

September 11, 2019

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: Complaint against Prosperity Alliance, Inc.

Dear Commissioner Rettig:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the Internal Revenue Service (“IRS”) investigate whether Prosperity Alliance, Inc., a nonprofit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“Code”), is operated primarily to influence political campaigns in violation of the Code.¹ CREW further requests the IRS investigate whether Prosperity Alliance failed to properly disclose its political contributions.

During its 2017 tax year, covering May 1, 2017 to April 30, 2018, Prosperity Alliance contributed \$475,000 to political organizations. Those expenditures accounted for 78.4% of its total spending during the year, which was its first year of existence. As a result, political activity appears to be the group’s primary activity, a violation of its tax-exempt status. In addition, Prosperity Alliance falsely represented on its 2017 tax return that it did not engage in any political activities and failed to disclose on the IRS form used to report political expenditures the hundreds of thousands of dollars it contributed to the political organization.

Prosperity Alliance, Inc.’s Political Activity

Prosperity Alliance is a nonprofit corporation established in Virginia on May 8, 2017.² Prosperity Alliance was granted tax-exempt status on December 22, 2017, effective May 8, 2017.³

Between April 2, 2018 and April 24, 2018, Prosperity Alliance made six contributions totaling \$475,000 to Conservative Alliance PAC, a federal independent expenditure-only

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

² Prosperity Alliance, Inc., Business Entity Details, Commonwealth of Virginia, State Corporation Commission, available at <https://bit.ly/2I5riTI>; Prosperity Alliance, Inc., Form 1024, available at <https://bit.ly/2GOB7DB>.

³ Prosperity Alliance, Inc. Tax Exemption Determination Letter from the IRS, Dec. 22, 2017, available at <https://bit.ly/2YDnMnZ>. The organization’s Employer Identification Number is 82-1420326, and its most recent mailing address reported to the IRS is PO Box 80234, Washington, DC, 20018. Prosperity Alliance, Inc., 2017 Form 990, at 1, available at <https://bit.ly/2Ys3oel>.

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

Prosperity Alliance’s contributions were promptly used by Conservative Alliance PAC for political activity. On April 2, 2018, Prosperity Alliance contributed \$250,000 to Conservative Alliance PAC, which had only registered with the FEC less than a week earlier.⁶ The following day, April 3, 2018, Conservative Alliance PAC spent nearly the same amount – \$245,681 – on a media buy and direct mail related to non-federal candidates.⁷ Around the same time, Conservative Alliance PAC ads and mail pieces began appearing in Ohio state House races.⁸

Prosperity Alliance made five more contributions to Conservative Alliance PAC, totaling \$225,000, between April 4, 2018 and April 24, 2018, bringing the total Prosperity Alliance contributed to Conservative Alliance PAC during its 2017 tax year, which ended on April 30, 2018, to \$475,000.⁹ Conservative Alliance PAC quickly spent the money it received from Prosperity Alliance during that period on communications targeting non-federal elections, spending \$221,412 on “telephone voter contact,” “direct mail,” and an “IE,” which is presumably short for independent expenditure.¹⁰

In this time period, and indeed during the entire 2018 election cycle, Prosperity Alliance was the only contributor to Conservative Alliance PAC.¹¹ 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* wrote, 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

⁴ Conservative Alliance PAC, FEC Form 3X, 2018 July Quarterly Report, July 12, 2018, *available at* <https://bit.ly/2TQtyjL>.

⁵ 26 U.S.C. § 527(e)(1).

⁶ Conservative Alliance PAC, FEC Form 3X, 2018 July Quarterly Report, July 12, 2018; Conservative Alliance PAC, FEC Form 1, Statement of Organization, Mar. 27, 2018, *available at* <https://bit.ly/2FR0moQ>.

⁷ Conservative Alliance PAC, FEC Form 3X, 2018 July Quarterly Report, July 12, 2018.

