

# CREW | citizens for responsibility and ethics in washington

September 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](mailto:IRS.Commissioner@IRS.gov)) and First Class mail**

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

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Internal Revenue Service (“IRS”) investigate whether Donald J. Trump violated the Internal Revenue Code (“tax code”) by repeatedly engaging in prohibited acts of self-dealing, and whether The Donald J. Trump Foundation, Inc. (“Trump Foundation”), a private foundation organized under sections 501(c)(3) and 509 of the tax code, violated its tax-exempt status by making multiple payments and grants that inured to the private benefit of Mr. Trump and his business interests.<sup>1</sup>

Mr. Trump is the president of the Trump Foundation. In recent weeks, the *Washington Post* has reported that on multiple occasions the Trump Foundation paid Mr. Trump’s personal and business obligations, all apparently acts of self-dealing and private inurement. On one occasion, for example, a golf club owned by Mr. Trump settled a lawsuit by agreeing to pay \$158,000 to charity, but the Trump Foundation paid the obligation. At other times, Mr. Trump or members of his family pledged to make contributions at charity auctions, but the Trump Foundation made the payments. As explained in CREW’s previous complaints, the Trump Foundation and Mr. Trump also apparently engaged in self-dealing and private inurement when the foundation made a \$25,000 political contribution.

### **Factual Background**

The Trump Foundation is a private foundation established in 1987, and Donald J. Trump is its president.<sup>2</sup>

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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. This complaint is related to the complaints CREW filed against the Trump Foundation on March 31, 2016 and September 7, 2016. See <http://www.citizensforethics.org/press-release/crew-files-irs-complaint-donald-trump-trump-foundation/>; <http://www.citizensforethics.org/legal-filing/crew-files-complaint-trump-foundation/>.

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

Since 2007 the Trump Foundation repeatedly has made contributions and grants to satisfy Mr. Trump's personal and business obligations. In 2012, the foundation made a \$158,000 grant to the Martin B. Greenberg Foundation.<sup>3</sup> According to the *Washington Post* and other news reports, that contribution was part of the settlement of a lawsuit brought against the Trump National Golf Club in Briarcliff Manor, New York, which Mr. Trump owns.<sup>4</sup> During an August 2010 charity golf tournament held at the club, Martin Greenberg hit a hole-in-one, for which there was a \$1 million prize.<sup>5</sup> After the tournament, however, Mr. Greenberg was told that the prize's rules required the shot to be longer than 150 yards, and his was too short.<sup>6</sup> Mr. Greenberg sued, and court papers alleged the Trump golf club made the hole too short.<sup>7</sup> Later, the *Washington Post* reported, the club "signed off on a settlement that required it to make a donation" chosen by Mr. Greenberg.<sup>8</sup> The contribution, however, was made by the Trump Foundation, not Mr. Trump or his golf club.<sup>9</sup>

The Trump Foundation similarly paid a legal settlement of the Mar-a-Lago Club, the Palm Beach, Florida private club owned by Mr. Trump.<sup>10</sup> In 2006, the club put up a large American flag on a pole taller than allowed under Palm Beach town rules, and the town began fining the club \$1,250 per day.<sup>11</sup> Mar-a-Lago sued the town in federal court, and the parties eventually settled, with the town waiving the \$120,000 in fines and Mr. Trump agreeing to donate \$100,000 to charity.<sup>12</sup> Again, however, those contributions were made by the Trump Foundation, not Mr. Trump or Mar-a-Lago.<sup>13</sup>

The Trump Foundation further paid pledges made by Mr. Trump and his wife, Melania Trump, at charity events. At one 2012 event, Mr. Trump won a charity auction for a Tim Tebow football helmet with a \$12,000 bid.<sup>14</sup> Mr. Trump's pledge, however, was paid by the Trump Foundation.<sup>15</sup> The Trump Foundation also has twice paid for portraits of Mr. Trump won by Mr.

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<sup>3</sup> The Donald J. Trump Foundation, 2012 Form 990-PF, Part XV, Line 3 (excerpts attached as Exhibit C)

<sup>4</sup> David A. Fahrenthold, Trump Used \$258,000 From His Charity to Settle Legal Problems, *Washington Post*, Sept. 20, 2016 (attached as Exhibit D); Hole-In-One Ace Sues For \$1M, *New York Post*, Feb. 11, 2011 (attached as Exhibit E); Donald J. Trump, Personal Financial Disclosure Statement, Candidate Report, July 15, 2015 (excerpts attached as Exhibit F).

<sup>5</sup> Wachtel, *Business Insider*, Feb. 12, 2011.

