

November 5, 2013

Daniel Werfel
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Complaint Against Association for American Innovation,
Inc./Freedom Partners Chamber of Commerce, Inc.

Dear Commissioner Werfel:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the Internal Revenue Service (“IRS”) investigate whether the activities of Freedom Partners Chamber of Commerce, Inc. (“Freedom Partners”), a non-profit organization claiming exemption from taxation pursuant to section 501(c)(6) of the Internal Revenue Code (“Code”), serve and promote the commercial and industrial interests of its members, as the Code requires. In addition, Freedom Partners appears to have violated the Code and IRS regulations by failing to disclose complete copies of its 2011 Form 990 tax return, including Schedule B, upon CREW’s request.

Freedom Partners, headquartered in Arlington, Virginia, was incorporated on November 2, 2011, under the name Association for American Innovation, Inc. (“AAI”). *See* AAI Form 1024 Application for Recognition of Exemption Under Section 501(a) (attached as Exhibit A). On November 4, 2011, AAI applied for tax-exempt status under section 501(c)(6) of the Code as a business league, describing its anticipated activities as “promot[ing] the common business interests and conditions of its members, in order to improve their competitive standing and innovation in various lines of business, industries, etc. in which they are engaged.” *Id.*, Attachment B, at 2. In its application for tax-exempt status, AAI enumerated nine activities it would pursue to promote the common business interests of its members, including forming broad-based coalitions on a number of topics, conducting polling and other research, conducting public opinion polling, engaging in non-partisan issue advocacy, making grants to other non-profit organizations “that help advance AAI’s Code section 501(c)(6) purposes,” and developing policy content. *Id.*, at 5-6. AAI further noted it anticipated, at least initially, “the vast majority of its projects to advance its purposes will be carried out” through grants to other non-profit organizations and individuals. *Id.*, at 9.

On September 16, 2013, AAI filed Form 990 with the IRS under the name Freedom Partners Chamber of Commerce, Inc. (attached as Exhibit B). Earlier in the year, however, using

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the AAI moniker, the organization had sought three separate three-month extensions in which to file its 990. *See* AAI 2011 Form 990. While AAI may have changed its name in an attempt to pass itself off as a chamber of commerce rather than a business league, the mission of Freedom Partners remains the same, specifically,

advanc[ing] its members' common business interests by promoting economic freedom and improving business conditions in the United States, thereby increasing opportunity, innovation, and prosperity for all Americans.

Id., Parts I and III.¹ Thus, regardless of the name AAI chooses to use, it is operating as a business league.

The only requirements for membership in AAI/Freedom Partners are a “genuine[] interest[] in AAI’s business purposes . . . and activities” and paying membership dues. *Id.*, at 11. Reportedly, members are “drawn from the Koch brothers’ semiannual conferences.” Mike Allen and Jim VandeHei, Exclusive: The Koch Brothers’ Secret Bank, *Politico*, September 11, 2013.² AAI/Freedom Partners itself has been described as “another Koch-linked money machine.” Peter H. Stone, Sean Noble, ‘Wizard’ Behind Koch Brothers’ Donor Network, Now On The Outs, *Huffington Post*, October 2, 2013.³ Each member pays a minimum of \$100,000 in annual membership dues. Allen and VandeHei, *Politico*, Sept. 11, 2013. From late 2011 through the fall of 2012, the group raised nearly \$149 million from membership dues. AAI 2011 Form 990,

¹ Bruce Hopkins, an expert on non-profit law, has described the main distinction between a business league and a chamber of commerce under section 501(c)(6) as follows:

the former must promote the common business interests of persons within a line of business, while the latter must promote the common business interests of persons within a community or similarly defined geographic area.

Bruce R. Hopkins, *The Tax Law of Associations* 50 (2006). Whether using the name AAI or Freedom Partners, the organization has described its mission as promoting the common business interests of its members.

² Available at <http://www.politico.com/story/2013/09/behind-the-curtain-exclusive-the-koch-brothers-secret-bank-96669.html>.

