# The Center for Media and Democracy

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Dear U.S. Attorneys Vaudreuil and Santelle,

I am writing on behalf of the Center for Media and Democracy to ask that your offices investigate possible violations of federal law by the Wisconsin Club for Growth (WiCFG). WiCFG officials and associates reside in both the Western and Eastern Districts of Wisconsin, so I address this letter to you jointly.

We believe the evidence shows that WiCFG, a group organized under Section 501(c)(4) of the Internal Revenue Code with its mailing address in Sun Prairie, Wisconsin, violated 26 USC § 7206(1) [making false statements on tax return] and 18 USC § 371 [conspiracy to defraud the United States].

WiCFG spent an estimated $9.1 million on broadcast communications identifying candidates for elective office in Wisconsin, discussing their qualifications, and airing close to election day in Wisconsin's 2011 and 2012 recall elections. Additionally, in 2011 and 2012 WiCFG made at least $9,624,000 in grants to other groups, some of which were controlled by WiCFG's leaders, that spent those funds on political campaign ads. The facts and circumstances surrounding the communications -- such as evidence indicating they were coordinated with political candidates, and internal emails describing WiCFG's role in electoral intervention -- and the content of the ads themselves demonstrate that WiCFG engaged in a substantial amount of intervention or participation in a campaign under IRS rules.

Yet, WiCFG reported to the IRS in both 2011 and 2012 that it engaged in zero political activity. In its 2011 and 2012 filings with the IRS, WiCFG answered "no" to the question, "Did the organization engage in direct or indirect political campaign

activities on behalf of or in opposition to candidates for public office" (Form 990, Part IV, question 3).

As outlined in the attached complaint filed with the Internal Revenue Service, *internal emails show that WiCFG officials and leaders knew that the group's activities constituted political campaign intervention, and that donors gave to the group for the express purpose of funding such activities.*

**We believe the evidence shows that WiCFG and its officials knowingly and willfully made false statements on its tax returns when it claimed to have spent $0 on political campaign activities in 2011 and 2012, when it actually spent millions on such activities.**

WiCFG "was" political operatives R.J. Johnson and Deborah Jordahl, according to internal documents obtained by Wisconsin prosecutors in the course of an investigation into alleged state campaign finance violations during the state's 2011-2012 recall elections. "We own CFG," Johnson has stated.

At the same time that Johnson "own[ed]" WiCFG, he was also a paid senior advisor to Governor Scott Walker's campaign throughout the 2011 and 2012 recall elections. Johnson and his consulting firms received commissions for ad placement on behalf of the Walker campaign, WiCFG, and other groups that ran ads supporting Walker or Republican candidates.

In remarks prepared by R.J. Johnson and sent to Governor Walker for use in an August 18, 2011 conference call -- just after the 2011 Senate recall elections and in advance of the 2012 gubernatorial recall election -- Johnson said WiCFG's efforts were run by:

> ". . . operatives R.J. Johnson and Deb Jordahl, who coordinated spending through 12 different groups. Most spending by other groups was directly funded by grants from the club."

An email from Governor Walker to Republican operative Karl Rove explains that WiCFG was directly involved in Wisconsin elections, contradicting WiCFG's statements to the IRS that it spent $0 on political activity. In advance of the 2011 senate recall elections, Walker told Rove:

> "Bottom-line: R.J. helps keep in place a team that is wildly successful in Wisconsin. We are running 9 recall elections and it will be like running 9 Congressional markets in every market in the state (and Twin Cities)."

Walker and his staff referred to fundraising for WiCFG for the purposes of "raising money for Walker's possible recall efforts." When Walker raised funds for WiCFG, he was instructed to refer to WiCFG as "your" 501(c)(4), and to tell potential donors that, in contrast with direct contributions to his campaign or to state senators'

campaigns, "donations to WiCFG are not disclosed and [it] can accept corporate donations without limits."

Donors gave to WiCFG for the purpose of funding the group's political campaign activities. Prosecutors uncovered numerous examples of Walker meeting with potential donors, and within a short period, large checks from those same individuals or for-profit corporations appearing in WiCFG's account. The memo line of one $50,000 check to WiCFG reads "501c4-Walker."

