

CREW | citizens for responsibility and ethics in washington

September 7, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov) and First Class mail

Re: Complaint Against The Donald J. Trump Foundation, Inc. and Donald J. Trump

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Internal Revenue Service (“IRS”) investigate whether The Donald J. Trump Foundation, Inc. (“Trump Foundation”), a private foundation organized under sections 501(c)(3) and 509 of the Internal Revenue Code (“tax code”), violated its tax-exempt status by making a contribution to a political organization connected to Florida Attorney General Pam Bondi that inured to the private benefit of Donald J. Trump and his business interests, and violated the tax code and federal law by falsely representing on its tax return that it engaged in no political activity. CREW further requests the IRS investigate whether Mr. Trump violated the tax code and is personally liable for excise tax penalties by engaging in prohibited self-dealing with regard to the same political contribution.¹

Mr. Trump is the president of the Trump Foundation. He also owned or owns nearly all of Trump University LLC/Trump Entrepreneur Initiative LLC (“Trump University”), a company that ran real estate seminars promising to impart Mr. Trump’s business knowledge and secrets, and licensed a separate company to conduct real estate seminars under the name Trump Institute. In September 2013, Attorney General Bondi’s office had before it more than 20 complaints against Trump University, the Trump Institute, and related entities, and was considering whether Florida should join a New York lawsuit alleging that Trump University, Mr. Trump, and others engaged in fraudulent, illegal, and deceptive conduct.

Several weeks before a newspaper reported her office’s consideration of the New York lawsuit, Attorney General Bondi personally solicited a campaign contribution from Mr. Trump. Four days after the news report was published, the Trump Foundation made a \$25,000 contribution to a political committee established and run by Attorney General Bondi.

Details of subsequent decisions by Attorney General Bondi’s office regarding the complaints and the lawsuit are not known, but a month after her committee received the

¹ CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office. This complaint is related to the complaint CREW filed against the Trump Foundation on March 31, 2016. See <http://www.citizensforethics.org/legal-filing/crew-files-complaint-trump-foundation/>.

contribution, the Florida Office of the Attorney General (“FL-OAG”) effectively asserted it would not join the lawsuit or take similar legal action. FL-OAG also may have decided around this time not to investigate the complaints it received.

This timeline suggests Mr. Trump and the Trump Foundation used the foundation’s contribution in an effort to benefit Trump University and Mr. Trump by influencing Attorney General Bondi’s decisions, conduct that would constitute private inurement by the Trump Foundation in violation of section 501(c)(3) of the tax code, and self-dealing by Mr. Trump himself in violation of section 4941.

The likelihood that these actions violated the tax code is supported by the conduct of the Trump Foundation and Mr. Trump after CREW filed a complaint in March 2016 alleging that the contribution violated the tax code’s prohibition on private foundations engaging in political activity. Immediately after the complaint was filed, the Trump Foundation admitted the contribution was to a political organization, but claimed it was the result of a series of mistakes. Then, when Attorney General Bondi’s representatives tried to return the contribution, the Trump Foundation refused to take it back. Instead, Mr. Trump gave the foundation \$25,000 to compensate it for the contribution, and Mr. Trump or the Trump Foundation paid the IRS an excise tax penalty for its violation of the tax code.

This conduct suggests both that the foundation’s contribution was intended to provide a private benefit to Mr. Trump and his business interests, and that it was used to satisfy Mr. Trump’s personal obligation to Attorney General Bondi, a form of self-dealing prohibited by the tax code and IRS regulations.

The Trump Foundation’s actions also appear to confirm that it made false representations on its tax return, which CREW also asked the IRS to investigate in the March 2016 complaint. The foundation’s 2013 tax return asserted it did not engage in any political activity that year, and inaccurately reported that the money actually contributed to Attorney General Bondi’s political organization was given to a Kansas tax-exempt group with a similar name. The Trump Foundation has now admitted that the contribution was political and was given to Attorney General Bondi’s political committee, refused to take the money back, and either it or Mr. Trump paid an excise tax penalty – all of which demonstrate that it made false statements on its tax return – yet it has apparently failed to correct those misrepresentations.