³ Available at http://www.huffingtonpost.com/2013/10/02/sean-noble-koch-brothers_n_4017578.html.

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Part VIII. As a section 501(c)(6) organization, Freedom Partners does not have to disclose the identities of its donors/members.

AAI/Freedom Partners' activities during the 2011 reporting period covering November 2, 2011 through October 31, 2012 (acting under the name AAI) consisted exclusively of providing grants to 30 different section 501(c)(3), 501(c)(4), and 501(c)(6) entities. AAI 2011 Form 990, Schedule I. Each and every grant was provided for "general support." *Id.* According to Freedom Partners,

[a]ll grants were made pursuant to specific grant letter agreements, which included prohibitions on the use of the grant funds, for example, activities that would violate federal, state or local laws, rules or regulations, or that would be considered lobbying activities under federal or state law. In addition, all grant letter agreements were made subject to express prohibitions or protections against the use of grant funds for electioneering purposes. The grant letters also contained a review and monitoring procedure which requires reports on the use of the grant funds upon request, and return of any funds used in violation of the agreement.

Id., Part IV.

In all, AAI/Freedom Partners made a total of \$235,715,250 in grants to the 30 politically active groups, ranging from American Future Fund, a group that aggressively supported Mitt Romney in 2012, which received \$13.6 million, to the National Rifle Association ("NRA"), which received \$3.465 million. *Id.* A number of tea party groups received grants of less than \$1 million each. *Id.* The biggest recipient was the Center to Protect Patient Rights ("CPPR"), "a 501(c)(4) group that received three separate grants totaling \$115 million through the end of 2011. AAI 2011 Form 990, Schedule I. Notably, this amount exceeds the total annual revenues CPPR reported receiving since it was established in 2009 by more than \$14 million.⁴ Americans for Prosperity, an advocacy group started by David Koch and Richard Fink that "is courted by Republican presidential candidates,"⁵ received \$32.3 million.⁶

⁴ CPPR's Form 990s (relevant portions of which are attached as Exhibit C) show annual revenue of \$13,656,500 in 2009; \$61,838,792 in 2010; and \$25,318,576 in 2011.

⁵ Allen & VandeHei, *Politico*, Oct. 2, 2013.

⁶ This includes two grants of \$26 million and \$6.3 million respectively to PR-Dist., LLC, a disregarded entity of Americans for Prosperity. AAI 2011 Form 990, Schedule I.

Concerned about these activities, on October 1, 2013 CREW sent a representative to the address Freedom Partners' 2011 Form 990 provides for the individual in possession of the physical books and documents of the organization, 2200 Wilson Boulevard, Suite 102-533, Arlington, Virginia 22201. CREW was seeking to obtain a copy of Freedom Partners' complete 2011 Form 990, including the Schedule B. Declaration of Adam J. Rappaport ("Rappaport Decl."), ¶¶ 2-3 (attached as Exhibit D). CREW's representative discovered, however, the location is in fact a UPS store. *Id.*, at ¶ 3. That same day, CREW advised Freedom Partners' spokesman, James Davis, of CREW's unsuccessful attempt to obtain a copy of the Schedule B. *Id.*, at ¶ 4. Mr. Davis responded the document was on Freedom Partners' website. *Id.* This was incorrect information; the posted version did not include the Schedule B, so via email CREW again requested a copy of the Schedule B. Rappaport Decl., at ¶ 4. Receiving no reply, CREW contacted Mr. Davis again the following week. He, once again, directed CREW to Freedom Partners' website, which still did not include the requested Schedule B. *Id.*, at ¶ 5. In response to subsequent inquiries, Mr. Davis replied only "Please refer to I.R.M. 11.3.9.13.4." *Id.*, at ¶¶ 7-8. Mr. Davis also failed to respond to CREW's request to be put in touch with counsel for Freedom Partners to discuss this matter further. *Id.*, at ¶ 9.

