

December 17, 2020

The Honorable Charles P. Rettig  
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 Broken Promises

Dear Commissioner Rettig:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the Internal Revenue Service (“IRS”) investigate whether Broken Promises, a nonprofit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“Code”), is operated primarily to influence political campaigns in violation of the Code.<sup>1</sup> CREW further requests the IRS investigate whether Broken Promises violated federal law by failing to properly disclose its political contributions.

During its 2018 tax year, Broken Promises contributed more than \$160,000 to political organizations, mostly to a political committee called Friends of Charles Goston that appears to have supported an alleged “spoiler” candidate in a Florida state Senate election. Those expenditures accounted for 99.6% of Broken Promises’s total spending during the year, indicating the group was being used as a pass-through for political contributions. As a result of its spending, political activity appears to be Broken Promises’s primary activity, a violation of its tax-exempt status. In addition, the group falsely represented on its 2018 tax return that it did not engage in any political activities and failed to disclose on the IRS form used to report political expenditures its contributions to political organizations.

### **Broken Promises’s Political Activity**

Broken Promises is a nonprofit organization established in Washington, DC on August 29, 2018.<sup>2</sup> Sean Anderson is the president and chairman of the board of directors of Broken Promises.<sup>3</sup> Little is known about Mr. Anderson, but a person with the same name is also the board president of at least one other nonprofit, Stand Up for Justice, that appears to be involved

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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.

<sup>2</sup> Broken Promises, Initial File Number: N00006066042, Washington, DC Department of Consumer and Regulatory Affairs, <https://bit.ly/3nv47mL>; Broken Promises, 2018 Form 990, at 1, <https://bit.ly/3bpNsw7>. The organization’s Employer Identification Number is 83-1745117 and its most recent mailing address reported to the IRS is 2021 L St., N.W. Ste. 101, Washington, DC, 20036. *Id.*

<sup>3</sup> *Id.*, at 1, and Part VII, Section A. Mr. Anderson may also go by the name Jason. According to a statement on Schedule O, another director, “Deborah Anderson is the mother of the director and principal officer Jason Anderson.” *Id.*, Schedule O, Supplemental Information.

in political activity in Florida and used the same accountant as Broken Promises to prepare its 2018 Form 990.<sup>4</sup>

In 2018, Broken Promises made seven contributions, totaling \$160,470, to political committees registered with the Florida Department of State's Division of Elections. Five of those contributions were in-kind contributions of advertising or direct mail provided to a political committee.

In particular, Broken Promises contributed \$135,470 in monetary and in-kind contributions to Friends of Charles Goston, a political action committee.<sup>5</sup> In its statement of organization, Friends of Charles Goston described itself as a "[s]tatewide political committee to support or oppose candidates for local, legislative or multi-county office."<sup>6</sup> Likewise, Friends of Charles Goston told the IRS that the "purpose of this organization is to support candidates and issues, in the state of Florida, as permitted by law."<sup>7</sup> Broken Promises contributed \$20,000 to Friends of Charles Goston on September 29, 2018, and a total of \$115,470 in in-kind contributions in the form of "advertising" and "direct mail" between October 8, 2018 and November 1, 2018.<sup>8</sup>

Broken Promises contributions to Friends of Charles Goston supported direct political activity. Charles Goston is a lifelong Democrat and former Gainesville City Commissioner who sought Florida's 8th Senate District seat as an independent in 2018.<sup>9</sup> Mr. Goston's candidacy, which was backed by donations from Republican lobbyists, raised suspicions that it was part of a spoiler effort "to split the Democratic vote to help Republicans."<sup>10</sup> According to the *Ocala Star Banner*, Mr. Goston's campaign account was "largely funded by Republican lobbyists Joe Johnson and Travis Blanton through various businesses."<sup>11</sup> The Republican lobbyists "also paid \$49,764 toward" the Florida Republican Senatorial Campaign Committee, "a political organization that donated nearly \$750,000 toward" the re-election efforts of the Republican in

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<sup>4</sup> Stand Up for Justice, 2018 Form 990, at 1, and Part VII, Section A, <https://bit.ly/3IXURYC>; Our Future Now PC, Campaign Contributions, Division of Elections, Florida Department of State, <https://bit.ly/3pC4JsT> (reporting contributions from Stand Up for Justice); Our Future Now PC, Statement of Organization of Political Committee, Division of Elections, Florida Department of State, Sept. 4, 2018, <https://bit.ly/32SKgGe> (establishing Our Future Now PC as a political committee).