Factual Background

The Donald J. Trump Foundation, Inc., Trump University/Trump Institute, and Donald J. Trump

The Trump Foundation is a private foundation established in 1987.² Donald J. Trump is the foundation's president and has contributed approximately \$2.8 million to it during the last 15 years.³

Mr. Trump also established Trump University LLC ("Trump University") with two others in 2004,⁴ and Mr. Trump owned 93 percent of the company.⁵ In 2010, after New York State repeatedly told Trump University to stop calling itself a "university" because it was not licensed, the company changed its name to Trump Entrepreneur Initiative LLC.⁶

Between 2005 and 2011, Trump University ran real estate seminars that promised to impart Mr. Trump's business knowledge and secrets.⁷ Three-day seminars cost \$1,495, and employees were encouraged to use those sessions to sell participants more expensive packages that cost up to \$34,995 per year.⁸ In promotional advertisements, Mr. Trump claimed he was overseeing the curriculum and that the faculty was "the best of the best" and would be "hand-picked by me."⁹ Former employees have since described Trump University as a "scam" and a "fraudulent scheme."¹⁰

In addition, Mr. Trump licensed a separate company to run real estate seminars under the name Trump Institute, receiving a share of the profits.¹¹ Materials from those seminars used the

² New York State Department of State, Division of Corporations, Entity Information for The Donald J. Trump Foundation, Inc. (attached as Exhibit A).

³ The Donald J. Trump Foundation, 2013 Form 990-PF, Part VIII, Line 1 (attached as Exhibit B); David A. Fahrenthold, Trump Promised Millions to Charity. We Found Less Than \$10,000 Over 7 Years, *Washington Post*, June 28, 2016 (attached as Exhibit C). *See also, e.g.*, The Donald J. Trump Foundation, 2005 Form 990-PF, Schedule B (reporting \$622,000 contribution from Mr. Trump) (excerpts attached as Exhibit D).

⁴ *People v. Trump Entrepreneur Initiative LLC d/b/a Trump University LLC, et al.*, Index No. 451463, Verified Petition, ¶ 15, Aug. 24, 2013 (N.Y. Sup. Ct. N.Y. County) ("New York Complaint") (available at <http://online.wsj.com/public/resources/documents/trump.pdf>); *see also* New York State Department of State, Division of Corporations, Entity Information, Trump University LLC (attached as Exhibit E).

⁵ Michael Barbaro and Steve Eder, Former Trump University Workers Call the School a 'Lie' and a 'Scheme' in Testimony, *New York Times*, May 31, 2016 (attached as Exhibit F).

⁶ New York Complaint, ¶¶ 7, 16-25.

⁷ *Id.* ¶ 1; Julie Pace, Jill Colvin, and Jonathan Lemire, Trump University: Sales Strategy Foreshadowed Campaign, *Associated Press*, June 1, 2016 (attached as Exhibit G).

⁸ *Id.*; Tom Hamburger, Rosalind S. Helderman, and Dalton Bennett, Donald Trump Said 'University' Was All About Education. Actually, It's Goal Was: 'Sell, Sell, Sell!', *Washington Post*, June 4, 2016 (attached as Exhibit H).

⁹ Tom Hamburger and Rosalind S. Helderman, Trump Involved in Crafting Controversial Trump University Ads. Executive Testified, *Washington Post*, May 31, 2016 (attached as Exhibit I).

¹⁰ *Id.*; Barbaro and Eder, *New York Times*, May 31, 2016.

¹¹ Jeff Horwitz, Gary Fineout, and Michael Biesecker, Florida AG Asked Trump for Donation Before Nixing Case, *Associated Press*, June 6, 2016 (attached as Exhibit J); Jonathan Martin, Trump Institute Offered Get-Rich Quick Schemes With Plagiarized Lessons, *New York Times*, June 29, 2016 (attached as Exhibit K).

