



January 28, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Complaint against Trees of Liberty, Inc.

Dear Commissioner Koskinen:

On behalf of the Center for Media and Democracy and Citizens for Responsibility and Ethics in Washington, we are writing to request that the Internal Revenue Service (“IRS”) investigate whether Trees of Liberty, Inc. misled the IRS and violated tax law by claiming it did not engage in any political campaign activities in 2014.¹ In fact, the primary purpose of Trees of Liberty appears to be political, and it spent most of its budget on political activities in the 2014 Iowa Republican Senate primary, attacking the leading opponent of now-Sen. Joni Ernst (R-IA).

Trees of Liberty appears to have knowingly and willfully omitted information and made false statements on its 2014 Form 990 tax return with respect to its political activities, in violation of both the tax code and federal criminal law, 18 U.S.C. § 1001. It appears that Trees of Liberty’s political intervention that year was so extensive that it was primarily engaged in non-exempt political activities, and thus also ineligible for section 501(c)(4) tax-exempt status.

Additionally, as detailed below, the facts and circumstances strongly indicate that Trees of Liberty was operated primarily to advance the private interests of Sen. Ernst and of the Koch political network that created and funded Trees of Liberty, in violation of its section 501(c)(4) tax-exempt status.

Background

In 2013 and 2014, five candidates were competing for the Republican nomination for Iowa’s open U.S. Senate seat, with a primary election scheduled for June 3, 2014.²

¹ This letter is submitted in lieu of Form 13909; a copy is being sent to the Dallas office.

² Kenneth P. Vogel, *How the Kochs Launched Joni Ernst*, POLITICO, Nov. 12, 2015 (attached as Exhibit A and available at <http://www.politico.com/story/2015/11/the-kochs-vs-the-gop-215672>).

Ernst, then an Iowa state senator, entered the race in July 2013. As the race developed in early 2014, retired energy executive Mark Jacobs emerged as the frontrunner, with Ernst running second.¹

Soon after she declared her candidacy, Ernst was invited to a gathering of donors associated with the Koch political network at the Santa Ana Pueblo in Albuquerque, New Mexico.² The “Koch political network” refers to the association of wealthy donors convened by billionaire industrialists Charles and David Koch and the array of politically active groups, most of which are organized under section 501(c)(4) of the Internal Revenue Code (“tax code”), through which they spend hundreds of millions on elections.³ At the meeting, Ernst reportedly impressed Koch network donors.⁴

Several months later, in March of 2014, a Koch-tied political consultant named Karl Crow formed Trees of Liberty, serving as its president and operating it out of his consulting office in Virginia.⁵ The group was incorporated in Virginia the next month.⁶ Crow previously served as a policy analyst for the Charles G. Koch Charitable Foundation, a strategist for Themis Trust (a voter database project spearheaded by the Kochs), and a policy analyst for i360 (a data analytics and ad buying firm formed by the Koch network that has been described as the “Koch data mine”).⁷

Trees of Liberty operates out of the same address as the Koch-tied political consulting firm Aegis Strategic, LLC (“Aegis”), at 2000 14th Street, Suite 710, Arlington, Virginia.⁸ Crow is Aegis’s lead strategist.

According to *Politico*, Aegis “was established in 2013 with the Kochs’ blessing after an analysis concluded that their network’s efforts in the run-up to the 2012 election suffered from flawed GOP candidates.”⁹ As reported by *Mother Jones*, “The consulting firm plans to handpick local, state, and federal candidates who share the Kochs’ free-market, limited-government agenda, and groom them to win elections. ‘We seek out electable advocates of the freedom and opportunity

¹ Public Policy Polling, *Braley, Branstad Lead in Iowa Races*, Feb. 25, 2014 (attached as Exhibit B and available at http://www.publicpolicypolling.com/pdf/2014/PPP_Release_IA_225.pdf).

² Vogel, *supra* note 1.