<sup>5</sup> Friends of Charles Goston, Campaign Contributions, Division of Elections, Florida Department of State, <https://bit.ly/3IHnHMc>.

<sup>6</sup> Friends of Charles Goston, Statement of Organization of Political Committee, Division of Elections, Florida Department of State, Oct. 1, 2018, <https://bit.ly/3kEkKL3>.

<sup>7</sup> Friends of Charles Goston, Form 8871, Notice of 527 Status, Sept. 18, 2018, <https://bit.ly/38NIIdXS>.

<sup>8</sup> Friends of Charles Goston, Campaign Contributions, Division of Elections, Florida Department of State.

<sup>9</sup> Andrew Caplan, GOP money backs spoiler in key race for Florida Senate, *Ocala Star Banner*, Oct. 15, 2018, <https://bit.ly/2QVz31a>.

<sup>10</sup> *Id.*; Andrew Caplan, Goston PAC closes, mirrors Ocala group, *Ocala Star Banner*, Nov. 13, 2018, <https://bit.ly/3gX8OIV>; Andrew Caplan, Elections complaint filed against Goston, *Gainesville Sun*, Nov. 20, 2018, <https://bit.ly/32W04ra>; Andrew Caplan, Goston takes aim at local leaders, *Gainesville Sun*, Nov. 2, 2018, <https://bit.ly/2EYzgy6>; Andrew Caplan, Behind the scenes, Bainter pulls strings, *Gainesville Sun*, Jan. 12, 2019, <https://bit.ly/3jeUzds>.

<sup>11</sup> Caplan, *Ocala Star Banner*, Nov. 13, 2018.

Mr. Goston's race, state Sen. Keith Perry.<sup>12</sup> The *Gainesville Sun* also noted that Friends of Charles Goston "used the same bank branch as at least three other controversial PACs" tied to William S. Jones, a former county Republican chairman who operates dozens of political committees and several nonprofit organizations, including some with ties to a company called Data Targeting.<sup>13</sup> The company was "an integral part of Sen. Keith Perry's controversial re-election campaign through research, consulting, polling and mailers paid for by groups run by Jones and the Florida Republican Senatorial Campaign Committee."<sup>14</sup>

Mr. Goston reportedly did not actively campaign after he announced his candidacy and reportedly "remained unseen and unheard" until late September 2018, when mailers touting him to his former constituents began appearing.<sup>15</sup> After the election, Mr. Goston brushed off concerns about the anonymous source of funds that backed his campaign, telling a former colleague on the Gainesville City Commission that "dark money is not illegal ... It's still America. You can do what you want to do."<sup>16</sup> He also later said: "Voters don't have a right to know anything."<sup>17</sup>

With the \$20,000 it received from Broken Promises – the PAC's only contributor – Friends of Charles Goston contributed \$1,000 to Mr. Goston's campaign committee and paid \$14,061.42 for advertising.<sup>18</sup> Florida campaign finance records do not specify the exact purpose of Broken Promises's \$115,470 in in-kind contributions of "advertising" and "direct mail," but presumably they furthered Friends of Charles Goston's electoral efforts in favor of Mr. Goston.<sup>19</sup>

Broken Promises also contributed \$25,000 to Consumers for Energy Fairness, a political action committee, on October 2, 2018.<sup>20</sup> In its statement of organization, Consumers for Energy Fairness described itself as a "[s]tatewide political committee to support or oppose candidates for statewide, legislative, multi-county, county and municipal offices and other activities not prohibited by Chapter 106, Florida Statutes."<sup>21</sup> The day after Consumers for Energy Fairness received the contribution from Broken Promises, Consumers for Energy Fairness contributed

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<sup>12</sup> *Id.*

<sup>13</sup> Caplan, *Gainesville Sun*, Jan. 12, 2019.