Trump University name and Mr. Trump appeared in an infomercial promoting them.¹² As with the Trump University seminars, the Trump Institute promised the faculty was handpicked by Mr. Trump, and its seminars cost up to \$2,000.¹³ Trump University considered Trump Institute a “historical partner” and provided discounts to students who had been through a Trump Institute seminar.¹⁴

Trump University/Trump Institute Complaints and the New York Lawsuit

Between February 2008 and May 2011, the Florida Office of the Attorney General received at least 22 complaints regarding Trump University, the Trump Institute, and related entities.¹⁵ Many of the complainants asserted they were deeply dissatisfied with the programs, for which they had paid thousands of dollars and then were unable to get refunds.¹⁶ For example, one complaint filed in May 2011 by “a student of Trump University” said the complainant had lost more than \$26,000 and had declared bankruptcy because of it.¹⁷ That complaint noted the New York Attorney General was investigating Mr. Trump and asked whether Florida would join to represent its residents if there was a lawsuit.¹⁸

On August 25, 2013, New York Attorney General Eric Schneiderman filed a civil lawsuit against Trump University and related entities, Trump University’s former president, and Mr. Trump.¹⁹ The lawsuit alleged that the defendants “engaged in persistent fraudulent, illegal and deceptive conduct in connection with the operation of Trump University,” misleading “consumers into paying for a series of expensive courses that did not deliver on their promises.”²⁰ The lawsuit sought full restitution for the more than 5,000 consumers nationwide who had been defrauded out of more than \$40 million.²¹

¹² *Id.*

¹³ *Id.*

¹⁴ Trump University, 2010 Playbook, at 3, 70, available at <http://static.politico.com/25/88/783a0dca43a0a898f3973da0086f/trump-university-playbook.pdf>.

¹⁵ In response to a CREW Public Records Act request, FL-OAG produced records regarding Trump University, the Trump Institute, the New York lawsuit, and related issues. The request and related records are available at <https://www.scribd.com/collections/16969968/CREW-Trump-University-Florida>, and the document containing FL-OAG records cited in this complaint is available at <https://www.scribd.com/document/317528146/PRR-CREW-CommPublic-Records-Act-Request-Trump-University-Trump-Foundation-Response-2>. That document is cited herein as “FL-OAG PRA Response.”

¹⁶ See, e.g., Complaint from Tom A. Harb, FL-OAG PRA Response at 150-60; Complaint from David Rolla, FL-OAG PRA Response at 121-22; Complaint from Susan Steinbrenner, FL-OAG PRA Response at 123-24.

¹⁷ Complaint from Charles Jacobson, FL-OAG PRA Response at 112-13, 1255.

¹⁸ *Id.*

¹⁹ Press Release, New York State Office of the Attorney General, *A.G. Schneiderman Sues Donald Trump, Trump University & Michael Sexton For Defrauding Customers Out Of \$40 Million With Sham “University”*, Aug. 25, 2013 (attached as Exhibit L).

²⁰ *Id.*

²¹ *Id.*

The Trump Foundation's Contribution to Attorney General Bondi's Political Organization

And Justice for All, a political organization associated with Attorney General Bondi, was established on August 7, 2013 under section 527 of the tax code.²² In a "Statement of Solicitation" filed with the Florida Division of Elections, Attorney General Bondi declared that she "established" and "maintain[ed]" the group.²³

At around the same time that New York Attorney General Schneiderman filed the lawsuit, Attorney General Bondi personally solicited a campaign contribution from Mr. Trump.²⁴ The exact date of the solicitation has not been made public, but a spokesman for Attorney General Bondi said she spoke to Mr. Trump "several weeks" before the contribution was received in mid-September 2013.²⁵

On September 13, 2013, the *Orlando Sentinel* published a story based on comments from FL-OAG reporting that "now Florida Attorney General Pam Bondi's office is reviewing the New York lawsuit's allegations, to determine whether Florida should join the multi-state case."²⁶ Four days later, on September 17, the Trump Foundation made a \$25,000 contribution to And Justice for All, according to Florida campaign finance disclosures filed by the group.²⁷

The contribution was quickly linked to Attorney General Bondi's review of the complaints and the New York lawsuit. The *Tampa Bay Times* published a news report on October 17, 2013 raising questions about whether they were connected, and Mr. Trump personally provided a statement for it.²⁸ While Mr. Trump did not comment on why he was contributing to a Florida attorney general race, he praised Attorney General Bondi "as a fabulous representative of the people" and attacked the New York lawsuit and New York Attorney General Schneiderman, saying "[t]he case in New York is pure politics brought by an incompetent attorney general, a political hack."²⁹

²² And Justice for All, Form 8871, Political Organization Notice of Section 527 Status, Aug. 7, 2013 (attached as Exhibit M).