⁸ Jim Siegel, Fisticuffs, sexting, lawsuits: Welcome to Ohio House GOP primaries, *The Columbus Dispatch*, Apr. 20, 2018, *available at* <https://bit.ly/2HQpHl9>; Jon Baker, Brett Hillyer, Shane Gunnoe spar over endorsement from Ohio House speaker, *The Times-Reporter*, Apr. 11, 2018, *available at* <https://bit.ly/2VcxbSf>; Rory Ryan, Political mailer shows devious side of politics, *The Highland County Press*, Apr. 9, 2018, *available at* <https://bit.ly/2OG54IP>; *See also* <https://bit.ly/2HReJf6> and <https://bit.ly/2YEp6lg>.

⁹ Conservative Alliance PAC, FEC Form 3X, 2018 July Quarterly Report, July 12, 2018; Prosperity Alliance, Inc. 2017 Form 990, Schedule I.

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

¹¹ Conservative Alliance PAC, Receipts, 2017-2018, Federal Election Commission, *available at* <https://bit.ly/2OCCkAE>. Prosperity Alliance ultimately contributed \$1,021,000 to Conservative Alliance PAC during the 2018 election cycle.

[Conservative Alliance PAC]’s funds through a non-disclosing entity rather than have its donors provide those funds directly.”¹²

At least some of Conservative Alliance PAC’s communications that Prosperity Alliance’s contributions funded expressly advocated for or against the election of candidates. For instance, a direct mail piece Conservative Alliance PAC sent to Ohio residents attacking Jim Trakas, a candidate in an Ohio Republican state House primary, urged recipients to “vote no on taxin’ Trakas,” while another said “vote no on Jim Trakas on May 8th.”¹³ Likewise, an ad Conservative Alliance PAC ran against candidate Josh Hagan, whose sister held the Ohio state House seat he was seeking, declared, “every dynasty must come to an end. It’s time to topple the Hagan kingdom” after on-screen text indicated Hagan was a candidate in the May 8, 2018 primary election.¹⁴

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. 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.”¹⁵ Among other things, Schedule C is used by the IRS to track political activity and ensure section 501(c)(4) organizations pay tax on those activities.¹⁶ “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.”¹⁷ Political contributions by tax-exempt organizations to federal super PACs should be disclosed both in Federal Election Commission reports filed by the super PAC and in Schedule C forms filed by the tax-exempt organization along with its Form 990 tax returns.¹⁸

In its 2017 tax year, Prosperity Alliance spent a total of \$605,795.¹⁹ The \$475,000 the group spent on contributions to Conservative Alliance PAC, a super PAC, constituted 78.4% of

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

¹³ Declaration of Chris Marston, Exhibits 1 and 2, *Trakas v. Conservative Alliance Political Action Committee, et al.*, Case No. 1:18-cv-1798 (N.D. Ohio Oct. 12, 2018), available at <https://bit.ly/2YJU8OR>.

¹⁴ Robert Wang, Attack-ad mailers go after GOP candidates in 50th, *Canton Repository*, Apr. 27, 2018, available at <https://bit.ly/2OHJ1As>; “Conservative Alliance PAC – ‘Hagan Kingdom’,” Content Creative Media, YouTube, Jan. 17, 2019, available at <https://bit.ly/2YDYaIB>; Robert Wang, Who’s on the May 8 ballot in Stark, *Canton Repository*, Feb. 7, 2018, available at <https://bit.ly/2I9TvIR>.

¹⁵ Form 990, Part IV, Question 3; 2017 Instructions for Form 990, at 12; 2017 Instructions for Schedule C, at 1, 3.

¹⁶ See, e.g., Letter from Steven T. Miller, Deputy Commissioner for Services and Enforcement, to Sen. Carl Levin, Aug. 24, 2012, reprinted in 158 Cong. Rec. S.6431 (daily ed. Sept. 19, 2012) and available at <https://www.congress.gov/112/crec/2012/09/19/CREC-2012-09-19-pt1-PgS6428.pdf> and https://www.governmentattic.org/13docs/IRSresponsesToCongress_2012-2013U.pdf (beginning at 260); 26 U.S.C. 527(f).

¹⁷ 2017 Instructions for Schedule C, at 1; 2017 Instructions for Form 990, at 66.