<sup>14</sup> *Id.*

<sup>15</sup> Caplan, *Ocala Star Banner*, Oct. 15, 2018; Drew Wilson, [Keith Perry holds off Kayser Enneking to win second Senate term](#), *Florida Politics*, Nov. 7, 2018, <https://bit.ly/2W2W8lv>.

<sup>16</sup> Caplan, *Gainesville Sun*, Nov. 2, 2018.

<sup>17</sup> *Id.*

<sup>18</sup> Friends of Charles Goston, Campaign Contributions, Division of Elections, Florida Department of State; Friends of Charles Goston, Campaign Expenditures, Division of Elections, Florida Department of State, <https://bit.ly/35D8y8U>; Agreement Form for Non-Candidate/Issue Advertisements, WTMG-FM, Williston, FL, Friends of Charles Goston, Oct. 16, 2018, <https://bit.ly/32PLZfr>.

<sup>19</sup> Friends of Charles Goston, Campaign Contributions, Division of Elections, Florida Department of State.

<sup>20</sup> Consumers for Energy Fairness, Campaign Contributions, Division of Elections, Florida Department of State, <https://bit.ly/2IN6QZC>.

<sup>21</sup> Consumers for Energy Fairness, Statement of Organization of Political Committee, Division of Elections, Florida Department of State, Sept. 7, 2018, <https://bit.ly/3ID5IXi>.

\$25,000 to Friends of Ron DeSantis, a statewide political committee supporting now-Florida Gov. Ron DeSantis (R-FL).<sup>22</sup>

### **Broken Promises's Representations to the IRS**

As a section 501(c)(4) tax-exempt organization, Broken Promises is required to file annual Form 990 tax returns. Tax-exempt organizations engaged in any “direct or indirect political campaign activities on behalf of or in opposition to candidates for public office” also must file a Schedule C with their tax returns, which requires disclosure of the amount spent on “political expenditures.”<sup>23</sup> Among other things, Schedule C is used by the IRS to track political activity and ensure section 501(c)(4) organizations pay tax on those activities.<sup>24</sup> “Political expenditures” include all “political campaign activities” – defined as “[a]ll activities that support or oppose candidates for elective federal, state, or local public office.”<sup>25</sup> In particular, political contributions by tax-exempt organizations to political committees must be disclosed on Schedule C.<sup>26</sup>

In its 2018 tax year, Broken Promises reported spending a total of \$161,010.<sup>27</sup> According to Florida campaign finance reports filed by Friends of Charles Goston and Consumers for Energy Fairness, \$160,470 of that spending was contributions to those political committees. Broken Promises did not, however, disclose those contributions on its 2018 tax return. To the contrary, Broken Promises asserted to the IRS that the group did not engage in any “direct or indirect political campaign activities on behalf of or in opposition to candidates for public office,” and failed to file a Schedule C reporting the amount it spent on political expenditures.<sup>28</sup> The nonprofit also failed to file a Schedule I, which is used to disclose grants to other organizations.<sup>29</sup> The closest Broken Promises came to acknowledging its political activity or disclosing its contributions was in its description of its program service accomplishments, in which the nonprofit broadly stated: “The organization collected funds to bring awareness to social and political issues and mitigate [sic] their negative impact. The funds wer [sic] paid to printing companies for mailers highlighting critical issues, lobbyists and political action committees with a common social and political goals [sic].”<sup>30</sup>

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<sup>22</sup> Consumers for Energy Fairness, Campaign Expenditures, Division of Elections, Florida Department of State, <https://bit.ly/3lBjklW>; Friends of Ron DeSantis, Statement of Organization of Political Committee, Division of Elections, Florida Department of State, Jan. 2, 2018, <https://bit.ly/36JFdZN>. See <https://friendsofrondesantis.com/>.

