

RAÚL M. GRIJALVA  
7TH DISTRICT OF ARIZONA

COMMITTEE ON NATURAL RESOURCES  
Subcommittee on Water and Power  
Subcommittee on Parks, Forests and  
Public Lands – *Ranking Member*

COMMITTEE ON EDUCATION AND THE WORKFORCE  
Subcommittee on Early Childhood,  
Elementary and Secondary Education  
Subcommittee on Higher Education and  
Workforce Training

CONGRESSIONAL PROGRESSIVE CAUCUS,  
Co-Chair

Douglas Shulman  
Commissioner, Internal Revenue Service  
1111 Constitution Ave. NW  
Washington, D.C. 20224



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0307**

June 21, 2012

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Dear Mr. Shulman,

On June 12, I wrote a letter along with Congressional Progressive Caucus co-chair Rep. Keith Ellison to the National Federation of Independent Business (NFIB) asking the group to release its donors and membership over the past three years. In that letter, we asked the group to explain a \$3.7 million donation from Karl Rove's Crossroads GPS political advocacy group and raised concerns that NFIB is acting on behalf of wealthy interests that do not speak for the American small business community. I write to you today because NFIB has refused to answer these questions in a manner that suggests the IRS may need to revisit existing non-profit disclosure regulations.

As you know, NFIB has sued the federal government to block implementation of the Patient Protection and Affordable Care Act. Our letter was prompted in part by the urgent need to understand the financial interests at stake in this lawsuit. In reply to our letter, rather than providing the courtesy of a written response, NFIB elected to inform us through a quote in the *Daily Caller* that it had no intention of revealing who is paying for that lawsuit, nor would it answer any of our questions about its funding sources. Communications director Jean Card, according to the report, said the group is "not sure why the Progressive Caucus thinks that they can compel us to disclose things that we are not legally required to disclose."<sup>1</sup>

In the small business community, a handshake is a commitment and what you see is what you get. If NFIB refuses to disclose the sources of high-dollar contributions – to the public or at the very least to the Supreme Court – it declares itself squarely on the side of secrecy. Secrecy is not a small business value, nor is it in the interests of political integrity. If NFIB is determined not to say where its money comes from or who its members are, we must ask what the group is hiding.

What little we already know is greatly troubling. A staff review of its recent finances found:

1) While the \$3.7 million Crossroads GPS contribution was the largest to NFIB or its Small Business Legal Center in the past three years, nine other six-figure contributions, including three

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<sup>1</sup> Alexis Levenson, "Liberal congressmen demand donor list from business lobby group at center of Obamacare court case," *Daily Caller*, June 13, 2012.

of more than \$1 million, came in from unknown sources. In 2011, the Legal Center received a \$2.04 million donation and NFIB itself received a \$1.65 million donation; in 2010, the Legal Center received a \$1.15 million donation. While the sources of these grants are reported to the IRS, they are not required to be made public. As a consequence, no one outside the IRS – including the Supreme Court – knows where this money came from.

Under existing IRS rules, public inspection copies of Form 990 filings must include individual contribution amounts, but the sources of each contribution can be (and often are) redacted. Current IRS regulations, therefore, make it impossible for the public to learn basic information about where non-profit institutions able to involve themselves in political advocacy get their money. There is no basis for this standard, especially when politically active groups like NFIB are able to influence national policy much more than individuals.

2) The large recent contributions to the Legal Center closely coincide with the group's Affordable Care Act lawsuit expenses. In 2010, when it received its unusually large \$1.15 million grant, the Center paid \$1,073,242 to the Baker & Hostetler law firm for legal services. In 2011, when it received its \$2.04 million contribution, it paid \$1,240,730 to Jones Day for legal services, \$401,756 to Randy E. Barnett for legal services, and \$203,701 to Creative Response Concepts for public relations. These combined expenses of more than \$1.8 million for legal and public relations work represent a major expansion of the Center's mission and were funded by a few high-dollar donations, not by a spontaneous outpouring of member-driven contributions.