<sup>6</sup> Fahrenthold, *Washington Post*, Sept. 20, 2016; David A. Fahrenthold and Rosalind S. Helderman, Missing From Trump's List of Charitable Giving: His Own Personal Cash, *Washington Post*, Apr. 10, 2016 (attached as Exhibit G).

<sup>7</sup> *Id.*

<sup>8</sup> Fahrenthold, *Washington Post*, Sept. 20, 2016.

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

<sup>10</sup> Donald J. Trump, Personal Financial Disclosure Statement, Candidate Report, July 15, 2015.

<sup>11</sup> Fahrenthold, *Washington Post*, Sept. 20, 2016.

<sup>12</sup> *Id.*; Frank Cerabino, Trump's War With Palm Beach, *Politico*, Sept. 5, 2015 (attached as Exhibit H).

<sup>13</sup> Fahrenthold, *Washington Post*, Sept. 20, 2016.

<sup>14</sup> David A. Fahrenthold, Donald Trump Used Money Donated For Charity To Buy Himself a Tim Tebow-Signed Football Helmet, *Washington Post*, July 1, 2016 (attached as Exhibit I); Fahrenthold, *Washington Post*, Sept. 20, 2016.

<sup>15</sup> *Id.*; Fahrenthold, *Washington Post*, July 1, 2016; The Donald J. Trump Foundation, 2012 Form 990-PF, Part XV, Line 3.

or Mrs. Trump at charity events. In 2007, when Mrs. Trump bid \$20,000 for a portrait of Mr. Trump at a charity auction, the Trump Foundation paid the obligation.<sup>16</sup> Similarly, the Trump Foundation paid Mr. Trump's winning bid of \$10,000 for another portrait at a 2014 event.<sup>17</sup>

The Trump Foundation also made a \$5,000 donation to the D.C. Preservation League in 2013.<sup>18</sup> That contribution, however, paid for advertisements in programs for three of the charity's events that simply promoted Mr. Trump's hotels and had nothing to do with the foundation.<sup>19</sup>

Finally, as CREW explained in its September 7, 2016 complaint, in September 2013 the Trump Foundation made a \$25,000 contribution to And Justice for All, a political committee associated with Attorney General Bondi.<sup>20</sup> The timing of the contribution suggests Mr. Trump and the Trump Foundation used the contribution in an effort to benefit Mr. Trump and his business interests by influencing Attorney General Bondi's decisions about whether to join a lawsuit against Mr. Trump and Trump University and whether to investigate complaints against Trump University, the Trump Institute, and related entities.<sup>21</sup>

### **Potential Violations**

#### **26 U.S.C. § 4941 – Self-dealing**

Section 4941 prohibits any “act of self-dealing between a disqualified person and a private foundation.”<sup>22</sup> A “disqualified person” includes any person who is “a foundation manager” such as an officer or director, and a family member of a disqualified person.<sup>23</sup> A corporation, partnership, or trust for which disqualified persons have more than a 35 percent stake also is a disqualified person.<sup>24</sup>

“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.”<sup>25</sup> 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.”<sup>26</sup> Self-dealing also occurs when “a private foundation makes a grant or payment which satisfies a pledge, enforceable under local law, to an organization described in

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<sup>16</sup> David A. Fahrenthold, How Donald Trump Retooled His Charity to Spend Other People's Money, *Washington Post*, Sept. 10, 2016 (attached as Exhibit J); Fahrenthold, *Washington Post*, Sept. 20, 2016.

<sup>17</sup> *Id.*; The Donald J. Trump Foundation, 2014 Form 990-PF, Part XV, Line 3 (excerpts attached as Exhibit K).

<sup>18</sup> Fahrenthold, *Washington Post*, Sept. 20, 2016; The Donald J. Trump Foundation, 2013 Form 990-PF, Part XV, Line 3.

<sup>19</sup> Fahrenthold, *Washington Post*, Sept. 20, 2016.

<sup>20</sup> See <http://www.citizensforethics.org/press-release/crew-files-irs-complaint-donald-trump-trump-foundation/>.

<sup>21</sup> *Id.*

<sup>22</sup> 26 U.S.C. § 4941(a)(1).

<sup>23</sup> 26 U.S.C. §§ 4946(a)(1)(B), (a)(1)(D), (b), (d).

<sup>24</sup> 26 U.S.C. § 4946(a)(1)(E)-(G)

<sup>25</sup> 26 U.S.C. § 4941(d)(1)(E).

