

CAMPAIGN ACCOUNTABILITY WATCH

POB 9576
WASHINGTON, DC 20016
May 1, 2011

Eastern District
Zane D. Memeger, USA*
615 Chestnut Street, Ste. 1250
Philadelphia, PA 19106

Re: Request to Empanel Grand Jury To Investigate And Prosecute United States Chamber of Commerce, Crossroads GPS, and American Crossroads For Campaign Finance Violations

Dear United States Attorney Memeger:

I am writing to ask that you investigate and prosecute three groups that spent funds during the 2010 elections in the Eastern District of Pennsylvania in violation of federal law. These groups, the United States Chamber of Commerce (“Chamber”), Crossroads GPS (“CXGPS”), and American Crossroads (“AMX”) committed campaign finance violations by raising and spending significant amounts of undisclosed money to influence the 2010 House and Senate elections while committing widespread violations of the law as listed below. Your office has jurisdiction under 2 U.S.C. § 437g(d) of the Federal Campaign Election Act to prosecute violations of the Act that occur in your district. In fact, since the Federal Election Commission (“FEC”) has been unable to effectively enforce campaign finance laws for several years, your office has the obligation to do so.

CampaignAccountabilityWatch.org, is a network of fair election advocates representing over a million members. I am attaching the names of more than ten thousand citizens who have signed our petitions requesting an investigation into these groups and their activities.

THE CHAMBER OF COMMERCE

The Chamber spent a total of more than \$1,800,000 in three contests in your district in 2010 -- PA-7 Bryan Lentz (D) \$146,680.00 PA-8 Patrick J. Murphy (D) \$170,000.00 PA-Senate Joseph A. Sestak, Jr (D) \$1,488,880.00

1. **Foreign Money**-On October 5, 2010, *Think Progress* reported that the Chamber was raising funds from foreign companies and that money was being used to help fund partisan attack ads against Democrats. A week later, more information was reported that the Chamber raised at least \$885,000 in foreign money that was part of a pot used for attack ads. On October 5, 2010, MoveOn.org wrote a letter to the Department of Justice requesting a criminal investigation of the Chamber because it is against federal law to use foreign money in United States elections and it is illegal for foreign nationals to make such contributions. Senator Al Franken wrote to the FEC to investigate the Chamber’s

activities in this regard.

2. 501c(3) Fraud-On September 10, 2010, a complaint was filed with the IRS alleging that the Chamber committed fraud by using \$18 million in charitable funds under 501c(3) for non charitable purposes (including electioneering) and transferring such funds to the Chamber general fund. It is illegal to use charitable funds to fund a non-charitable operation such as the Chamber of Commerce and for partisan purposes such as attack ads against Democrats.

3. Excessive Compensation For Tom Donohue-On October 14, 2010, another complaint was filed with the IRS alleging that the Chamber illegally used its 501c(6) business league status to inure to the benefit of Tom Donohue, who receives a salary of over \$3.5 million, a private jet, a chauffer-driven luxury limousine, and at least \$7.4 million in supplemental retirement benefit. His total compensation in 2006 was \$3,287,372, far higher than other trade association CEOs.

4. 501c(6) Violations-On September 28, 2010, Senate Finance Chair Max Baucus wrote to the IRS requesting an investigation into certain c(4), c(5) and c(6) organizations for misusing their tax status “for lobbying or other financial or political gain.” The Chamber has been using its 501c(6) status for the “primary purpose” of political campaign activity in order to benefit individuals and companies they own or control. It has spent at least \$32 million in 2010 to defeat Democrats and has spent hundreds of millions to defeat legislation over the past two years in order to benefit and advance private interests. This was detailed in this New York Times article showing how a small number of large companies use the Chamber’s c(6) operation to inure to their benefit.

5. Misuse of 501c(6)-The Chamber has been using 501c(6) status to engage in political activity and protect its donors from disclosure. Under section c(6), electioneering activity cannot be an organization’s primary purpose and donors do not have to be publicly disclosed. Electioneering is broadly defined in law as “any political activity.” However, electioneering that addresses matters beyond an organization’s policy objectives is not permitted. As noted above, the Chamber has spent literally hundreds of millions on political activity over the past two years, from election advertisements supporting or opposing candidates to advertisements supporting or opposing legislation that affects its paying members. The Chamber, rather than operating under c(6), should be operating as a 527 PAC, which allows for electioneering as a primary purpose and requires disclosure of donors. Also, the Chamber may have defrauded the federal government by failing to pay taxes on its electioneering activity as required by section 527(f).

6. Illegal Earmarking Of Donations- Chamber donors can indicate if they want to earmark their donation for a specific purpose, and how much should be marked as non-tax deductible lobbying expense. It is illegal to earmark donations to target a particular candidate when giving to a group engaged in political activity because this constitutes a straw donation, which could exceed the individual contribution limits of the Federal Election Campaign Act. Failing to disclose such earmarked donations violates federal election rules. It is also illegal for a foreign company or citizen to earmark money for

electioneering yet according to Chamber fundraisers, they solicit funds from foreign donors and allow them to earmark.