In addition to knowingly and willfully misleading the IRS as to its expenditures on political campaign activities in 2011 and 2012, WiCFG engaged in such a degree of political intervention during those years that all facts and circumstances suggest it was primarily engaged in non-exempt political activities, and thus ineligible for 501(c)(4) tax-exempt status.

Section 501(c)(4) organizations are required to primarily engage in the promotion of social welfare; these organizations cannot engage in more than an insubstantial amount of non-exempt activity, such as direct or indirect political intervention.

In addition to directly spending at least $9.1 million influencing Wisconsin elections, WiCFG acted as a "hub"" for funneling at least $9,624,000 to other IRC 501(c)(4) groups that would use those funds to support the reelection of Republican state senators or Governor Walker. Evidence indicates that WiCFG knew that its grants would be used for the non-exempt function of political campaign intervention. This spending amounts to almost all of WiCFG's $20 million in total expenditures in 2011 and 2012, making clear that WiCFG's first and primary emphasis in 2011 and 2012 was to elect political candidates in Wisconsin.[1]

We believe that WiCFG was primarily engaged in political campaign activity during 2011 and 2012, and is therefore ineligible for 501(c)(4) tax-exempt status. WiCFG's tax status is more appropriately that of an IRC 527 organization. Such groups are required to notify the IRS within 24 hours of formation in order to qualify for 527 status. IRC § 527(i). If such an organization fails to make such a notification, it shall not be treated as a 527 organization for any period prior to giving such notice, and is subject to taxation as a taxable entity and must file annual tax returns.[2]

We believe that the evidence demonstrates that WiCFG knowingly and willfully made false statements on its tax returns when it claimed to have engaged in zero political activity in 2011 and 2012, in violation of 26 USC § 7206(1). Section 7206(1) of the Code provides that any person who, under penalty of perjury, signs a

[1] WiCFG had an estimated $12,606,477 in total expenditures in 2011, and $8,035,883 in 2012, according to its tax returns from those years.

[2] WiCFG formed a 527 arm in May of 2011, called the "Wisconsin Club for Growth Political Fund," yet nonetheless routed the vast majority of its political expenditures through its 501(c)(4) "social welfare" arm. IRC 527 organizations are required to publicly disclose the identities of their donors and report their expenditures; IRC 501(c)(4) organizations are not.

document that "he does not believe to be true and correct as to every material matter," is guilty of a felony, subject to a fine of up to $100,000 and up to three years imprisonment.[3] Section 7203 of the Code provides for a fine of up to $25,000 and imprisonment for up to one year for a willful failure to provide information required under the Internal Revenue Code.

We further believe the evidence shows that WiCFG conspired to defraud the United States, in violation of 18 USC § 371. Courts have held that a charge of conspiracy to defraud the United States can be based upon any agreement to obstruct or impede the Internal Revenue Service in the determination, assessment, or collection of tax.[4] It is not necessary for an IRS examination to have occurred, and the conspiracy need not have been successful. The government need only show that two or more people conspired to take any step -- such as WiCFG claiming to have engaged in zero political activity, or claiming tax exempt status as an IRC § 501(c)(4) "social welfare" nonprofit but operating as an IRC § 527 political committee -- which might mislead an IRS auditor examining the books.

There is precedent for such a prosecution. In 2012, the Department of Justice successfully prosecuted John Junker, the former executive director of the IRC 501(c)(3) Fiesta Bowl, on conspiracy charges for knowingly filing a false Form 990. Junker pled guilty to conspiracy to defraud the U.S. government for knowingly declaring, falsely, that his tax-exempt organization engaged in no political campaign activity.[5]

I thank you in advance for your attention to this matter.

Sincerely,

Brendan Fischer
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Center for Media and Democracy

[3] A misstatement is "material" if it has the potential [to] hinder[] the IRS's efforts to monitor and verify the tax liability" of a group or if it results in the underpayment of tax. *United States v. Presbitero*, 569 F.3d 691, 700-01 (7th Cit. 2009).
[4] See *United States v. Klein*, 247 F.2d 908, 915 (2d Cir. 1957); *cf. Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924).
[5] http://www.fbi.gov/phoenix/press-releases/2012/ex-fiesta-bowl-chief-pleads-guilty-to-federal-charge