

October 13, 2010

Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General:

As detailed in the attached complaint, filed October 13, 2010, with the Federal Election Commission (FEC), Prosperity Agenda, Protect Our Elections, Democrats.com, and American Crossroads Watch have reason to believe, based on published reports, that Crossroads GPS and American Future Fund have violated the law 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. § 432.¹ Consequently, the public is being denied critical information regarding the identity of corporations, individuals and other organizations spending money to influence voting in the 2010 federal election.

We are writing to urge the Department of Justice to exercise its authority to conduct criminal investigations of these potential violations of federal law by Crossroads GPS and American Future Fund, and, if warranted, to bring criminal proceedings to enforce federal campaign finance laws as they apply to these groups, the individuals involved with them 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 for violations of these laws. Specifically, FECA provides for *criminal* sanctions,

¹ The attached FEC complaint is against Crossroads GPS and our similar complaint against American Future Fund will be filed on Monday, October 18, 2010. Published reports suggest that Crossroads GPS and American Future Fund are may not be explicitly coordinating their expenditures with candidates nor making contributions directly to candidates—meaning that Crossroads GPS and American Future Fund likely qualify as “independent expenditure only” committees under the Federal Election Commission’s Ad. Ops. 2010-09 and 2010-11 and, therefore, are not subject to the contribution restrictions of 2 U.S.C. §§ 441a and 441b. For this reason, we limit our allegations to violations of the political committee registration and reporting requirements of 2 U.S.C. §§ 433 and 434. However, in the event that Crossroads GPS and American Future Fund make contributions to candidates or coordinate their expenditures with candidates, they may also be in violation of 2 U.S.C. §§ 441a and 441b.

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).²

As explained in the Department of Justice handbook *FEDERAL PROSECUTION OF ELECTION OFFENSES* 179-80 (7th Ed. 2007), “[e]xamples of evidence that has been used to prove that FECA violations were committed knowingly and willfully include . . . Proof that the offender is active in political fundraising and is personally well-versed in the federal campaign financing laws (such as offenders who can be shown to be professional lobbyists or fundraisers)[.]”

For this reason, as well as the fact that the FEC cannot act in time to protect the 2010 elections, criminal investigations of potential FECA violations by Crossroads GPS and American Future Fund should be announced immediately and include, in addition to the organizations themselves, the individuals who established, manage, solicit funds for, and donate to the groups. From published reports it seems evident that donors to these organizations have colluded with the fundraisers and managers of these organizations 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, prosecutions should follow. 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 last week said that the use of secret money laundered through 501c(4) groups is a “threat to our democracy.” The Department of Justice is responsible for removing such threats and can do so now by ensuring that potential “knowing and willful” violations of FECA are investigated and that actual “knowing and willful”

² As explained in the Department of Justice handbook *FEDERAL PROSECUTION OF ELECTION OFFENSES* 198-99 (7th Ed. 2007):

The Federal Election Commission has exclusive authority to enforce FECA’s noncriminal penalties. . . . FECA violations that are committed knowingly and willfully and involve aggregate values that satisfy the monetary thresholds in the Act’s criminal provision, 2 U.S.C. § 437g(d), are also federal crimes. These cases are prosecuted by the Department of Justice.

. . . .

In view of the enhanced criminal penalties for FECA crimes and the legislative history supporting their enactment, it is the Justice Department’s position that all knowing and willful FECA violations that exceed the applicable jurisdictional floor specified in the Act’s criminal provision should be considered for federal prosecution under one or more of the prosecutive theories presented above.

violations are prosecuted and punished. We therefore ask the Department of Justice to act immediately to stop this crime in progress and ensure the integrity of our elections.³

Sincerely,



Kevin Zeese
Attorney at Law
301-996-6582

³ We also ask that the DOJ order these groups to preserve all records because they are part of an ongoing investigation, and to advise them that destruction of evidence would constitute obstructing justice.

Copy to: Mr. Lanny A. Breuer, Assistant Attorney General, Criminal Division
Mr. Jack Smith, Chief, Public Integrity Section