³ Matea Gold, *Koch-backed Political Network, Built to Shield Donors, Raised \$400 Million in 2012 Elections*, THE WASHINGTON POST, Jan. 5, 2014 (attached as Exhibit C and available at https://www.washingtonpost.com/politics/koch-backed-political-network-built-to-shield-donors-raised-400-million-in-2012-elections/2014/01/05/9e7cfd9a-719b-11e3-9389-09ef9944065e_story.html).

⁴ Vogel, *supra* note 1.

⁵ *Id.*; Trees of Liberty, 2014 IRS Form 990, Part VII (attached as Exhibit D).

⁶ Trees of Liberty, Incorporated, Business Entity Details, Virginia State Corporation Commission (listing Apr. 16, 2014 as date of formation/registration) (attached as Exhibit E).

⁷ LinkedIn page for Karl Crow (last visited Jan. 26, 2016) (attached as Exhibit F and available at <https://www.linkedin.com/in/karl-crow-2777824>); Andy Kroll, *New Koch-Linked Political Firm Aims to Handpick “Electable” Candidates*, MOTHER JONES, Jan. 17, 2014 (attached as Exhibit G and available at <http://www.motherjones.com/politics/2014/01/koch-brothers-candidate-training-recruiting-aegis-strategic>); Mike Allen and Ken Vogel, *Inside the Koch Data Mine*, POLITICO, Dec. 8, 2014 (attached as Exhibit H and available at <http://www.politico.com/story/2014/12/koch-brothers-rnc-113359>).

⁸ Aegis Strategic website, homepage (last visited Jan. 25, 2016) (attached as Exhibit I and available at <http://aegis-strategic.com/>); Trees of Liberty, 2014 IRS Form 990, 1.

⁹ Vogel, *supra* note 1.

agenda who will be forceful at both the policy and political levels,’ the company notes on its website. Aegis says it can manage every aspect of a campaign, including advertising, direct mail, social media, and fundraising.”¹⁰

Aegis, *Politico* later reported, is “owned by a former Koch operative named Jeff Crank and staffed by fellow Koch network veterans [and] has an ongoing consulting contract with Freedom Partners and also has worked with other Koch-backed groups.”¹¹

Freedom Partners Chamber of Commerce (“Freedom Partners”) is a section 501(c)(6) organization often referred to as “the Koch brothers’ secret bank” because it serves as a funding vehicle for the Koch political network to distribute contributions from donors to Koch-affiliated nonprofits, while keeping the public in the dark about activities to influence elections that might otherwise be disclosed if done via political action committees.¹²

Nearly all of Trees of Liberty’s funds came from Freedom Partners: tax filings show that Freedom Partners donated \$400,000 out of the \$440,200 raised by Trees of Liberty in 2014.¹³ In addition to funding Trees of Liberty’s ad campaign supporting Ernst in the primary, Freedom Partners made significant efforts of its own to promote Ernst’s election. At around the same time that Trees of Liberty’s ads ran, Freedom Partners created and aired a \$1 million advertising campaign attacking her eventual opponent in the general election, Democratic candidate Bruce Braley.¹⁴

Freedom Partners also paid over \$1.2 million in consulting fees to Aegis in 2014.¹⁵

In April 2014, within a week of registering in Virginia, Trees of Liberty purchased television airtime in Iowa for an ad attacking Jacobs, Ernst’s main competitor in the GOP U.S. Senate primary.¹⁶ The advertisement was shown on broadcast television in Cedar Rapids, Des Moines, and Sioux City, Iowa, and on cable television in Cedar Rapids, Davenport, Des Moines, Omaha, Ottumwa, and Sioux City, Iowa.¹⁷

¹⁰ Kroll, *supra* note 8.

¹¹ Vogel, *supra* note 1.

¹² Freedom Partners 2014 IRS Form 990, 1 (excerpts attached as Exhibit J); Mike Allen & Jim Vandehei, *The Koch Brothers’ Secret Bank*, POLITICO, Sept. 11, 2013 (attached as Exhibit K and available at <http://www.politico.com/story/2013/09/behind-the-curtain-exclusive-the-koch-brothers-secret-bank-096669>).

