



**citizens for responsibility  
and ethics in washington**

February 1, 2011

Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Dear Commissioner Shulman:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests an Internal Revenue Service (“IRS”) investigation into whether the American Future Fund, Inc., (“AFF”), a non-profit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“Code”), is operating with the primary purpose of influencing political campaigns in violation of the Code.<sup>1</sup>

Despite the fact that AFF repeatedly told the IRS it had not and did not plan to support or oppose candidates for office or spend any money attempting to influence elections, AFF did exactly that throughout the 2010 campaign cycle. Because of the serious nature of the tax law violations, the IRS should consider revoking the AFF’s tax-exempt status and/or impose appropriate excise taxes and penalties on the organization.

Under the law, section 501(c)(4) organizations such as the AFF may not engage in political campaign activity as their primary purpose.<sup>2</sup> Beyond a general conclusion that political activities are those activities that influence or attempt to influence the election of an individual to public office, the Code does not precisely state what constitutes political activity. Instead, the IRS currently applies a facts and circumstances test to determine whether an organization has intervened in a political campaign.<sup>3</sup>

In some cases, such tests are difficult to apply. Such is not the case here, where even a cursory review of the AFF’s activities – whether measured by expenditure of funds, staff time, or otherwise – clearly demonstrates that the organization’s activities are primarily political in nature. In fact, the AFF’s primary activity in 2010 appears to have been sponsoring express

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

<sup>2</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2) (a section 501(c)(4) organization must be primarily engaged in promotion of social welfare, which does not include “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office”); *see also* Rev. Rul. 81-95. While the Supreme Court’s landmark decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010) greatly expanded the types of political activities in which section 501(c)(4) organizations could engage, it did not alter the requirement that political activity may not be the primary activity of these organizations.

<sup>3</sup> Rev. Rul. 2007-41.

advocacy independent expenditures and electioneering communications, activities that are clearly political.<sup>4</sup>

### **The American Future Fund's Representations to the IRS**

The American Future Fund, EIN 26-0620554, was established in 2007 and recognized by the IRS in 2008 as tax exempt under section 501(c)(4). In its February 2008 application for tax-exempt status, the organization represented under penalty of perjury it had not spent, and did not plan to spend, any money attempting to influence the selection, nomination, election, or appointment of any person to any federal, state, or local public office or to an office in a political organization.<sup>5</sup> On its application and in subsequent correspondence with the IRS, the only activities the AFF asserted it would undertake were education of the public on policy issues and grassroots activity to influence legislation.<sup>6</sup>

The IRS nevertheless raised several concerns during the application review process with respect to the AFF's activities, and requested additional information and clarification on several issues. The IRS specifically requested information about activities that appeared political, asking for an explanation as to why the organization's advertisements appeared to be "more partisan than non-partisan," whether it was supporting or opposing a particular candidate for public office through its grassroots lobbying activities, and for a more detailed description of the organization's activities.<sup>7</sup>

In response, the AFF assured the IRS under penalty of perjury its efforts were "strictly issue based and non-partisan," and that all of its admittedly aggressive grassroots advocacy efforts were conducted in a non-partisan manner.<sup>8</sup> The organization further asserted it "does not support or oppose any candidate for public office."<sup>9</sup> The AFF also represented its "grassroots issue advocacy fits within the Supreme Court's definition of 'genuine issue ads.' Its activities are directed toward influencing key votes by Congress on these issues, not supporting or opposing any candidate for public office."<sup>10</sup>

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<sup>4</sup> *Id.*; see also Election Year Issues, 2002 EO CPE Text at 349, 388-89, 433.

<sup>5</sup> See Form 1024, Application for Recognition of Exemption Under Section 501(a), response to Part II, Line 15 (attached as Exhibit A).

<sup>6</sup> *Id.*, response to Part II, Line 1; Letter from the American Future Fund to the IRS, August 18, 2008 (attached as Exhibit B)

<sup>7</sup> See Letter from the IRS to the American Future Fund, September 22, 2008 (attached as Exhibit C).

<sup>8</sup> See Letter from American Future Fund to the IRS, October 6, 2008 (attached as Exhibit D).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

As a section 501(c)(4) organization, the American Future Fund annually files Form 990 tax returns. As in its earlier representations to the IRS, the organization asserted under penalty of perjury on its 2008 and 2009 Form 990s it had not engaged in direct or indirect political campaign activities on behalf of, or in opposition to, candidates for public office.<sup>11</sup>

### **The American Future Fund's Political Activity**

In contrast to these sworn representations, the AFF directly intervened and participated in political campaigns in 2010, frequently expressly advocating the election or defeat of candidates for federal office. Moreover, it appears the organization's primary activity in 2010 was political campaigning in violation of its tax-exempt status under section 501(c)(4).

The AFF's express advocacy is reflected both in the political advertisements it produced and broadcast, and in the organization's independent expenditure and electioneering communications reports filed with the Federal Election Commission ("FEC").

