

March 21, 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.

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests 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 status as a tax-exempt private foundation by making a contribution to a political organization associated with Florida Attorney General Pam Bondi.¹ CREW further requests the IRS investigate whether the Trump Foundation violated federal law by filing a tax return that failed to disclose that the foundation made the contribution and engaged in political activity.

According to Florida campaign finance records, in September 2013 the Trump Foundation made a \$25,000 contribution to And Justice for All, a political organization registered with the IRS under section 527 of the tax code. Private foundations, however, are prohibited from engaging in any political activity, including making contributions to political organizations. In addition, the Trump Foundation represented to the IRS it did not transfer any money to a section 527 organization or engage in any political activity in 2013, and it failed to report the contribution to And Justice for All. The IRS should investigate whether the contribution violated the tax code and whether the Trump Foundation’s representations violated federal law.

The Donald J. Trump Foundation, Inc.’s Contribution to And Justice for All

The Trump Foundation is a private foundation established in 1987, and Donald J. Trump is its president.² The Trump Foundation represented on its 2013 Form 990-PF tax return that it did not transfer any money or other assets to a section 527 political organization and did not participate or intervene in any political campaigns.³

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

² The Donald J. Trump Foundation, 2013 Form 990-PF, Part VIII, Line 1 (attached as Exhibit A); New York State Department of State, Division of Corporations, Entity Information for The Donald J. Trump Foundation, Inc. (attached as Exhibit B).

³ *Id.*, Part VII-A, Lines 1a, 1d, and 1e; Part XVII, Line 1a.

And Justice for All was a political organization established under section 527 of the tax code.⁴ A “political organization” is broadly defined in section 527 to include any “party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.”⁵ An “exempt function” includes “influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office.”⁶ And Justice for All notified the IRS of its status as a political organization on August 7, 2013, declaring that its purpose was “[t]o accept contributions and make expenditures for exempt activity as described in Section 527 of the Internal Revenue Code”⁷

At the same time And Justice for All registered with the IRS, it filed a “Statement of Organization” with the Florida Division of Elections as an electioneering communications organization (“ECO”).⁸ Along with And Justice for All’s statement of organization, Attorney General Bondi filed a “Statement of Solicitation” required in Florida when a cabinet member solicits or accepts contributions for a section 527 organization that the official established, maintains, or controls.⁹ In the statement of solicitation, Attorney General Bondi declared that she “established” and “maintain[s]” And Justice for All.¹⁰

According to Florida campaign finance disclosures filed by And Justice for All, “The Donald J. Trump Foundation, Inc.” made a \$25,000 contribution to And Justice for All on September 17, 2013.¹¹ In a news report, And Justice for All’s treasurer acknowledged receiving the contribution.¹²

The Trump Foundation’s 2013 tax return did not disclose the contribution. As noted above, the foundation represented that it did not transfer any money to a section 527 political organization or engage in any political activity. With regard to the specific contribution, the Trump Foundation did not disclose it in listing its grants and contributions for 2013. The

⁴ And Justice for All, Form 8871, Political Organization Notice of Section 527 Status, Aug. 7, 2013 (attached as Exhibit C).

⁵ 26 U.S.C. § 527(e)(1).

⁶ 26 U.S.C. § 527(e)(2).

⁷ And Justice for All, Form 8871, Political Organization Notice of Section 527 Status, Part III, Line 12.

⁸ And Justice for All, Electioneering Communication Statement of Organization, Aug. 5, 2013 (attached as Exhibit D). Florida law defines an ECO as a group whose “election-related activities are limited to making expenditures for electioneering communications or accepting contributions” for them. Fla. Stat. § 106.011(9). Electioneering communications are communications that: (1) refer to a political candidate without expressly advocating for the candidate’s election or defeat but are susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate; (2) are made close to an election; and (3) are targeted to the electorate in the geographic area the candidate would represent if elected. Fla. Stat. § 106.011(8)(a).

⁹ Pam Bondi, Statement of Solicitation for And Justice for All, Aug. 5, 2013 (attached as Exhibit E); Fla. Stat. § 106.0701(1).

¹⁰ *Id.*

¹¹ And Justice for All contribution search, Florida Department of State, Division of Elections (attached as Exhibit F).

¹² 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 G).

foundation did disclose a \$25,000 contribution to a group called Justice for All, but based on the address the Trump Foundation provided on its tax return, this is a Kansas-based section 501(c)(3) organization.¹³ Despite the similar name, this group does not appear related to the And Justice for All political organization that reported receiving the foundation's contribution.¹⁴

News reports have raised questions about the relationship between the Trump Foundation's contribution and the decision by Attorney General Bondi's office whether to join a civil lawsuit involving Trump University. On August 25, 2013, New York Attorney General Eric Schneiderman sued Mr. Trump, the Trump Entrepreneur Institute (formerly Trump University), and Trump University's former president "for engaging in persistent fraudulent, illegal and deceptive conduct in connection with" the university's operation.¹⁵ On September 13, 2013, the *Orlando Sentinel* reported 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, a spokeswoman for the Republican attorney general said Wednesday."¹⁶ As reported by the *Tampa Bay Times* in October 2013, the Trump Foundation made its contribution to And Justice for All "three days after an Attorney General's Office spokeswoman said Bondi was reviewing" the allegations in the lawsuit.¹⁷ The newspaper 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."¹⁸ According to recent news reports, Attorney General Bondi's office decided not to join the lawsuit or open an investigation.¹⁹

¹³ The Donald J. Trump Foundation, 2013 Form 990-PF, Part XV, Line 3; Justice for All website, "Contact" page (available at <http://www.jfaweb.org/contact/>); *id.*, "Frequently Asked Questions" page (available at <http://www.jfaweb.org/giving-faqs>).