Potential Violations

Failure To Meet The Criteria For A Section 501(c)(6) Organization

Section 501(c)(6) of the Code provides a tax exemption for, *inter alia*, business leagues not organized for profit where no part of their net earnings inures to the benefit of any individual or private shareholder. Implementing IRS regulations define a "business league" as an "association of persons" with a "common business interest, whose purpose is to promote the common business interest." Treas. Reg. 1.501(c)(6)-1. Like all other 501(c)(6) organizations, business leagues must engage primarily in "activities or functions constituting the basis for their exemption." Part 7 of the IRS Exempt Organizations Determinations Manual, 7.25.6.1.2 (10-19-1998). To qualify as a business league an organization must have some "specific program directed to the improvement of business conditions" of "one or more lines of business." Rev. Rul. 70-244, 1999970-1 C.B. 132. *See also The Engineers Club of San Francisco v. United States*, 791 F.2d 696, 698 (9th Cir. 1986) (activities of a section 501(c)(6) organization must be "directed to the improvement of business conditions of one or more lines of business"); Private Letter Ruling 201215014, 2012 PLR LEXIS 39, *8 (Jan. 19, 2012) (group that had no "program designed to improve the business conditions of one or more lines of business" was not a section 501(c)(6) organization).

Whether evaluated under the name AAI or Freedom Partners it is clear the organization's activities do not meet these criteria. AAI/Freedom Partners has engaged exclusively in providing grants to a variety of politically active organizations, specifying only that those grants be used for "general support." Because the grant recipients need not spend the money on any specific

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activity, there is no guarantee the purpose to which they put those grants will further the common business interests of AAI/Freedom Partners and its members, as the law requires.

Moreover, the nature of the grant recipients strongly suggests their interests actually diverge from the stated goals of AAI/Freedom Partners' members. For example, AAI/Freedom Partners grant recipient NRA described its mission in its 2011 Form 990⁷ as:

To protect and defend the U.S. Constitution to promote the safety, law and order, and the national defense to train law enforcement agencies to train civilians in marksmanship to foster and promote the shooting sports to promote hunter safety.

Providing "general support" to the NRA, therefore, clearly does absolutely nothing to further AAI/Freedom Partners' common business interest of "promoting economic freedom and improving business conditions in the United States." See AAI Form 990, Part I.

The activities of CPPR further illustrate the disconnect between the common business interest of AAI/Freedom Partners and that of the organizations it has funded. Like AAI/Freedom Partners, CPPR has no activities of its own, and instead only makes grants to other politically active tax-exempt organizations for "general support." See CPPR Form 990, 2010 and 2011. In other words, like AAI/Freedom Partners, CPPR serves merely as a pass-through for the \$115 million given to it by AAI/Freedom Partners; that money, in turn, has provided general support to groups with widely ranging missions, from Americans for Prosperity to U.S. Health Freedom Coalition. As a pass-through, CPPR does not serve AAI/Freedom Partners' common business interest, violating the requirement 501(c)(6) business leagues engage primarily in "activities or functions constituting the basis for their exemption."⁸

The nature of the funding AAI/Freedom Partners provides, the structure it uses to provide that funding, and the recipients of its grants reveal that, in truth, AAI/Freedom Partners is simply funneling money into organizations that spend money on partisan political activities. By providing general support funding for tax-exempt groups, AAI/Freedom Partners is freeing up

⁷ The relevant page is attached as Exhibit E.

⁸ Recently, in announcing a record \$1 million settlement against CPPR and Americans for Responsible Leadership for failing to disclose two dark money independent expenditure contributions in the 2012 election, the State of California Fair Political Practices Commission ("FPPC") described CPPR as "the key nonprofit in the Koch Brothers' dark money network of nonprofit corporations." See FPPC Press Release, October 24, 2013 (*available at* <http://www.fppc.ca.gov/releasespdf/2013-10-24.pdf>).

those groups to spend other funds on political activities. While this may further the political agenda of AAI/Freedom Partners' founders and members, it fails to advance the common business interests of the league's members in the manner contemplated by section 501(c)(6) of the Code.