²³ Pam Bondi, Statement of Solicitation for And Justice for All, Aug. 5, 2013 (attached as Exhibit N); Fla. Stat. § 106.0701(1).

²⁴ Horwitz, Fineout, and Biesecker, *Associated Press*, June 6, 2016.

²⁵ *Id.*; Tom LoBianco, Drew Griffin, and Scott Zamost, Florida AG Sought Donation Before Nixing Trump University Fraud Case, *CNN*, June 10, 2016 (attached as Exhibit O).

²⁶ Richard Burnett, N.Y.'s Trump U Suit Draws Florida Officials' Attention, *Orlando Sentinel*, Sept. 13, 2013 (attached as Exhibit P). See also FL-OAG PRA Response at 316-17, 661.

²⁷ And Justice for All contribution search, Florida Department of State, Division of Elections (attached as Exhibit Q).

²⁸ Michael Van Sickler, Trump Contribution to Pam Bondi's Re-election Draws More Scrutiny to Her Fundraising, *Tampa Bay Times*, Oct. 17, 2013 (attached as Exhibit R).

²⁹ *Id.*

Decisions by Attorney General Bondi's Office Regarding the Complaints and the Lawsuit

Even though FL-OAG asserted in mid-September that it was reviewing the allegations in the New York complaint, a month later it effectively asserted it would not join the lawsuit or take similar legal action. The October 17 *Tampa Bay Times* story noted that “Florida hasn’t followed New York’s lead against Trump” and reported that Attorney General Bondi’s spokeswoman “suggested no action is necessary because the affected Florida consumers would be compensated if New York wins the case.”³⁰ As for the complaints, on October 15 FL-OAG told the *Orlando Sentinel* “there is no investigation at this time.”³¹

Over the next several years, however, FL-OAG insisted it had never said it was reviewing the allegations in the New York lawsuit to decide whether or not to join it, claiming instead that it determined the complaints against Trump University would be resolved by that lawsuit.³² FL-OAG also asserted that a staff member, not Attorney General Bondi, had made decisions about the complaints.³³

In recent months, FL-OAG, Attorney General Bondi, and her representatives have repeated these assertions and further claimed Attorney General Bondi was not aware of any complaints when she solicited the contribution from Mr. Trump and received it from the Trump Foundation. A spokesman for Attorney General Bondi, for example, told the *Associated Press* in early June 2016 she was unaware of any of the complaints FL-OAG received when she requested the donation,³⁴ and FL-OAG told *CNN* there was never an investigation and that staff had reviewed the complaints and New York lawsuit.³⁵

In the end, Attorney General Bondi and FL-OAG have asserted that FL-OAG did not investigate any of the Trump University/Trump Institute complaints, did not join New York Attorney General Schneiderman’s lawsuit, and did not take any other legal action related to the complaints or lawsuit. It remains unclear, however, when those decisions were made, who made them, and why they were made.

The Trump Foundation and Mr. Trump's Actions After the Illegal Contribution Was Publicized

On March 21, 2016, CREW filed a complaint with the IRS alleging that the Trump Foundation’s political contribution to And Justice for All violated the tax code’s prohibition on private foundations engaging in political activity and that the foundation violated the tax code

³⁰ *Id.*

³¹ FL-OAG PRA Response at 751.

³² FL-OAG PRA Response at 643, 1432, 1518, 1529.

³³ FL-OAG PRA Response at 1532.

³⁴ Horwitz, Fineout, and Biesecker, *Associated Press*, June 6, 2016.

³⁵ LoBianco, Griffin, and Zamost, *CNN*, June 10, 2016; *see also* Steve Bousquet, [Pam Bondi Breaks Her Silence Over Donald Trump's \\$25,000 Campaign Contribution](#), *Tampa Bay Times*, June 7, 2016 (attached as Exhibit S).

and federal law by filing a tax return that failed to disclose that the foundation made the contribution and engaged in political activity.³⁶