¹⁴ Another group called Justice for All is related to And Justice for All. This Justice for All is a political committee based in Florida that was created on the same date as And Justice for All. Justice for All, Form 8871, Political Organization Notice of Section 527 Status, Aug. 7, 2013 (attached as Exhibit H); Justice for All, Statement of Organization of Political Committee, Aug. 5, 2013 (attached as Exhibit I). The Florida-based Justice for All also is registered under section 527 and is associated with Attorney General Bondi. Pam Bondi, Statement of Solicitation for Justice for All, Aug. 5, 2013 (attached as Exhibit J).

¹⁵ Press Release, Attorney General Eric T. Schneiderman, A.G. Schneiderman Sues Donald Trump, Trump University & Michael Sexton For Defrauding Consumers Out Of \$40 Million With Sham "University", Aug. 25, 2013 (attached as Exhibit K).

¹⁶ Richard Burnett, N.Y.'s Trump U Suit Draws Florida Officials' Attention, *Orlando Sentinel*, Sept. 13, 2013 (attached as Exhibit L).

¹⁷ Van Sickler, *Tampa Bay Times*, Oct. 17, 2013.

¹⁸ *Id.*

¹⁹ See, e.g., Matt Dixon and Marc Caputo, As Bondi Endorses Trump, Past Political Contribution Comes Under Fire, *PoliticoFlorida*, Mar. 14, 2016 ("Bondi's office later determined it did not need to take any action against Trump University because of" the New York lawsuit, and her office said "there was never a formal investigation in Florida into the now defunct school") (attached as Exhibit M); Michael Auslen, Old Questions Resurface as Attorney General Pam Bondi Endorses Trump, *Miami Herald*, Mar. 14, 2016 ("Florida never followed New York's lead. Although there were complaints in Florida, the state never opened an investigation.") (attached as Exhibit N); Wayne Washington, \$26,000 Loss to Trump University Makes Disabled Florida Man 'Nauseous', *Palm Beach Post*, Mar. 5, 2016 (Attorney General Bondi's spokeswoman "said the contribution did not play a role in the determination not to take independent action against Trump University") (attached as Exhibit O).

Potential Violations

26 U.S.C. § 501(c)(3)

Section 501(c)(3) prohibits public charities and private foundations from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office. This statutory prohibition is absolute – the political intervention does not need to be a substantial part of the organization’s activity.²⁰ Contributions to political organizations constitute participation or intervention in political campaigns: “Contributions to political campaign funds . . . clearly violate the prohibition on political campaign activity.”²¹

By contributing \$25,000 to And Justice for All, a section 527 political organization, the Trump Foundation appears to have violated section 501(c)(3). Violations of this prohibition can result in revocation of tax-exempt status and the imposition of excise and other taxes.²²

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.²³ 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, the Trump Foundation appears to have violated 26 U.S.C. § 6652 and should be subject to monetary penalties. The Trump Foundation further appears to have violated 26 U.S.C. § 6652 by failing to report that it made a contribution to And Justice for All.

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

²⁰ See, e.g., *United States v. Dykema*, 666 F.3d 1096, 1101 (7th Cir. 1981); IRS, Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations, FS-2006-17, February 2006 (“IRS Fact Sheet 2006-17”).

²¹ *Id.*; see also, e.g., IRS website, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, Dec. 15, 2015 (available at [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501\(c\)\(3\)-Tax-Exempt-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations)).

²² IRS Fact Sheet 2006-17. The tax code provides for the imposition of two types of taxes for political spending by private foundations. Section 4955 provides for the imposition of taxes on political expenditures made by all section 501(c)(3) organizations, 26 U.S.C. § 4955, and section 4945 provides for the imposition of taxes on “taxable expenditures” made by private foundations, which include “any amount paid or incurred by a private foundation . . . to influence the outcome of any specific election,” 26 U.S.C. § 4945(d)(2). These taxes may be levied on the private foundation and, if a foundation manager made the expenditure knowing it was political or a taxable expenditure, taxes may be levied on a foundation manager. 26 U.S.C. §§ 4945(a)(2), 4955(a)(2), 4955(b)(2).

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

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 \$100,000.²⁴ 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;²⁵ 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 990.²⁶

The Trump Foundation’s 2013 Form 990-PF tax return was signed under a written declaration that it was made under penalty of perjury.²⁷ 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 reporting that it made a contribution to And Justice for All. 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.²⁸ Violations are punishable by up to five years in prison.²⁹ 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, the Trump Foundation may have violated 18 U.S.C. § 1001.

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, and requires them to disclose information about how they spend their money.

One critical restriction on these organizations is that they may not engage in any political activity. The Trump Foundation appears to have violated this prohibition by contributing \$25,000 to And Justice for All, a political organization. Accordingly, the IRS should investigate

²⁴ 26 U.S.C. § 7206(1).

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

²⁶ IRS, Background Paper, Summary of Form 990 Redesign Process, August 19, 2008, at 1.

²⁷ The Donald J. Trump Foundation, 2013 Form 990-PF, Page 13.

²⁸ 18 U.S.C. § 1001(a)(2).

²⁹ *Id.*

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the Trump Foundation and, should it find that the foundation violated its tax-exempt status, take appropriate action, which may include revoking its section 501(c)(3) status and imposing applicable taxes. The Trump Foundation further appears to have incorrectly reported that it did not transfer any money to a political organization or participate in political activity, and to have failed to disclose the specific political contribution to And Justice for All. As a result, the IRS also should investigate whether the Trump Foundation made false and incomplete statements on its tax return and, if warranted, take appropriate action.

Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

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