In sum, AAI/Freedom Partners does not meet the most basic requirement for a tax-exempt 501(c)(6) business league: it engages in no substantive programs aimed at advancing the common business interest of its members, which AAI/Freedom Partners has defined as promoting economic freedom and improving business conditions in the United States. *See* AAI 2011 Form 990, Part I. Instead, AAI/Freedom Partners exclusively provides grants with no specified purpose, and with no assurance those funds will be used in a manner that promotes the common business interest of its members. Indeed, the activities of the grant recipients reveal AAI/Freedom Partners' true agenda – allowing grant recipients to use more of their funds advancing the election and defeat of candidates for office. Such activities violate AAI/Freedom Partner's tax-exempt status under section 501(c)(6) of the Code.

Failure To Disclose Complete Copies Of Form 990 Upon Request

The Code and IRS regulations require all entities organized under section 501(c) to make their annual tax returns available for inspection and copying. 26 U.S.C. § 6104(d)(1); 26 C.F.R. § 301.6104(d)-1(a). The regulations specify organizations must provide an exact copy of the filed tax return, including all information furnished to the IRS on the return and all schedules, attachments, and supporting documents. 26 C.F.R. § 301.6104(d)-1(b)(4)(i). The Code and IRS regulations permit an organization not to publicly disclose the name or address of any contributor to the organization provided to the IRS on Schedule B. 26 U.S.C. § 6104(d)(3)(A); 26 C.F.R. § 301.6104(d)-1(b)(4)(ii). The organization must, however, make publicly available all other information provided to the IRS on the Schedule B, including the total amount of contributions from each contributor. *See* Schedule B, General Instructions, Public Inspection, at 5 (2012) (“All other information, including the amount of contributions . . . is required to be made available for public inspection unless it clearly identifies the contributor.”); Instructions for Form 990 Return of Organization Exempt from Income Tax, Appendix D, at 74-75 (2012); *see also* 26 C.F.R. § 301.6104(b)-1(b)(2); I.R.M. 11.3.9.13.4 (“The amounts of contributions and bequests to an organization shall be available for public inspection unless the disclosure can reasonably be expected to identify any contributor.”).

Further, copies of an organization's annual tax return requested in person at the organization's office during regular business hours must be provided immediately on the day the request is made, except under unusual circumstances. 26 U.S.C. § 6104(d)(1)(B); 26 C.F.R. § 301.6104(d)-1(1). Copies requested in writing, including by email, must be provided within 30 days of the request. 26 U.S.C. § 6104(d)(1)(B); 26 C.F.R. § 301.6104(d)-1(d)(2)(ii). Failure to

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comply with this requirement will result in civil fines up to \$10,000 per report requested, and an additional fine of \$5,000 for a wilful failure to comply. 26 U.S.C. §§ 6652(c)(1)(C), 6685.

Here, CREW attempted to make an in-person request of Freedom Partners for its Form 990, including the Schedule B, on October 1, 2013, at the address where Freedom Partners claims to maintain its records. In fact, however, that location is a UPS store, meaning that Freedom Partners provided false information to the IRS and the public. Further, Freedom Partners failed to respond to multiple requests CREW made in writing over the course of a week for its Form 990, including the Schedule B.

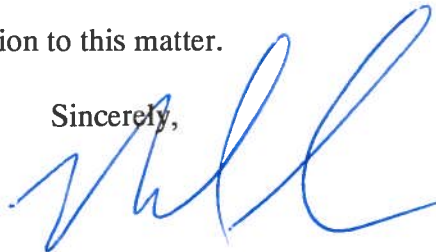
Freedom Partners' refusal to disclose its Schedule B in response to CREW's in-person and written requests violates the Code and IRS regulations.

Conclusion

Accordingly, the IRS should scrutinize all the activities of AAI/Freedom Partners to determine if its tax-exempt status under section 501(c)(6) of the Code should be revoked. Such an inquiry should also consider the activities of the grant recipients and their relationship, if any, to AAI/Freedom Partners and the common business interests of their members. Further, the IRS should consider whether to assess penalties against AAI/Freedom Partners for refusing to disclose its Schedule B upon request.

Thank you for your prompt attention to this matter.

Sincerely,



Melanie Sloan
Executive Director

Enclosures