Questioned about the complaint, the Trump Foundation quickly admitted it made the contribution to a political organization, a violation of the tax code, but claimed the contribution was the result of a series of mistakes.³⁷ According to the foundation, when an accounts payable clerk for “the Trump Organization” received a request for payment to And Justice for All, he followed the organization’s standard procedure to determine whether the check would come from the Trump Foundation or Mr. Trump’s personal funds by consulting a “reference book” to ascertain if the recipient was a charity.³⁸ The book listed a group called And Justice for All, so the clerk cut a check to it from the Trump Foundation.³⁹ The listed group, however, is a charity in Utah, not the political organization in Florida.⁴⁰ Strangely, the money was not sent to that group, but instead was sent to the political organization associated with Attorney General Bondi – a step the foundation’s treasurer could not explain.⁴¹

The Trump Foundation also admitted it made another mistake in failing to report the contribution on its 2013 tax return. That tax return oddly did not name either the Florida political organization or the Utah charity as the recipient of the money.⁴² Instead, it listed a Kansas charity called Justice for All that is not related to the Florida And Justice for All.⁴³ The foundation’s treasurer attributed this misrepresentation to a “typographical mistake.”⁴⁴

Soon after CREW filed its complaint in March, the treasurer of Attorney General Bondi’s political committee attempted to return the money to the Trump Foundation.⁴⁵ The committee’s treasurer said that when she became aware the Trump Foundation was a charity, the committee sent a check to the foundation refunding the contribution.⁴⁶ The Trump Foundation, however, “rejected it and sent it back,”⁴⁷ she said, saying they “had declined to accept the refund.”⁴⁸

³⁶ See <http://www.citizensforethics.org/legal-filing/crew-files-complaint-trump-foundation/>.

³⁷ David A. Fahrenthold and Rosalind S. Helderman, Trump Camp Says \$25,000 Charity Contribution to Florida AG Was a Mistake, *Washington Post*, Mar. 22, 2016 (attached as Exhibit T); David A. Fahrenthold, Trump Pays IRS a Penalty for His Foundation Violating Rules With Gift to Aid Florida Attorney General, *Washington Post*, Sept. 1, 2016 (attached as Exhibit U).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Fahrenthold and Helderman, *Washington Post*, Mar. 22, 2016.

⁴² *Id.*; Fahrenthold, *Washington Post*, Sept. 1, 2016.

⁴³ The Donald J. Trump Foundation, 2013 Form 990-PF, Part XV, Line 3.

⁴⁴ Fahrenthold and Helderman, *Washington Post*, Mar. 22, 2016.

⁴⁵ Gary Fineout, Florida Attorney General Bondi Tried to Return Trump Cash, *Associated Press*, June 7, 2016 (attached as Exhibit V); Fahrenthold, *Washington Post*, Sept. 1, 2016.

⁴⁶ Fineout, *Associated Press*, June 7, 2016.

⁴⁷ *Id.*

⁴⁸ Fahrenthold, *Washington Post*, Sept. 1, 2016.

Instead, Mr. Trump personally reimbursed the Trump Foundation for the \$25,000 contribution, writing a personal check covering the money.⁴⁹

Further confirming that its contribution was political and violated the tax code, the Trump Foundation or Mr. Trump himself paid a \$2,500 excise tax penalty to the IRS following CREW's complaint and news reports about the contribution.⁵⁰ Although the Trump Foundation has not released the paperwork it said it filed with the IRS,⁵¹ the penalty appears to be the 10 percent excise tax levied under section 4955 on all political expenditures by section 501(c)(3) charities.

The Trump Foundation's Representations to the IRS

As noted above, the Trump Foundation's 2013 tax return, filed in October 2014, did not disclose the contribution to And Justice for All. The foundation also represented that it did not engage in any political activity or transfer any money to a section 527 political organization, and incorrectly reported that it made the \$25,000 contribution to Justice for All, the Kansas charity that is not related to the Florida And Justice for All.⁵² The Trump Foundation has since admitted it made a contribution to the And Justice for All associated with Attorney General Bondi and that the contribution was political and made to a section 527 organization. The foundation or Mr. Trump also paid an excise tax penalty for its conduct. However, the Trump Foundation apparently has not amended its tax return to correct its false statements. More than four months after the foundation admitted it made a contribution to a political organization that demonstrated its tax return was false, CREW requested the Trump Foundation's 2013 Form 990-PF tax return from the IRS.⁵³ The tax return the IRS provided to CREW on August 26, however, is the same one the foundation filed in October 2014.⁵⁴ The Trump Foundation also has not provided any indication that it intends to correct its tax return.