7. Buying Access To The US Government For Foreign Companies-The Chamber has set up 115 American Chambers of Commerce “AmChams,” which are partnerships with foreign companies in foreign countries. These AmChams pay the US Chamber of Commerce dues and other income that are comingled with its general funds and used for political purposes. *See* 1 above. These AmChams are selling foreign corporate access to US Government officials in violation of US law. Those companies in turn give money to the Chamber, which is used to elect particular candidates that will be friendly to the foreign companies.

AMERICAN CROSSROADS

American Crossroads spent \$1,000.00 to oppose Senate Candidate Joseph Sestak in Pennsylvania in 2010. AMX acted illegally as a “shadow Republican National Committee” without complying with the laws that govern the RNC, such as reporting of donations and expenditures, limits on such donations, and prohibitions against coordination. Published reports also suggest that AMX coordinated its expenditures with candidates meaning that it violated the contribution restrictions of 2 U.S.C. §§ 441a and 441b. It also coordinated with other 527, c(4) and c(6) organizations.

American Crossroads was formed as a 527 PAC by former chairmen of the RNC, released a GOP platform, took up pricey administrative functions of the RNC, created a database and micro-targeting list based on RNC data, issued a GOP concept paper, hired state based operatives, and launched get out the vote efforts. In short, AMX engaged in the same activities historically done by the RNC. When the election was over, election experts stated that AMX made the RNC “irrelevant.” *“Other than running primaries, ‘who needs (political parties)?’ asked Brett Kappel, a Washington lawyer who specializes in campaign finance laws. Contributions to the parties remain ‘heavily regulated,’ under strict limits and must be publicly disclosed, he noted. ‘After this election,’ Kappel said, ‘all of that can be outsourced to unregulated entities that don’t have to disclose their donors.’”*

American Crossroads began as a 527 group but was unable to raise significant funds. Therefore, it created a sister organization called Crossroads GPS that shared the same office, staff, hardware, software and books. American Crossroads conspired with Crossroads GPS to violate for Federal Election Campaign Act.

CROSSROADS GPS

Crossroads GPS spent \$809,196.00 to oppose Senate candidate Joseph A. Sestak in Pennsylvania in 2010. GPS committed campaign finance violations during the 2010 mid-term election season by raising and spending significant amounts of money to influence the 2010 congressional elections without (1) registering as a political committee, as required by 2 U.S.C. § 433, (2) filing political committee financial disclosure reports required by 2 U.S.C. § 434, and (3) complying with the political

committee organizational requirements of 2 U.S.C. § 432. Published reports also suggest that these groups coordinated expenditures with candidates meaning that they violated the contribution restrictions of 2 U.S.C. §§ 441a and 441b. Consequently, the public was denied critical information regarding the identity of corporations, individuals and other organizations spending money to influence voting in the 2010 federal election.

Conclusion

During the 2010-midterm election season, the Chamber spent \$32,118,821, American Crossroads spent \$21,533,272, and Crossroads GPS spent \$15,571,175. Because some of this money was spent in your federal district, I urge you to exercise your authority to conduct criminal investigations and prosecutions of federal campaign finance laws as they apply to the Chamber, CXGPS, and AMX, and the individuals involved with the groups, including those who have donated to them. Although the FEC has exclusive jurisdiction over *civil* enforcement of the Federal Election Campaign Act (FECA), 2 U.S.C. § 431 *et seq.*, the Department of Justice has its own independent and exclusive jurisdiction to bring *criminal* enforcement proceedings or prosecute violations of these laws. Specifically, FECA provides for *criminal* sanctions, enforced by the Department of Justice, in the case of “knowing and willful” violations of FECA that exceed specified monetary thresholds, which vary according to the specific statutory provision violated. *See* 2 U.S.C. § 437g(d). Such violations can be proven by showing that the offenders are active in political operations, such as professional fundraisers and professional lobbyists.

I ask that you launch your investigation immediately and include, in addition to the groups themselves, the individuals who established, manage, solicit funds for, and donate to the groups. Published reports state that donors to these groups have colluded with the fundraisers and managers to violate federal election laws as well as the tax laws in order to protect their anonymity and information about how much money they have donated. If this information is confirmed by a criminal investigation, these staffers and donors should also be prosecuted. Published reports also indicate that individuals who are personally well-versed in federal campaign finance laws are intimately involved in management, fundraising and funding of these groups, which provides powerful evidence that they are engaged in “knowing and willful” actions.

President Obama said repeatedly during the 2010 election that the use of secret money laundered through 501c groups constitutes a “threat to our democracy.” The Department of Justice is responsible for addressing such threats and should do so now by ensuring that potential “knowing and willful” violations of FECA are investigated, and that actual “knowing and willful” violations are prosecuted to the full extent of the law. It is incumbent upon you to use existing statutes to hold these violators accountable, to deter others, and to restore confidence in the rule of law and our electoral system. We are ready to cooperate with your office in this matter and provide you with the documents referred to in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Zeese', with a long horizontal flourish extending to the right.

Kevin Zeese
Attorney at Law
301-996-6582