¹³ Freedom Partners 2014 IRS Form 990, Schedule I; Trees of Liberty 2014 IRS Form 990, Part I, Line 8.

¹⁴ Vogel, *supra* note 1.

¹⁵ Freedom Partners 2014 IRS Form 990, Part VII, Section B(1).

¹⁶ See KDSM Fox 17, *Issue Advertising Checklist (Trees of Liberty) Contract Number 1821977*, Apr. 23, 2014 (attached as Exhibit L). The ad in question was uploaded to YouTube the following day, see *TOL Video*, YOUTUBE (Apr. 24, 2014) (available at https://www.youtube.com/watch?v=qQ_ztDvjijl&feature=youtu.be). See also Ed Tibbets, *Outside Group Targets Jacobs*, QUAD CITY TIMES, Apr. 25, 2014 (noting that Trees of Liberty began running ads on April 24, 2014) (attached as Exhibit M and available at http://qctimes.com/news/local/government-and-politics/elections/outside-group-targets-jacobs/article_d09a64d6-c84f-5c2c-9260-f70e96fcc853.html).

¹⁷ Jennifer Jacobs, *New Outside Group Targets GOP’s Mark Jacobs on Cap and Trade*, DES MOINES REGISTER, May 8, 2014 (attached as Exhibit N and available at <http://www.desmoinesregister.com/story/news/politics/elections/2014/04/24/trees-of-liberty-iowa/8125575/>).

The advertisement attacked Jacobs' stance on cap and trade energy policies, a policy that Ernst was using to differentiate herself from Jacobs.¹⁸ Jacobs did not hold elective office at the time, so the ad's entreaty that viewers "call Mark Jacobs and tell him Iowa families can't afford higher energy costs" would have been a meaningless exercise—but the ads did serve the political purpose of casting Jacobs in a negative light and distinguishing him from Ernst.

According to news reports, Trees of Liberty spent an estimated \$257,000 on this ad campaign.¹⁹ Based on Trees of Liberty's publicly-available contracts with television stations, the advertising campaign ended on May 2, 2014, just one month and one day before the June 3, 2014 Iowa Republican Senate primary.²⁰

Additionally, Trees of Liberty reportedly established a website—www.RealMarkJacobs.com—that attacked Jacobs on a range of issues that distinguished him from Ernst, such as education and healthcare policy.²¹ Trees of Liberty also appears to have created a phony Twitter account (@Real_MarkJacobs) that directed readers to that website. It is not known how much Trees of Liberty spent on the website and any online advertising.²²

Trees of Liberty reported on its 2014 tax return that "advertising campaigns on television, radio, and online" amounted to the entirety of the group's program activities for 2014, spending a total of \$412,006 on such advertising campaigns.²³ This means that advertising expenditures accounted for 94 percent of Trees of Liberty's \$438,084 in total spending that year.²⁴

Most of those advertising expenditures were fees paid to i360, the Koch network data analytics and ad buying firm where Crow formerly worked.²⁵ Trees of Liberty reported on its 2014 tax return that it paid \$346,635 to i360, Inc. for "advertising."²⁶

Following the hundreds of thousands of dollars in attack ads from Trees of Liberty, Ernst won the June 2014 primary over Jacobs.

Two weeks after her primary victory, *Politico* reported, Ernst "paid another visit to the Koch network, thanking its donors for their help during a closed-door speech at the network's summer 2014 summit at the St. Regis in Dana Point, Calif."²⁷ According to a secret recording obtained by a blogger, she told the Koch donors they were critical to her win in the primary:

¹⁸ *TOL Video*, *supra* note 17; Joni Ernst, *January 20, 2014 Status*, FACEBOOK (attached as Exhibit O and available at <https://www.facebook.com/joniforiowa/posts/2442595635540>); Kevin Hall, *Ernst on Gas Tax Vote: "I Made a Mistake,"* THE IOWA REPUBLICAN, May 20, 2014 (attached as Exhibit P and available at <http://theiowarepublican.com/2014/ernst-on-gas-tax-vote-i-made-a-mistake/>).