Potential Violations

26 U.S.C. § 501(c)(3) – Private Inurement

Under section 501(c)(3), none of the assets or income of a charitable organization, including a private foundation, may "inure[] to the benefit of any private shareholder or individual."⁵⁵ A covered private shareholder or individual is broadly defined as a person "having a personal or private interest in the activities of the organization,"⁵⁶ meaning an "insider" of the

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² The Donald J. Trump Foundation, 2013 Form 990-PF, Part VII-A, Lines 1a and 1b, Part VII-B, Line 5a, Part XV, Line 3, Part XVII, Line 1.

⁵³ CREW, Form 4506-A Request for Public Inspection or Copy of Exempt or Political Organization IRS Form for The Donald J. Trump Foundation, filed Aug. 2, 2016 (attached as Exhibit W).

⁵⁴ The Donald J. Trump Foundation, 2013 Form 990-PF, copy provided to CREW on Aug. 26, 2016 (cover letter and excerpts attached as Exhibit X).

⁵⁵ 26 U.S.C. § 501(c)(3).

⁵⁶ Treas. Reg. § 1.501(c)(3)-1(c)(2).

organization.⁵⁷ Insiders include the organization's founder and members of its board, as well as businesses owned or managed by an insider.⁵⁸ This prohibition "serves to prevent anyone in a position to do so from siphoning off any of a charity's income or assets for personal use."⁵⁹ The prohibition also is absolute: an organization can lose its tax-exempt status even if only a small percentage of its income inures to a private individual.⁶⁰ Whether an impermissible benefit has been conferred on an insider is primarily a factual question.⁶¹

As the founder and president of the Trump Foundation, Mr. Trump unquestionably is and was an insider, and the foundation thus could not confer a benefit on him or businesses he owned at the time, including Trump University.⁶² The Trump Foundation's contribution to the political organization associated with Attorney General Bondi, however, appears to have been an effort to provide a benefit to Trump University and Mr. Trump by influencing Attorney General Bondi's decisions regarding the complaints and the lawsuit.⁶³ At nearly the same time that Attorney General Bondi solicited a campaign contribution from Mr. Trump, her office had before it the complaints against Trump University and related entities, and was considering whether Florida should join the New York lawsuit against Trump University, Mr. Trump and others or take similar legal action. Within days of the newspaper report that Attorney General Bondi's office was reviewing the lawsuit's allegations and considering whether to join it, the Trump Foundation made the \$25,000 contribution to And Justice for All. The Trump Foundation may have succeeded in its effort to confer a benefit on Trump University and Mr. Trump. Although details of FL-OAG's subsequent decisions are not clear, it effectively asserted a month later it would not join the lawsuit or take similar legal action, and did not investigate the complaints it received.

In addition, after the contribution was questioned by CREW's March 2016 complaint, the Trump Foundation refused to take it back, and instead Mr. Trump personally gave the foundation \$25,000 to compensate it for the contribution. The result of these actions was to make it so that Mr. Trump paid for the contribution through the foundation, further indicating that its purpose was to benefit Mr. Trump and his business interests.

⁵⁷ *United Cancer Council, Inc. v. Commissioner*, 165 F.3d 1173, 1176 (7th Cir. 1999); *Family Trust of Mass., Inc. v. United States*, 892 F. Supp. 2d 149, 156 (D.D.C. 2012).

⁵⁸ *United Cancer Council, Inc.*, 165 F.3d at 1176; *Church by Mail, Inc. v. Commissioner*, 765 F.2d 1387, 1388, 1392-93 (9th Cir. 1985) (inurement benefitting companies owned by insiders who managed the charity); *est of Hawaii v. Commissioner*, 71 T.C. 1067, 1080-82 (1979) (inurement benefitting entity closely associated with tax-exempt organization through a licensing agreement).

⁵⁹ G.C.M. 39862 (Dec. 2, 1991).

⁶⁰ *Orange County Agricultural Soc'y v. Commissioner*, 893 F.2d 529, 534 (2d Cir. 1990); *Church of Scientology v. Commissioner*, 823 F.2d 1310, 1316 (9th Cir. 1987).

⁶¹ *Capital Gymnastics Booster Club, Inc. v. Commissioner*, 106 T.C.M. (CCH) 154 (2013) (applying a "facts and circumstances" test); *Church by Mail, Inc. v. Commissioner*, 48 T.C.M. (CCCH) 471 (1984).