<sup>23</sup> Form 990, Part IV, Question 3; 2017 Instructions for Form 990, at 12; 2017 Instructions for Schedule C, at 1, 3.

<sup>24</sup> See, e.g., Letter from Steven T. Miller, Deputy Commissioner for Services and Enforcement, to Sen. Carl Levin, Aug. 24, 2012, reprinted in 158 Cong. Rec. S.6431 (daily ed. Sept. 19, 2012) and available at <https://www.congress.gov/112/crec/2012/09/19/CREC-2012-09-19-pt1-PgS6428.pdf> and [https://www.governmentattic.org/13docs/IRSresponsesToCongress\\_2012-2013U.pdf](https://www.governmentattic.org/13docs/IRSresponsesToCongress_2012-2013U.pdf) (beginning at 260); 26 U.S.C. 527(f).

<sup>25</sup> 2017 Instructions for Schedule C, at 1; 2017 Instructions for Form 990, at 66.

<sup>26</sup> 2017 Instructions for Schedule C, at 3-4

<sup>27</sup> Broken Promises, 2018 Form 990, Part I, Line 18.

<sup>28</sup> *Id.*, Part IV, Question 3.

<sup>29</sup> *Id.*

<sup>30</sup> Broken Promises, 2018 Form 990, Part III, Line 4a.

The \$160,470 that Friends of Charles Goston and Consumers for Energy Fairness reported receiving from Broken Promises in 2018 constituted 99.6% of the group's total spending that year.<sup>31</sup>

### **Political Activity Under Section 501(c)(4)**

Section 501(c)(4) provides tax-exempt status to organizations “not organized for profit but operated exclusively for the promotion of social welfare.”<sup>32</sup> IRS regulations interpret the statute to mean a section 501(c)(4) organization must be “primarily engaged in promoting in some way the common good and general welfare of the people of the community.”<sup>33</sup> The regulations further provide that “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office” does not promote social welfare.<sup>34</sup>

The IRS has not further defined the “primary activity” standard, and provides only that all the facts and circumstances are to be taken into account in determining the “primary activity” of a section 501(c)(4) organization.<sup>35</sup> Internal IRS training materials, however, assert section 501(c) organizations (other than section 501(c)(3) charities) “may generally make expenditures for political activities as long as such activities, in conjunction with any other non-qualifying activities, do not constitute the organization’s *primary activity (51%)*.”<sup>36</sup>

Contributions to political organizations are direct or indirect participation or intervention in political campaigns. “Contributions to political campaign funds . . . clearly violate the prohibition on political campaign intervention” for section 501(c)(3) organizations,<sup>37</sup> and prohibited political intervention for section 501(c)(3) organizations constitutes political activity for section 501(c)(4) groups like Broken Promises.<sup>38</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> 26 U.S.C. § 501(c)(4).

<sup>33</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2)(i). By allowing section 501(c)(4) organizations to be only “primarily” engaged in social welfare, the regulation misinterprets the plain meaning of the word “exclusively” in the statute. This complaint analyzes Broken Promises’s conduct using the “primarily” standard. Under a correct interpretation of the statute, Broken Promises’s political spending unquestionably would violate its tax-exempt status.

<sup>34</sup> Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

<sup>35</sup> Rev. Rul. 68-45, 1968-1 C.B. 259.

<sup>36</sup> Exempt Organizations Determinations Unit 2, Student Guide, Training 29450-002 (Rev. 9-2009), at 7-19 (emphasis added), <https://bit.ly/2F0srGI>.

<sup>37</sup> IRS, Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations, FS-2006-17, February 2006; *see also, e.g.*, IRS website, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, Mar. 5, 2014, <https://bit.ly/1ev87z2>.