¹⁹ Vogel, *supra* note 1; Jacobs, *supra* note 18.

²⁰ *Id.*

²¹ The Real Mark Jacobs website is down but online reports indicate the website was a Trees of Liberty project. *See Mark Jacobs – Most Vulnerable Candidate?*, VERITAS PAC (Apr. 26, 2014) (attached as Exhibit Q and available at <http://www.veritaspac.com/2014/04/26/mark-jacobs-most-vulnerable-candidate/>).

²² Real Mark Jacobs (@Real_MarkJacobs), TWITTER (available at https://twitter.com/real_markjacobs).

²³ Trees of Liberty 2014 IRS Form 990, Part III, Line 4a. *See also id.*, Part IX, Lines 12, 13, 25.

²⁴ *Id.*, Part I, Line 18.

²⁵ Allen and Vogel, *supra* note 8.

²⁶ Trees of Liberty 2014 Form 990, Part VII, Section B(1).

²⁷ Vogel, *supra* note 1.

The first time I was introduced to this group was a year ago, August, in New Mexico, and I was not known at that time. . . . The exposure to this group and to this network and the opportunity to meet so many of you—that really started my trajectory.²⁸

The donors “in this room . . . got my start,” Ernst added, having “backed me in this election cycle and primary.”²⁹

The panel was moderated by Jeff Crank, the Koch operative who owns Aegis, the consulting firm that shares an address with Trees of Liberty.³⁰

At that same Dana Point meeting, Aegis organized a fundraiser and a reception for a joint fundraising committee called “Victory Trust 2014,” which was created by Aegis to raise money for Ernst and other candidates favored by the Koch political network.³¹ Ultimately Victory Trust 2014 transferred more than \$60,000 to Ernst’s campaign, and additionally paid Aegis \$58,500 in fundraising consulting fees.³²

Also at that meeting, the Koch political network announced it would be forming a new super PAC called “Freedom Partners Action Fund.”³³ Freedom Partners Action Fund endorsed Ernst in the general election and reported to the Federal Election Commission that it spent \$4,360,071 supporting Ernst or attacking her opponent in the Iowa U.S. Senate race, more than it spent on any other race.³⁴

Trees of Liberty also has other ties to the Koch political network.

As noted, Crow serves as the group’s president. In addition, Trees of Liberty’s chairman is Pam Pryor, a former director of DC London, Inc., a political consulting firm that has been paid almost \$11 million by the Koch-backed group Center to Protect Patient Rights, Inc. (“CPPR”), now named American Encore. CPPR paid DC London, Inc. \$4,960,000 in consulting fees in 2012, and \$5,860,050 in consulting fees and reimbursements in 2011.³⁵

²⁸ Lauren Windsor, *U.S. Senate Candidates Praise Koch Network*, THE LADY LIBERTINE, Aug. 26, 2014 (available at <http://ladylibertine.net/2014/08/26/u-s-senate-candidates-speak-at-koch-donor-summit/>).

²⁹ *Id.*

³⁰ *Id.*

³¹ Vogel, *supra* note 1.

³² Center for Responsive Politics/Open Secrets, *Victory Trust 2014, Expenditures, 2014* (available at <https://www.opensecrets.org/jfc/expenditures.php?id=C00564641&cycle=2014>).

³³ Darren Goode and Kenneth P. Vogel, *Kochs Launch New Super PAC*, POLITICO, Jun. 16, 2014 (attached as Exhibit R and available at <http://www.politico.com/story/2014/06/2014-elections-koch-brothers-super-pac-107926>).