⁶² Trump University's close relationship with Trump Institute through a licensing agreement also indicates Trump Institute could not receive a benefit from Trump Foundation.

⁶³ See Philip Hackney, *Should the IRS Penalize Trump Foundation Political Contribution, Surly Subgroup*, June 8, 2016 (attached as Exhibit Y and available at <https://surllysubgroup.com/2016/06/08/trump-foundation-political-contribution/>).

These facts suggest Mr. Trump and the Trump Foundation used the foundation's contribution in an effort to benefit Trump University and Mr. Trump. As a result, the Trump Foundation may have engaged in private inurement in violation of section 501(c)(3).

26 U.S.C. § 4941 – Self-dealing

Section 4941 prohibits any “act of self-dealing between a disqualified person and a private foundation.”⁶⁴ A “disqualified person” includes any person who is “a foundation manager” such as an officer or director,⁶⁵ and “a substantial contributor to the foundation,” meaning anyone who contributed more than \$5,000 to it.⁶⁶ “Self-dealing” is defined to include “any direct or indirect . . . use by or for the benefit of, a disqualified person of the income or assets of a private foundation.”⁶⁷ One form of self-dealing is when “a private foundation makes a grant or other payment which satisfies the legal obligation of a disqualified person.”⁶⁸ The excise tax penalties for self-dealing must be paid by the self-dealer as an individual, not the foundation.⁶⁹ Separate taxes for self-dealing also can be levied on a foundation manager who participates in an act of self-dealing “knowing that it is such an act,” unless the act was not willful and was due to reasonable cause.⁷⁰ For the self-dealer himself or herself, however, there is no requirement that he or she knew the act constituted self-dealing to be liable for an excise tax penalty.⁷¹

As president of the Trump Foundation and a substantial contributor to it, Mr. Trump clearly is a disqualified person for the foundation. Mr. Trump may have engaged in self-dealing in two separate but related ways. First, Mr. Trump may have engaged in an act of self-dealing if the Trump Foundation's contribution to And Justice for All was used “for the benefit of” Mr. Trump in an effort to influence Attorney General Bondi with regard to her decisions on whether to join the New York lawsuit and whether to investigate the complaints.⁷² Second, the payment may have been an act of self-dealing if it satisfied Mr. Trump's obligation to make a contribution to Attorney General Bondi or a political organization associated with her. Attorney General Bondi personally solicited a contribution from Mr. Trump, which the Trump Foundation paid. Moreover, the Trump Foundation refused to take the contribution back and Mr. Trump personally reimbursed the foundation for the \$25,000, strongly suggesting the obligation to make the contribution was Mr. Trump's.

Accordingly, the Mr. Trump may have engaged in an act of self-dealing in violation of section 4941.

⁶⁴ 26 U.S.C. § 4941(a)(1).

⁶⁵ 26 U.S.C. §§ 4946(a)(1)(B), (b).

⁶⁶ 26 U.S.C. § 4941(d)(1)(A); 26 U.S.C. § 507(d)(2)(A).

⁶⁷ 26 U.S.C. § 4941(d)(1)(E).

⁶⁸ Treas. Reg. § 53.4941(d)-2(f)(1).

⁶⁹ 26 U.S.C. § 4941(a)(1).

⁷⁰ 26 U.S.C. § 4941(a)(2).

⁷¹ I.R.M. 7.27.15.3.1.

⁷² See generally Hackney, *Surly Subgroup*, June 8, 2016.

26 U.S.C. § 6652

Under the tax code, a tax-exempt organization that, without reasonable cause, fails to include any of the information required on a Form 990 tax return or fails to provide the correct information is liable for civil penalties.⁷³ As CREW explained in its March 2016 complaint, by incorrectly representing on its 2013 Form 990-PF tax return that it did not transfer any money to a section 527 organization and did not participate or intervene in any political campaign, and by failing to report that it made a contribution to And Justice for All and falsely reporting a contribution to a different but similarly-named organization, the Trump Foundation appears to have violated 26 U.S.C. § 6652. The Trump Foundation has now admitted that the contribution was political and was given to Attorney General Bondi's political committee, and either it or Mr. Trump has paid an excise tax penalty for making a political expenditure, yet there is no indication it has corrected any of the misrepresentations. These actions seemingly confirm that that the Trump Foundation made false representations on its tax return.