As shown on the YouTube channel the AFF established,<sup>12</sup> the organization produced numerous television advertisements expressly advocating the election or defeat of candidates for federal office. For example, an advertisement about Rep. Bill Foster (D-IL) posted on the AFF's website and on its YouTube channel tells voters: "On Election Day, take the right path. Vote against Bill Foster. American Future Fund is responsible for the content of this advertising."<sup>13</sup> The AFF created similar ads targeting other Democratic candidates in the 2010 elections, including John Adler (D-NJ), Bobby Bright (D-AL), Chad Causey (D-AR), Travis Childers (D-MS), Barney Frank (D-MA), Chet Edwards (D-TX), Phil Hare (D-IL), Debbie Halvorson (D-IL), Denny Heck (D-WA), Martin Heinrich (D-NM), Baron Hill (D-IN), Rick Larsen (D-WA), Jim Marshall (D-GA), Gary McDowell (D-MI), Mike Oliverio (D-WV), Ed Perlmutter (D-CO), Stephanie Herseth Sandlin (D-SD), Mark Schauer (D-MI), and John Spratt (D-SC).<sup>14</sup> All of these ads urged voters to "vote against" the targeted candidate or said the candidate did not "deserve re-election."

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<sup>11</sup> See AFF 2008 Form 990, response to Part IV, Line 3 (attached as Exhibit E); AFF 2009 Form 990, response to Part IV, Line 3 (attached as Exhibit F).

<sup>12</sup> See <http://www.youtube.com/user/AmericanFutureFund>.

<sup>13</sup> See AFF TV Ad IL "Fork in the Road" Rep. Bill Foster, *available at* [http://www.youtube.com/watch?v=t\\_peHEcQzIE&feature=mfu\\_in\\_order&list=UL](http://www.youtube.com/watch?v=t_peHEcQzIE&feature=mfu_in_order&list=UL) (last visited January 25, 2011).

<sup>14</sup> See, e.g., AFF TV Ad IL "Fork in the Road" Rep. Debbie Halvorson, *available at* <http://www.youtube.com/watch?v=p0vMn3P33Ao&feature=autoplay&list=ULal2khkMVIgg&index=4&playnext=2> (last visited January 31, 2011); AFF TV Ad WA "Fork in the Road" Rep. Rick Larsen, *available at* [http://www.youtube.com/watch?v=tmAcXwUIXEk&feature=mfu\\_in\\_order&list=UL](http://www.youtube.com/watch?v=tmAcXwUIXEk&feature=mfu_in_order&list=UL) (last visited January 31, 2011); AFF TV Ad CO "Pure Pelosi" Rep. Ed Perlmutter, *available at* <http://www.youtube.com/watch?v=kPhU4-BR1Aw&feature=autoplay&list=ULal2khkMVIgg&index=8&playnext=2> (last visited January 31, 2011).

According to the AFF's FEC reports, the organization broadcast these and other political advertisements in 2010.<sup>15</sup> Moreover, these reports indicate the AFF spent nearly \$10 million on political activities in 2010 – a sum greater than the organization's total expenditures for 2008 and 2009 combined. Specifically, the AFF spent more than \$7.3 million in the 2010 election on independent expenditures expressly advocating the election or defeat of candidates for federal office, and at least another \$2.2 million on electioneering communications – ads that mention a candidate by name close to an election.<sup>16</sup> In one race alone, AFF spent nearly \$1.1 million in electioneering communications and almost \$900,000 in independent expenditures targeted at Rep. Bruce Braley (D-IA).<sup>17</sup> News reports described the AFF as “one of the more active players in this fall's campaigns, spending millions of dollars on ads attacking Democrats across the country.”<sup>18</sup> While the organization's total spending figures for 2010 are not yet available, it reported to the IRS it spent \$1.9 million in 2009 and \$6.3 million in 2008, a total less than the amount it spent in 2010 in political activity reported to the FEC.<sup>19</sup> In addition, the *New York Times* reported on October 17, 2010 that at that time the AFF had devoted more than half of its television advertising spending in 2010 to express advocacy advertisements.<sup>20</sup>

The amount the AFF spent on clearly political advertisements and other political activity suggests that its primary purpose in 2010 was political campaigning.

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<sup>15</sup> See <http://query.nictusa.com/cgi-bin/fecimg/?C90011677> (FEC reports of independent expenditures); <http://images.nictusa.com/cgi-bin/fecimg/?C30001028> (FEC reports of electioneering communications); see also American Future Fund, Outside Spending: Independent Expenditures, Electioneering Communications, and Communications Costs by Candidate as of December 31, 2010, *OpenSecrets.org* (summarizing campaign spending) (attached as Exhibit G).

<sup>16</sup> Outside Spending, *OpenSecrets.org* (attached as Exhibit H).

<sup>17</sup> See <http://query.nictusa.com/cgi-bin/fecimg/?C90011677>; <http://images.nictusa.com/cgi-bin/fecimg/?C30001028>; see also American Future Fund, Outside Spending: Independent Expenditures, Electioneering Communications, and Communications Costs by Candidate as of December 31, 2010, *OpenSecrets.org*. Approximately \$442,000 of the independent expenditures were for the production and placement of an advertisement against both Rep. Braley and Rep. Dave Loebsack (D-IA) suggesting the voters should “send them home for good.” See *Home Sweet Home*, available at <http://www.youtube.com/user/AmericanFutureFund#p/search/0/Gc7yc9C3Tq4> (last visited January 31, 2011).