IRS rules make it possible for NFIB and the Legal Center to receive these enormous contributions – which far outpace anything a typical small business could afford, let alone an individual family – without publicizing their sources. This is not in the public interest.

3) The timing of the recent uptick in NFIB and Legal Center contributions closely matches the group's decision to challenge the Affordable Care Act. Over the course of the 2010-2011 reporting cycle, NFIB and the Legal Center received a total of \$10.4 million from 10 six-figure contributions. This represents an unusual increase over 2009 levels; in that period, neither NFIB nor the Legal Center received a single six-figure contribution from an outside source. NFIB's largest reported contribution in 2009 from a source other than a directly affiliated entity, such as NFIB's Young Entrepreneur Foundation or SAFE Trust PAC, was \$21,000. The Legal Center's largest single contribution was \$7,500. This discrepancy gives the distinct impression that something extraordinary occurred in the interim.

4) NFIB reported \$80.4 million in membership dues in 2010 and claims to represent about 350,000 member businesses. Average membership dues work out to \$229.71. Even if NFIB is enjoying the huge lawsuit-related upswing in small-dollar member contributions that it claims, it would take more than 16,100 new businesses paying the average contribution to match the \$3.7 million Crossroads GPS donation. These recent costly legal and public relations efforts are clearly not member-driven.

Given the clear need for greater transparency, I respectfully request that you provide me with a report detailing IRS rulemaking authority with regard to non-profit financial disclosure requirements. This report should discuss the feasibility of several potential regulatory changes:

1) Requiring tax-exempt organizations (other than 501(c)(3) organizations) to publicize contributions and expenditures (other than staff compensation) of more than \$25,000.

2) Requiring section 501(c)(4), (c)(5) and (c)(6) organizations to file a Form 1024 application for recognition as a tax-exempt entity. As explained in a 2011 paper sponsored by the Ohio State University Moritz College of Law, "Since organizations are not required to file a Form 1024, there is no automatic time at which the [Internal Revenue] Service examines whether an organization meets the regulatory requirements of the statute."<sup>2</sup> This seems like an easily corrected loophole.

3) Applying stronger oversight, such as the extension of Circular 230 standards, to the groups and individuals allowed to consult with tax-exempt organizations (other than 501(c)(3) organizations) on tax shelter, tax avoidance and financial disclosure regulations. Under a potential new rule, at the very least, "The [tax advice] practitioner would [. . .] be required to reach an opinion that the organization was primarily engaged in social welfare activity under 501(c)(4) (or comparable purpose under other sections of the Code)."<sup>3</sup>

4) Establishing a transparent and thorough process allowing the public to file complaints about the activities of tax-exempt organizations. Such a process should provide assurance that reasonable concerns will be looked into in a nonpartisan and expeditious manner by appropriate IRS or Treasury Department staff.

As Donald Tobin states in the Moritz paper, in making these regulatory changes without waiting for Congress to write a new law, the IRS "can reasonably make the judgment that public disclosure will serve as a better compliance tool than additional audits or further internal compliance." I see no reason why well-funded political entities should be able to hide behind loose non-profit disclosure rules even as they greatly affect the outcome of our democratic process. Public opinion supports greater disclosure. The IRS has the power to act accordingly.

I thank you for your attention to this matter and look forward to your response. Please contact Adam Sarvana on my staff at (202) 225-2435 or [adam.sarvana@mail.house.gov](mailto:adam.sarvana@mail.house.gov).

Very respectfully,

  
Rep. Raúl M. Grijalva  
Co-Chair, Congressional Progressive Caucus

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<sup>2</sup> Donald Tobin, "Campaign Disclosure and Tax-Exempt Entities: A Quick Repair to the Regulatory Plumbing," Moritz College of Law, August 31, 2011 [available at <http://ssrn.com/abstract=1920269>]

<sup>3</sup> Tobin.

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