26 U.S.C. § 7206

Under the tax code, any person who “[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter,” is guilty of a felony and subject to up to three years in prison and a fine of up to \$100,000.⁷⁴ Information about spending on political campaign activities reported by a tax-exempt organization to the IRS on its tax return is material for several reasons, including: (1) the information can be used by the IRS to determine whether the organization is complying with its tax-exempt status; (2) the amount an organization expended on political activities and section 527 exempt activities in part determines the organization's excise, exempt function, and other taxes;⁷⁵ and (3) accurate public disclosure of political activity conducted by tax-exempt organizations is critical to the objective of transparency that underlies the reporting required on Form 990.⁷⁶

The Trump Foundation's 2013 Form 990-PF tax return was signed under a written declaration that it was made under penalty of perjury.⁷⁷ The tax return, however, appears to be false and incorrect as to the material matters of the foundation's transfer of money to a section 527 organization, its participation or intervention in a political campaign, and its failure to report that it made a contribution to And Justice for All. The Trump Foundation has now admitted that the contribution was political and was given to Attorney General Bondi's political committee, rather than a similarly named Kansas group as falsely reported on the tax return, and either it or Mr. Trump has paid an excise tax penalty for making a political expenditure, yet there is no indication it has corrected any of the misrepresentations, apparently confirming that the Trump

⁷³ 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); *see also* 2015 Instructions for Form 990-PF, at 8.

⁷⁴ 26 U.S.C. § 7206(1).

⁷⁵ 26 U.S.C. §§ 527(f)(1), 4945, 4955.

⁷⁶ IRS, Background Paper, Summary of Form 990 Redesign Process, August 19, 2008, at 1.

⁷⁷ The Donald J. Trump Foundation, 2013 Form 990-PF, Page 13.

Foundation made false representations on its tax return. As a result, the Trump Foundation may have violated 26 U.S.C. § 7206.

18 U.S.C. § 1001

Federal law further prohibits anyone from “knowingly and willfully” making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the jurisdiction of the executive, legislative, or judicial branch.⁷⁸ Violations are punishable by up to five years in prison.⁷⁹ By falsely stating that it did not transfer money to a section 527 organization and did not participate or intervene in a political campaign, and by failing to report its contribution to And Justice for All while falsely reporting a contribution to a different but similarly-named organization, the Trump Foundation may have violated 18 U.S.C. § 1001. Again, the Trump Foundation has now admitted that the contribution was political and was given to Attorney General Bondi’s political committee, either it or Mr. Trump paid an excise tax penalty for making a political expenditure, yet there is no indication it has corrected any of the misrepresentations, apparently confirming that the Trump Foundation made false statements on its tax return.

Conclusion

The tax code provides significant benefits to private foundations and public charities. Donations to these groups are tax deductible, and their operations are largely tax exempt. The tax code, however, also limits the activities of private foundations and public charities. Critically, these organizations may not engage in private inurement by conferring any benefit to an insider, and their officers and substantial funders may not use them to engage in acts of self-dealing. The facts described in this complaint suggest the Trump Foundation and Mr. Trump may have violated these prohibitions when the foundation made a contribution to a political committee associated with Florida Attorney General Bondi in an effort to influence her decisions on whether to investigate complaints against Trump University, Trump Institute, and related entities, and whether to join a lawsuit alleging Trump University, Mr. Trump, and others engaged in fraud or take similar legal action.

Private foundations also must file accurate informational tax returns, a requirement the Trump Foundation appears to have violated by falsely representing that it did not engage in political activity, failing to report its contribution to And Justice for All, and falsely reporting a contribution to a different but similarly-named organization.

Accordingly, the IRS should investigate the Trump Foundation and, should it find that the foundation violated its tax-exempt status or other provisions of the tax code and federal law, take appropriate action, which may include revoking its section 501(c)(3) status, imposing applicable taxes, and referring the matter to the Department of Justice.

⁷⁸ 18 U.S.C. § 1001(a)(2).

⁷⁹ *Id.*

Hon. John Koskinen
September 7, 2016
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Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

Encls.