



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

October 19, 2021

The Honorable Charles P. Rettig
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 Advancing Freedom Inc.

Dear Commissioner Rettig:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Internal Revenue Service (“IRS”) investigate whether Advancing Freedom Inc., 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.¹ CREW further requests the IRS investigate whether Advancing Freedom failed to properly disclose the organization’s political activity.

During its 2019 tax year, Advancing Freedom spent more than \$150,000 on independent expenditures in Phoenix, Arizona’s mayoral election. Those expenditures accounted for 74.2% of Advancing Freedom’s total spending during the year. As a result of its spending, political activity appears to be Advancing Freedom’s primary activity, a violation of its tax-exempt status. In addition, the group falsely represented on its 2019 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 expenditures in the Phoenix election.

Advancing Freedom’s Political Activity

Advancing Freedom is a nonprofit organization established in Oklahoma in May 2014.² Ernest Foster is the chairman of Advancing Freedom.³ Little is known about Mr. Foster. Advancing Freedom also has close ties to an Oklahoma-based political consultant named Trey Richardson. Mr. Richardson is listed as the custodian of the organization’s books on both its 2018 and 2019 tax returns, and both tax returns

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

² Advancing Freedom, Entity Summary Information, Business Entity Search, Oklahoma Secretary of State, <https://bit.ly/3gR4iMj>; Advancing Freedom, 2018 Form 990, at 1, <https://bit.ly/3kCT4s1>. The organization’s Employer Identification Number is 46-5680995 and its most recent mailing address reported to the IRS is PO Box 2593, Oklahoma City, OK, 73101. Advancing Freedom, 2019 Form 990, at 1, <https://bit.ly/2Yi6u5n>.

³ *Id.* Mr. Foster may also spell his name as Earnest. On Advancing Freedom’s business entity information on file with the Oklahoma Secretary of State, Earnest P. Foster is listed as the organization’s registered agent. Advancing Freedom, Entity Summary Information, Business Entity Search, Oklahoma Secretary of State.

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list the phone number associated with two of Mr. Richardson's consulting firms, Sagac Public Affairs and GR Pro, as Advancing Freedom's own telephone number.⁴

In March 2019, Advancing Freedom paid for eight independent expenditures, totaling \$150,403, in Phoenix, Arizona's mayoral election.⁵ The expenditures, which either supported candidate Daniel Valenzuela or opposed candidate Kate Gallego, consisted of newspaper ads, mailings, and digital ads.⁶

Specifically, Advancing Freedom paid for an ad that ran across the top of the front page of the *Arizona Republic* that declared, "Daniel Valenzuela for Mayor" with the slogan, "Protecting our Community and Keeping Phoenix Economy Strong."⁷ Advancing Freedom also took out a full-page ad in the paper.⁸ According to *Arizona Republic* columnist Laurie Roberts, Advancing Freedom's pro-Valenzuela promotion included the message, "Phoenix deserves a leader who answers the call every time!"⁹

One of Advancing Freedom's mail pieces reportedly suggested Ms. Gallego was "deplorable" while comparing her to former Secretary of State Hillary Clinton.¹⁰ Advancing Freedom mailers also portrayed Valenzuela as the "conservative choice" in the election.¹¹

In Facebook ads, Advancing Freedom stated, "Kate Gallego hasn't supported Phoenix first responders - that's why they support Daniel Valenzuela for Phoenix Mayor."¹² The video embedded in the ad claimed, "If Kate Gallego had her way, Phoenix would have slashed public safety" and asserted that she held an "anti-police position."¹³ The ad closed by saying, "Kate Gallego, wrong for Phoenix."¹⁴

⁴ Advancing Freedom, 2018 Form 990, Part VI, Section C, Line 20; Advancing Freedom, 2019 Form 990, Part V, Line 42a; Sagac Public Affairs, <https://bit.ly/3juowcE>; GR Pro, GR Pro Names Karma Robinson, Rusty Appleton to Leadership Roles, July 23, 2020, <https://bit.ly/2WzPPcu>. Sagac Public Affairs' website lists Advancing Freedom as a client, and an employee of GR Pro filed Advancing Freedom's City of Phoenix Campaign Finance Report with the Phoenix City Clerk Department in April 2019. Sagac Public Affairs, Our Work, Our Clients, <https://bit.ly/3kJ7wi2>. Advancing Freedom Inc, 2019 First Quarter City of Phoenix Campaign Finance Report, Apr. 15, 2019, <https://bit.ly/3kLSqsk>.

⁵ Advancing Freedom Inc, 2019 First Quarter City of Phoenix Campaign Finance Report, Apr. 15, 2019. The City of Phoenix defines independent expenditures as "expenditures by corporations, limited liability companies or labor organizations to support or oppose one or more candidates." City of Phoenix, Services, Public Records Search, Definitions, <https://bit.ly/3t9Wk22>.

⁶ Advancing Freedom Inc, 2019 First Quarter City of Phoenix Campaign Finance Report, April 15, 2019. Jessica Boehm, Phoenix mayoral candidates Kate Gallego and Daniel Valenzuela: What's the difference?, *Arizona Republic*, Mar. 5, 2019, <https://bit.ly/3mUqzZK>.

⁷ Twitter, @brahmresnik, Mar. 5, 2019, <https://bit.ly/3jAOJq3>.

⁸ Laurie Roberts, Why is an Oklahoma City group spending big to get Daniel Valenzuela elected mayor of Phoenix?, *Arizona Republic*, Mar. 6, 2019, <https://bit.ly/3KODI9p>.