<sup>26</sup> Treas. Reg. § 53.4941(d)-2(f)(1).

section 501(c)(3).”<sup>27</sup> In addition, the “furnishing of goods, services, or facilities between a private foundation and a disqualified person” constitutes self-dealing.<sup>28</sup>

The excise tax penalties for self-dealing must be paid by the self-dealer as an individual, not the foundation.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> The taxes are levied on each separate act of self-dealing.<sup>32</sup> The initial tax on a self-dealer is 10 percent of the amount involved, and 5 percent of the amount for a foundation manager.<sup>33</sup> Additional taxes of 200 percent of amount involved for the self-dealer and 50 percent of the amount involved for a foundation manager can be imposed when the act of self-dealing is not corrected within the taxable period.<sup>34</sup>

As president of the Trump Foundation, Mr. Trump clearly is a disqualified person for the foundation, as are Mrs. Trump, the Trump National Golf Club, and the Mar-a-Lago Club. Mr. Trump appears to have repeatedly engaged in self-dealing. The golf club owned by Mr. Trump entered into a legal settlement with Mr. Greenberg that obligated it to make a charitable contribution, but the Trump Foundation made the payment that satisfied the obligation. Similarly, the foundation paid to satisfy the obligation of Mr. Trump’s private club for Mr. Trump to make charitable contributions that it incurred in its legal settlement with Palm Beach.

Mr. Trump also apparently engaged in self-dealing when the Trump Foundation paid the obligations he and Mrs. Trump incurred in winning the two charity auctions for portraits of Mr. Trump. The grants to pay for the portraits also satisfied pledges made to section 501(c)(3) organizations, further demonstrating they constituted acts of self-dealing. Using Trump Foundation funds to pay for Mr. Trump’s winning bid for the Tim Tebow helmet similarly is a likely violation of the prohibition on self-dealing. These payments also appear to constitute self-dealing because they furnished goods – the portraits and the helmet – to Mr. Trump. The Trump Foundation’s donation to the D.C. Preservation League also appears to constitute self-dealing because it furnished a benefit, in the form of advertisements, exclusively to Mr. Trump’s hotels.

Mr. Trump also 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.

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<sup>27</sup> *Id.*

<sup>28</sup> 26 U.S.C. § 4941(d)(1)(C); Treas. Reg. § 53.4941(d)-2(d).

<sup>29</sup> 26 U.S.C. § 4941(a)(1).

<sup>30</sup> 26 U.S.C. § 4941(a)(2).

<sup>31</sup> I.R.M. 7.27.15.3.1.

<sup>32</sup> 26 U.S.C. § 4941(a).

<sup>33</sup> *Id.*

<sup>34</sup> 26 U.S.C. § 4941(b).

Accordingly, Mr. Trump appears to have engaged in multiple acts of self-dealing in violation of section 4941.

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.”<sup>35</sup> A covered private shareholder or individual is broadly defined as a person “having a personal or private interest in the activities of the organization,”<sup>36</sup> meaning an “insider” of the organization.<sup>37</sup> Insiders include the organization’s founder and members of its board, as well as businesses owned or managed by an insider.<sup>38</sup> 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.”<sup>39</sup> 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.<sup>40</sup> Whether an impermissible benefit has been conferred on an insider is primarily a factual question.<sup>41</sup>

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 during the relevant time period. The Trump Foundation’s payments and grants appear to constitute private inurement for the same reasons that they appear to be prohibited acts of self-dealing. The foundation’s payments to satisfy legal obligations incurred by Mr. Trump’s golf club and Mar-a-Lago benefitted Mr. Trump and his businesses, as did making the contributions for winning the two portraits and the football helmet and for the advertisements that benefitted only Mr. Trump’s hotels. The Trump Foundation’s contribution to the political committee associated with Attorney General Bondi similarly 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.

As a result, the Trump Foundation appears to have engaged in private inurement in violation of section 501(c)(3).

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<sup>35</sup> 26 U.S.C. § 501(c)(3).

<sup>36</sup> Treas. Reg. § 1.501(c)(3)-1(c)(2).

<sup>37</sup> *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).

<sup>38</sup> *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).

<sup>39</sup> G.C.M. 39862 (Dec. 2, 1991).

<sup>40</sup> *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).

<sup>41</sup> *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).



Hon. John Koskinen  
September 21, 2016  
Page 6

### Conclusion

The tax code strictly prohibits tax-exempt, charitable private foundations from giving private benefits to the people who run them. A private foundation's founders and officers are barred from using it to engage in self-dealing, and the foundation may not provide those insiders a private benefit. Mr. Trump and the Trump Foundation appear to have repeatedly violated these prohibitions, using the Trump Foundation to satisfy all sorts of private obligations of Mr. Trump and his businesses. This pattern of abusing the foundation and ignoring the law should not be tolerated. The IRS should investigate Mr. Trump and the Trump Foundation and, should it find that they violated the foundation's tax-exempt status or the tax code's prohibition on self-dealing, take appropriate action, which may include revoking the Trump Foundation's section 501(c)(3) status and imposing applicable taxes on Mr. Trump.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder".

Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics in Washington

Encls.