<sup>38</sup> *See, e.g.*, Notice of Proposed Rulemaking, Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535, 71536 (proposed Nov. 29, 2013) (“the IRS generally applies the same facts and circumstances analysis under section 501(c)(4)” as it does under section 501(c)(3)); Rev. Rul. 81-95 (citing examples of political intervention prohibited under section 501(c)(3) in determining political activity for section 501(c)(4) organizations); Priv. Ltr. Rul. 9652026 (Oct. 1, 1996) (“[A]ny activities constituting prohibited political intervention by a section 501(c)(3) organization are activities that must be less than the primary activities of a section 501(c)(4) organization.”).

## Violations

### 26 U.S.C. § 501(c)(4)

Under any interpretation of section 501(c)(4), Broken Promises's political activity in its 2018 tax year exceeded the amount permitted. Broken Promises spent 99.6% of its total expenditures on political activity in 2018, violating the organization's tax-exempt status.

### 26 U.S.C. § 6652

Under the 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.<sup>39</sup> By falsely representing on its 2018 Form 990 that it did not engage in any political campaign activity, by failing to report those activities on Schedule C, and by failing to report any of its contributions on Schedule I, Broken Promises appears to have violated 26 U.S.C. § 6652 and should be subject to monetary penalties.<sup>40</sup>

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<sup>39</sup> 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); *see also* 2017 Instructions for Form 990, at 6.

<sup>40</sup> Broken Promises also may have violated federal criminal law by making false statements on its Form 990 tax return. Under the 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. 26 U.S.C. § 7206(1). In addition, federal law 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. 18 U.S.C. § 1001(a)(2). The prohibition also includes anyone who “falsifies, conceals, or covers up by any trick, scheme, or device a material fact.” 18 U.S.C. § 1001(a)(1).

The money spent on political campaign activities a tax-exempt organization reports to the IRS on its Schedule C is material for several reasons, including: (1) the amounts reported 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 section 527 exempt activities in part determines exempt function taxes the organization must pay, 26 U.S.C. § 527(f)(1); and (3) accurate public disclosure of the amount of political activity conducted by tax-exempt organizations is critical to the objective of transparency that underlies the reporting required on Form 990, IRS, Background Paper, Summary of Form 990 Redesign Process, Aug. 19, 2008, at 1.

Broken Promises's 2018 Form 990 was signed by Mr. Anderson under a written declaration that it was made under penalty of perjury and that Mr. Anderson had examined the return and it was true, correct, and complete to the best of his knowledge. The tax return, however, appears to be false and incorrect as to the material matters of the amount Broken Promises spent on political campaign activities in fiscal year 2018.

Little is known about Mr. Anderson, making it difficult to assess whether Broken Promises's false representations to the IRS were knowing and willful. The group used an accountant to prepare its tax return, and it appears Mr. Anderson has served as an official with at least one other tax-exempt organization, suggesting Broken Promises knew it needed to provide true and accurate information to the IRS. Further, the importance of treating Broken Promises's contributions to political organizations as not political suggests Broken Promises and Mr. Anderson's representation may have been willful. Classifying that spending as political means political expenditures accounted for more than 50% of Broken Promises's overall spending in 2018, a violation of the group's tax-exempt status.

**Conclusion**

Based on the publicly available information, Broken Promises's activities do not comport with its claimed status as a section 501(c)(4) tax-exempt organization. Therefore, the IRS should investigate Broken Promises and, should it find that Broken Promises has violated its tax-exempt status, take appropriate action, which may include revoking its section 501(c)(4) status, imposing any applicable excise taxes under section 4958 for excess benefit transactions, and treating Broken Promises as a taxable corporation or a section 527 political organization. Further, it appears Broken Promises falsely represented that it did not engage in any political activity in its 2018 tax year and omitted more than a million dollars in spending on political activity from its 2018 tax return. The IRS should investigate Broken Promises and, should it find Broken Promises made false or incomplete statements on its tax return, take appropriate action.

Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder  
Executive Director



Matthew Corley  
Chief Investigator

cc: IRS-EO Classification