⁹ *Id.*

¹⁰ Dennis Welch, Valenzuela says he doesn't condone attack ad against his opponent, *AZFamily.com*, Mar. 11, 2019, <https://bit.ly/3ByNRsc>.

¹¹ Brahm Resnik, Phoenix Suns owner spends big money on city elections after arena deal, *12 News*, Mar. 10, 2019, <https://bit.ly/3BwpV8x>.

¹² Facebook, Ads from Advancing Freedom, <https://bit.ly/3kHIO1L>. Advancing Freedom, Facebook Ad, Mar. 8, 2019 – Mar. 12, 2019, ID: 827544510933094, <https://bit.ly/3DGLfKr>.

¹³ *Id.*

¹⁴ *Id.*

Advancing Freedom’s Representations to the IRS

As a section 501(c)(4) tax-exempt organization, Advancing Freedom 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.”¹⁵ 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.¹⁶ “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.”¹⁷ In particular, political contributions by tax-exempt organizations to political committees must be disclosed on Schedule C.¹⁸

On its 2019 tax return, Advancing Freedom asserted the group did not engage in any “direct or indirect political campaign activities on behalf of or in opposition to candidates for public office.”¹⁹ It also failed to file a Schedule C reporting the amount it spent on political expenditures with its tax return,²⁰ though it did disclose spending \$133,574 on “electioneering” on Schedule O.²¹ Even if this was a misplaced attempt to report the organization’s political activity, the reporting was apparently incorrect. As discussed above, Advancing Freedom reported to the City of Phoenix that it spent \$150,403 on expenditures to support or oppose candidates for office, \$16,829 more than Advancing Freedom reported spending on “electioneering” on its 2019 tax return.²²

In its 2019 tax year, Advancing Freedom reported spending a total of \$202,568²³ The \$150,403 Advancing Freedom reported spending on independent expenditures to the City of Phoenix constituted 74.2% of the group’s total.²⁴

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.”²⁵ 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.”²⁶ The regulations further provide that

¹⁵ Form 990, Part IV, Question 3; 2017 Instructions for Form 990, at 12; 2017 Instructions for Schedule C, at 1, 3.

¹⁶ 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://bit.ly/2XBSeUo> and <https://bit.ly/3zuj0LQ> (beginning at 260); 26 U.S.C. 527(f).

¹⁷ 2017 Instructions for Schedule C, at 1; 2017 Instructions for Form 990, at 66.

¹⁸ 2017 Instructions for Schedule C, at 3-4

¹⁹ Advancing Freedom, 2019 Form 990, Part V, Line 46.

²⁰ *Id.*

²¹ Advancing Freedom, 2019 Form 990, Schedule O.

²² Advancing Freedom Inc, 2019 First Quarter City of Phoenix Campaign Finance Report, Apr. 15, 2019; Advancing Freedom, 2019 Form 990, Schedule O.

²³ Advancing Freedom, 2019 Form 990, Part I, Line 17.

²⁴ Advancing Freedom Inc, 2019 First Quarter City of Phoenix Campaign Finance Report, Apr. 15, 2019

²⁵ 26 U.S.C. § 501(c)(4).

²⁶ 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 Advancing Freedom’s conduct using the “primarily” standard. Under a correct interpretation of the statute, Advancing Freedom’s political spending unquestionably would violate its tax-exempt status.

“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.²⁷

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.²⁸ 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%).”²⁹

When an advertisement explicitly advocates the election or defeat of an individual to public office, the expenditure unquestionably is political campaign activity.³⁰

Violations

26 U.S.C. § 501(c)(4)

Under any interpretation of section 501(c)(4), Advancing Freedom’s political activity in its 2019 tax year exceeded the amount permitted. Advancing Freedom spent 74.2% of its total expenditures on political activity in 2019, 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.³¹ By falsely representing on its 2019 Form 990 that it did not engage in any political campaign activity and by failing to report those activities on Schedule C, Advancing Freedom appears to have violated 26 U.S.C. § 6652 and should be subject to monetary penalties.

Conclusion

Based on the publicly available information, Advancing Freedom’s activities do not comport with its claimed status as a section 501(c)(4) tax-exempt organization. Therefore, the IRS should investigate Advancing Freedom and, should it find that Advancing Freedom 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 Advancing Freedom as a taxable corporation or a section 527 political organization. Further, it appears Advancing Freedom falsely represented that it did not engage in any political activity in its 2019 tax year and omitted, at a minimum, thousands of dollars in spending on political activity from its 2019 tax return. The IRS should investigate Advancing Freedom and, should it find Advancing Freedom made false or incomplete statements on its tax return, take appropriate action.

²⁷ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

²⁸ Rev. Rul. 68-45, 1968-1 C.B. 259.

²⁹ Exempt Organizations Determinations Unit 2, Student Guide, Training 29450-002 (Rev. 9-2009), at 7-19 (emphasis added), <https://bit.ly/2Xz5vgz>.

³⁰ Rev. Rul. 2004-06; see also Judith E. Kindell and John Francis Reilly, Election Year Issues, 2002 EO CPE Text, at 349, 388.

³¹ 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); see also 2017 Instructions for Form 990, at 6.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a stylized, cursive script.

Noah Bookbinder
Executive Director

A handwritten signature in blue ink, appearing to read 'Matthew Corley', with a stylized, cursive script.

Matthew Corley
Chief Investigator

cc: IRS-EO Classification