<sup>18</sup> Jim Rutenberg, Don Van Natta Jr., & Mike McIntire, Offering Donors Secrecy, and Going on Attack, *New York Times*, October 11, 2010 (attached as Exhibit I).

<sup>19</sup> See AFF 2009 Form 990, response to Part I, Line 18; AFF 2008 Form 990, response to Part I, Line 18.

<sup>20</sup> Michael Luo, Groups Push Legal Limits in Advertising, *New York Times*, October 17, 2010 (attached as Exhibit J).

### **The American Future Fund's Political Ties**

In addition to spending heavily on political advertisements largely attacking Democratic candidates for Congress, the AFF appears to have strong ties to the Republican party. These include:

- Nicole Schlinger, the AFF's sole board member when it was organized, is the former finance director for the Republican Party of Iowa.<sup>21</sup> Ms. Schlinger now serves as President of Capitol Resources, Inc.,<sup>22</sup> which does business as Campaign Headquarters. Campaign Headquarters bills itself as serving "Republican candidates and conservative organizations across the country."<sup>23</sup>
- Sandra Greiner, who was added to the AFF board in 2008 and is now its president,<sup>24</sup> was a Republican member of the Iowa House of Representatives from 1992-2008, and was elected to the state Senate as a Republican in 2010.<sup>25</sup> Ms. Greiner said she will continue to serve as president of the AFF while in office.<sup>26</sup>
- Bruce Rastetter, co-founder and chief executive of Hawkeye Energy Holdings, an ethanol company, reportedly provided the AFF with an undisclosed sum of "seed money."<sup>27</sup> Mr. Rastetter is a "long-time power broker in Iowa politics" who has donated more than \$540,000 to mostly Republican state candidates in Iowa,<sup>28</sup> and hundreds of thousands more to Republican federal candidates and party entities.<sup>29</sup>

These close ties to Republican operatives further suggest that the AFF's primary purpose is political activity.

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<sup>21</sup> See Our Management Team page, Campaign Headquarters website (attached as Exhibit K).

<sup>22</sup> *Id.*

<sup>23</sup> See History page, Campaign Headquarters website (attached as Exhibit L).

<sup>24</sup> See Letter from the American Future Fund to the IRS, August 18, 2008; About Us page, AFF website (attached as Exhibit M).

<sup>25</sup> See About Sandy page, Greiner state senate campaign website (attached as Exhibit N).

<sup>26</sup> Jason Hancock, Greiner Will Remain President of American Future Fund, *Iowa Independent*, January 11, 2011 (attached as Exhibit O).

<sup>27</sup> Rutenberg, Van Natta, Jr., & McIntire, *New York Times*, October 11, 2010.

<sup>28</sup> Jason Hancock, CCI critical of Rastetter's new role on Branstad inaugural team, *Iowa Independent*, December 2, 2010 (attached as Exhibit P).

<sup>29</sup> See Center for Responsive Politics, Donor lookup, Bruce Rastetter (attached as Exhibit Q).

### Conclusion

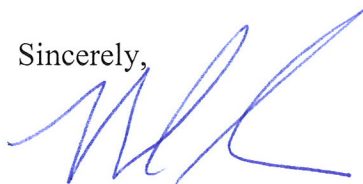
CREW urges the IRS to investigate the AFF to determine whether its activities are consistent with its tax exemption application and comport with its status as a section 501(c)(4) organization.

Should the IRS find that the AFF has violated its tax-exempt status, CREW urges the IRS to take appropriate and prompt action, which may include revoking section its 501(c)(4) status, imposing any applicable excise taxes under section 4958 for excess benefit transactions, and treating the AFF as a taxable corporation or as a section 527 organization.

Recently, CREW and others have filed complaints with the IRS against groups that have engaged in impermissible political activity in violation of their tax exempt status.<sup>30</sup> It is imperative that the IRS investigate likely tax law violators and institute enforcement actions prior to the 2012 election season. Only vigorous enforcement by the IRS will deter other exempt organizations from violating our nation's tax laws for political gain.

Thank you for your prompt attention to this matter.

Sincerely,



Melanie Sloan  
Executive Director  
Citizens for Responsibility and Ethics in Washington

Encls.

cc: IRS-EO Classification

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<sup>30</sup> See, e.g., Letter from CREW to the IRS, October 26, 2010 (requesting investigation of Pray in Jesus Name Project for violating its 501(c)(3) status); Letter from Campaign Legal Center and Democracy 21 to the IRS, October 5, 2010 (requesting investigation of Crossroads GPS for violating its 501(c)(4) status); Letter from Americans United for Separation of Church and State to the IRS, September 30, 2010 (requesting investigation of Cornerstone World Outreach for violating its 501(c)(3) status).