

Congress of the United States
Washington, DC 20515

April 18, 2011

The Honorable Eric Thorson
Office of Inspector General
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Dear Inspector General Thorson:

We write concerning the tax-exempt status of the Humane Society of the United States (HSUS), tax identification number 53-0225390. Over the past two years, this organization has conducted substantial political activities within Missouri that brought into question its tax-exempt 501(c)(3) status. In a letter dated March 23, 2010, attached as **Exhibit A**, Congressman Luetkemeyer notified IRS Commissioner Shulman of the organization's potential violation of the tax exemption laws. On May 12, 2010, Congressman Luetkemeyer followed up with a letter to Ms. Lois Lerner, Director of Exempt Organizations, attached as **Exhibit B**, yet to our knowledge no remedial action was taken against HSUS.

We believe that HSUS's own public documents show beyond question that lobbying is a "substantial part" of its activities, and feel that IRS's failure to act is attributable to the politically sensitive nature of HSUS's activities. Due to this, we write to request investigations by the Inspector General into HSUS's apparent improper activities and its tax-exempt status.

Pertinent legal background

The 501(c)(3) definition of a qualifying tax-exempt organization states that it "must be organized and operated exclusively for exempt purposes set forth in Section 501(c)(3), and . . . it may not be an active organization, i.e., it may not attempt to influence legislation as a substantial part of its activities . . ." If an organization has not made a Section 501(h) election (and HSUS has not), the IRS applies what it calls the "Substantial Part Test" to determine whether or not an organization has run afoul of this provision. This test is described on IRS.gov as,

Whether an organization's attempts to influence legislation, i.e., *lobbying*, constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

IRS.gov also states that "*Legislation* includes action . . . by the public in referendum, ballot initiative, constitutional amendment, or similar procedure." It states, "An organization

will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.”

Financial lobbying activities

We certainly understand that 501(c)(3) organizations are allowed to participate in lobbying activities, so long as it does not constitute a substantial part of its overall activities. However, lobbying not only is a substantial part of HSUS’s overall activities; it often appears to be the main reason for HSUS’s existence.

HSUS continually seeks donations through advertisements that claim the money will be used to help neglected or abused animals. The commercials deliberately lead the public to believe direct aid to animals is the main activity of the organization, as does the misleading similarity between the name of HSUS and the hundreds of local hands-on animal sheltering humane societies across America, which are wholly unaffiliated with HSUS and receive zero funding from it. However, a line-by-line review of HSUS’s 2008 Form 990 by HumaneWatch.org showed that less than one-half of one percent of HSUS’s \$99.8 million budget goes towards hands-on sheltering activities, and in 2009 that number rose only to 0.8%.

In contrast, HSUS’s own Financial Operations Report for 2009, attached as **Exhibit C**, shows that it spent \$26,264,166 for “Advocacy and public policy,” which is over 28% of its total non-overhead expenditures. Several of the report’s other expenditure categories are vaguely named and may also include activities that would fall into the IRS’s lobbying definition, such as “Strategic communications” or “International animal programs,” so the percentage may be even higher. Indeed, by its own admission, HSUS spends more than twice as much on “Advocacy and public policy” than any other category of expenses. To any objective observer, lobbying activities appear to “constitute a substantial part of its overall activities.”

In Missouri, voters passed “Proposition B,” a ballot initiative increasing restrictions on dog breeding facilities, in the November 2010 election with 51% of the vote. The campaign was heavily financed by HSUS. Campaign disclosure forms filed December 2, 2010 show that HSUS donated over \$2.1 million of the \$4.8 million raised by proponents of the measure. See page 4 of **Exhibit D**, attached.

Advocacy lobbying activities

In addition to simply donating money to efforts attempting to influence legislation, employees of HSUS spend substantial time and effort advocating specific legislation, particularly by urging the public to contact members of legislative bodies for the purpose of proposing, supporting, or opposing legislation. Attached as Appendix C to this letter’s Exhibit A are numerous examples of such activities, including a document called “Lobbying 101” and a letter signed by HSUS President Wayne Pacelle suggesting a specific script to follow when members contact their elected representatives. Mr. Pacelle’s blog at the HSUS website advocates the passage of or opposition to specific legislation in a very large percentage of its posts. HSUS lists

its “Change Agenda for Animals” on its website, a 13-page document advocating 100 legislative and administrative advocacy issues that it is actively supporting. See **Exhibit E**, attached

The coalition spearheaded by HSUS collected and submitted more than 190,000 signatures to place Proposition B on Missouri’s November ballot. See **Exhibit F**, attached. In the four months since Proposition B’s passage, Missouri legislators have worked to correct some perceived deficiencies in its language. HSUS has continued to specifically advocate against any changes to Proposition B. Several examples of its actions are attached as **Exhibit G**, including a web form to send letters to state legislators, an action alert urging phone calls to legislators, and a story about billboards purchased throughout the state. Mr. Pacelle has urged direct action on Proposition B through his blog at the HSUS website numerous times. HSUS is also a major sponsor of missourifordogs.com, a highly-professional website devoted entirely to advocating the passage and protection of Proposition B.

Requests


The specific items listed above are only a small portion of the publicly-available information we have reviewed evidencing that lobbying constitutes a substantial part of HSUS’s overall activities. We therefore request the following:

1. Please confirm that HSUS’s tax-exempt status is reviewed under the “Substantial Part Test” and not the “Expenditures Test.”
2. Please confirm that we have properly stated IRS’s “Substantial Part Test” standards above, and please supplement or correct any incomplete or incorrect understandings we may have expressed.
3. Please review the information provided with this letter, supplemented with your own staff’s research or investigations, and reevaluate the tax-exempt status of HSUS under the applicable legal standard.
4. Please investigate IRS’s potential failure to conduct a proper investigation pursuant to Congressman Luetkemeyer’s March 23, 2010 letter.

Please provide us with an explanation of the results of your investigations at your earliest convenience.

No group should be allowed to maintain tax-exempt status solely due to its political leanings or power. If HSUS is not complying with the law, it should be investigated and disciplined just like any other organization, as taxpayers would be effectively subsidizing a political organization. Thank you in advance for taking the time to respond to our request on this important matter. Please direct any questions in regards to this request to Eric Bohl at Congresswoman Hartzler’s office at 225-2876.

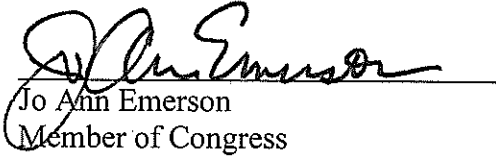
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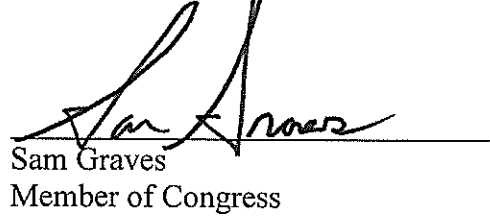
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