¹⁸ 2017 Instructions for Schedule C, at 3-4

¹⁹ Prosperity Alliance, Inc., 2017 Form 990, Part I, Line 18.

that amount. Thus, political campaign activity appears to have been Prosperity Alliance’s primary purpose during its 2017 tax year, which was also its first year of existence.

On its 2017 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.²⁰ The contributions to Conservative Alliance PAC were reported on a Schedule I, which is used to disclose grants to other organizations, and were described as being given to a “[section] 527” organization for “general support.”²¹

Political Activity Under Section 501(c)(4)

Section 501(c)(4) provides tax-exempt status to organizations “not organized for profit but operated exclusively for the promotion of social welfare.”²² IRS regulations interpret the statute 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.”²³ The regulations further provide that “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office” does not promote social welfare.²⁴

The IRS has not further defined the “primary activity” standard, and provides only that all the facts and circumstances are to be taken into account in determining the “primary activity” of a section 501(c)(4) organization.²⁵ Internal IRS training materials, however, assert section 501(c) organizations (other than section 501(c)(3) charities) “may generally make expenditures for political activities as long as such activities, in conjunction with any other non-qualifying activities, do not constitute the organization’s *primary activity* (51%).”²⁶

Contributions to political organizations 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)

²⁰ *Id.*, Part IV, Question 3.

²¹ *Id.*, Schedule I.

²² 26 U.S.C. § 501(c)(4).

²³ Treas. Reg. § 1.501(c)(4)-1(a)(2)(i). By allowing section 501(c)(4) organizations to be only “primarily” engaged in social welfare, the regulation misinterprets the plain meaning of the word “exclusively” in the statute. This complaint analyzes Prosperity Alliance’s conduct using the “primarily” standard. Under a correct interpretation of the statute, Prosperity Alliance’s political spending unquestionably would violate its tax-exempt status.

²⁴ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

²⁵ Rev. Rul. 68-45, 1968-1 C.B. 259.

²⁶ Exempt Organizations Determinations Unit 2, Student Guide, Training 29450-002 (Rev. 9-2009), at 7-19 (emphasis added), available at <https://bit.ly/2F0srGI>.

organizations,²⁷ and prohibited political intervention for section 501(c)(3) organizations constitutes political activity for section 501(c)(4) groups like Prosperity Alliance.²⁸

Violations

26 U.S.C. § 501(c)(4)

Even under the IRS's misinterpretation of section 501(c)(4), and certainly under the plain language of the statute, Prosperity Alliance's political activity in its 2017 tax year exceeded the amount permitted. Prosperity Alliance spent 78.4% of its total expenditures on political activity between May 1, 2017 and April 30, 2018, apparently violating the organization's tax-exempt status.

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.²⁹ By falsely representing on its 2017 Form 990 that it did not engage in any political campaign activity and by failing to report those activities on Schedule C, Prosperity Alliance appears to have violated 26 U.S.C. § 6652 and should be subject to monetary penalties.

Conclusion

Based on the publicly available information, Prosperity Alliance's activities do not comport with its claimed status as a section 501(c)(4) tax-exempt organization. Therefore, the IRS should investigate Prosperity Alliance and, should it find that Prosperity Alliance has violated its tax-exempt status, take appropriate action, which may include revoking its section 501(c)(4) status, imposing any applicable excise taxes under section 4958 for excess benefit transactions, and treating Prosperity Alliance as a taxable corporation or a section 527 political organization. Further, it appears Prosperity Alliance falsely represented that it did not engage in any political activity in its 2017 tax year and omitted hundreds of thousands of dollars in spending on political activity from its 2017 tax return. The IRS should investigate Prosperity Alliance and, should it find Prosperity Alliance made false or incomplete statements on its tax return, take appropriate action.

²⁷ 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 <https://bit.ly/1ev87z2>.

²⁸ *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.").

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

Hon. Charles P. Rettig
September 11, 2019
Page 6

Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director



Matthew Corley
Chief Investigator

Encl.

cc: IRS-EO Classification