³⁴ See Freedom Partners Action Fund website, “Iowa,” accessed Jan. 26, 2016 (available at <https://fpaction.org/states/iowa-senate/>); Center for Responsive Politics/Open Secrets, *Freedom Partners Action Fund, Independent Expenditures, 2014* (available at <https://www.opensecrets.org/pacs/indexpend.php?strID=C00564765&cycle=2014>).

³⁵ Center to Protect Patient Rights, Inc., 2012 IRS Form 990, Part VII, Section B (available at <https://www.propublica.org/documents/item/888744-2012-990-center-to-protect-patient-rights>); Center to Protect Patient Rights, Inc., 2011 IRS Form 990 (Amended), Part VII, Section B (available at http://www.citizensforethics.org/page/-/PDFs/990_Tax_Returns/1-14-14_Center_to_Protect_Patient_Rights_2011_990.pdf?nocdn=1).

On its 2014 Form 990, Trees of Liberty answered “no” to the question, “Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office?”³⁶ As a result, Trees of Liberty also did not file a Schedule C disclosing its political spending for 2014.

Description of Alleged Violations

Trees of Liberty violated the tax code and federal criminal law in three ways.

First, it misled the IRS by reporting that it did not engage in any political campaign activity in 2014, when in fact it spent hundreds of thousands of dollars on such activities, according to the factors that the IRS has identified as constituting intervention or participation in a campaign.

Second, Trees of Liberty is not eligible for tax-exempt status under section 501(c)(4) of the tax code because it primarily engages in political intervention in campaigns, rather than operating exclusively for the promotion of social welfare. Nearly all of Trees of Liberty’s 2014 activities were direct or indirect participation or intervention in political campaigns on behalf of or in opposition to candidates for public office, which does not promote social welfare.

Third, the facts and circumstances indicate Trees of Liberty operated primarily to advance the private interests of Ernst and of the Koch political network, in violation of section 501(c)(4)(B) of the Code, which provides that no part of the net earnings of a social welfare group like Trees of Liberty shall inure to the private benefit of any individual or entity.

I. Trees of Liberty Misled the IRS by Claiming It Engaged in No Political Campaign Activities in 2014

a. The content of Trees of Liberty’s communications satisfy IRS factors for political intervention

Trees of Liberty’s television ad in the Iowa GOP U.S. Senate primary attacking Mark Jacobs satisfies the factors that the IRS has identified as constituting intervention or participation in a campaign.

The advertisement begins by stating:

Remember cap and trade? Pushed by Barack Obama, Nancy Pelosi, and Harry Reid and supported by Mark Jacobs . . . [Cap and trade] would have exploded energy costs, hurt the economy, and cost American jobs. Up to 30,000 jobs in Iowa.³⁷

The advertisement ends by urging viewers to “Call Mark Jacobs, tell him Iowa families can’t afford higher energy costs,” and provides his campaign’s phone number.³⁸ At the bottom of the advertisement it states, “Paid for by Trees of Liberty.”³⁹

³⁶ Trees of Liberty 2014 IRS Form 990, Part IV, Question 3.

³⁷ *TOL Video*, *supra* note 17.

³⁸ *Id.*

While the ad did not include the “magic words” explicitly telling viewers to “vote for” or “vote against” a candidate, advertisements that do not expressly advocate voting for or against a particular candidate can constitute political campaign intervention. In general, the IRS considers “if there is any message favoring or opposing a candidate,” explaining that an advertisement is “particularly at risk of political campaign intervention when it makes reference to candidates . . . in a specific upcoming election.”⁴⁰

In determining if a group has intervened, directly or indirectly, in a political campaign, the IRS considers “all the facts and circumstances.”⁴¹ Key factors for making this determination include:

- 1) whether the statement identifies one or more candidates for a given public office;
- 2) whether the statement expresses approval or disapproval for one or more candidates’ positions and/or actions;
- 3) whether the statement is delivered close in time to the election;
- 4) whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- 5) whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
- 6) whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.⁴²

