.g.*, IRS website, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, Mar. 5, 2014, *available at* [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501\(c\)\(3\)-Tax-Exempt-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations).

⁷ *See, e.g.*, Notice of Proposed Rulemaking, Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535, 71536 (proposed Nov. 29, 2013) ("the IRS generally applies the same facts and circumstances analysis under section 501(c)(4)" as it does under section 501(c)(3)); Rev. Rul. 81-95 (citing examples of political intervention prohibited under section 501(c)(3) in determining political activity for section 501(c)(4) organizations); Priv. Ltr. Rul. 9652026 (Oct. 1, 1996) ("[A]ny activities constituting prohibited political intervention by a section 501(c)(3) organization are activities that must be less than the primary activities of a section 501(c)(4) organization.").

Violations

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 \$100,000.⁸ 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;⁹ 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 990.¹⁰

All of the groups signed Form 990 tax returns under a written declaration that they were made under penalty of perjury, and that the group’s representative had examined the return and it was true, correct, and complete to the best of his or her knowledge. All of the tax returns, however, appear to be false and incorrect as to the material matters of whether the groups engaged in political campaign activities in 2014 and the amount they spent on those activities.

The groups’ representations appear to be willful. As discussed in the IRS complaints, the groups and their representatives all had reasons to know that their assertions about the groups’ political activities were false.

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.¹¹ Violations are punishable by up to five years in prison.¹² The groups appear to have falsely stated on their Form 990s either that they did not engage in any political campaign activity or the amount of money they spent on those activities in violation of 18 U.S.C. § 1001.

⁸ 26 U.S.C. § 7206(1).

⁹ 26 U.S.C. § 527(f)(1).

¹⁰ IRS, Background Paper, Summary of Form 990 Redesign Process, August 19, 2008, at 1.

¹¹ 18 U.S.C. § 1001(a)(2).

¹² *Id.*

Assistant Director in Charge Paul Abbate
Acting Assistant Attorney General Caroline D. Ciralo
June 15, 2016
Page 5

Conclusion

In recent years, tax-exempt groups engaged in political activity have more and more frequently and brazenly made false representations to the IRS about whether they participated in politics at all and the amount of money they spent on those activities. These false statements undermine the IRS's ability to determine whether an organization is complying with its tax-exempt status and interfere with the IRS's collection of section 527 exempt function taxes. Moreover, these brazenly false statements deny the public information about political activity conducted by tax-exempt groups, contributing to the proliferation of secret money in our elections.

CREW respectfully requests DOJ and the FBI immediately commence an investigation into these matters. While CREW also filed complaints today with the IRS, we urge DOJ and the FBI not to wait for IRS action before initiating its own investigation. Only vigorous enforcement will deter other organizations from violating our nation's laws for political gain.

Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

Encls.