Taking each factor in turn:

- 1) The Trees of Liberty attack advertisement identifies a single candidate running for public office, Mark Jacobs.⁴³
- 2) The statements made in the advertisement express disapproval for Jacobs’ perceived position on cap and trade energy policies, stating that his stance would hurt families in Iowa.⁴⁴
- 3) This advertisement was placed close in time to the Iowa Republican Senate primary election, as the purchase of advertising time by Trees of Liberty ended precisely one day prior to one month before the primary election, at which point the Federal Election Commission would have required Trees of Liberty to make further disclosures.⁴⁵

³⁹ *Id.*

⁴⁰ Rev. Rul. 2007-41.

⁴¹ *Id.*; *see also* Rev. Rul. 2004-06 (“All the facts and circumstances must be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527(e)(2). When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2).”)

⁴² Rev. Rule 2007-41. *See also* Rev. Rul. 2004-06 (listing other factors and examples).

⁴³ *TOL Video*, *supra* note 17.

⁴⁴ *Id.*

⁴⁵ Jacobs, *supra* note 18; Vogel, *supra* note 1.

- 4) The issue of cap and trade energy policies was a contentious one in the Iowa Republican Senate primary election, with Ernst using that specific issue to differentiate herself from Jacobs.⁴⁶
- 5) The advertisement was not a part of an ongoing series of communications. Trees of Liberty was created on April 16, 2014, and began running the advertisement a week later, on April 23, 2014.⁴⁷ Both the timing of the release of the advertisement and the duration of the advertising campaign imply that the ad was purposefully connected to the June 3, 2014 primary election.
- 6) There was not a non-electoral purpose for this advertisement. There were no external events related to cap-and-trade that Trees of Liberty might have hoped to influence. Even if there were, Jacobs did not hold elective office at the time, so calling him, as the advertisement urged, would have been a meaningless exercise.

Although the advertisement does not mention the upcoming election explicitly, the advertisement is clearly related to the June 3, 2014 primary election.

b. Trees of Liberty misled the IRS by claiming that it engaged in no political campaign activities in 2014 when in fact it spent hundreds of thousands on such activities

In its 2014 Form 990 filing, Trees of Liberty answered “no” to the question, “Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office?” As a result, Trees of Liberty also did not file a Schedule C disclosing its political spending for 2014.

However, Trees of Liberty actually spent at least \$257,000 directly on political campaign intervention by way of the television advertisements opposing Mark Jacobs for public office. As explained above, the facts and circumstances demonstrate that those ads constituted political campaign intervention, according to IRS factors.

Additionally, Trees of Liberty reported that it spent a total of \$412,006, including the \$257,000 for the television advertisement discussed above, on “promoting principles of limited government, fiscal solvency, and economic freedom through advertising campaigns on television, radio, and online.”⁴⁸ The IRS should also assess the other advertising expenditures that are included in this total, which may include the www.RealMarkJacobs.com website and the phony Twitter account, to determine whether they also constitute political activity.

Federal tax and criminal law prohibit making false representations or omissions on tax returns.

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,

⁴⁶ Ernst, *supra* note 19; Hall, *supra* note 19.

⁴⁷ KDSM Fox 17, *supra* note 17.

⁴⁸ Trees of Liberty 2014 IRS Form 990, Part III, Line 4a; Vogel, *supra* note 1.

is liable for civil penalties.⁴⁹ By falsely reporting that it engaged in no political activity in 2014, Trees of Liberty appears to have violated 26 U.S.C. § 6652.

The tax code further provides that 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 \$100,000.⁵⁰ The money spent on political campaign activities that a tax-exempt organization must report to the IRS on its Schedule C is material, and Trees of Liberty’s tax return was signed under penalty of perjury. As a result, if Trees of Liberty’s misrepresentations were voluntary and intentional, it violated 26 U.S.C. § 7206.

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.⁵¹ The prohibition also includes anyone who “falsifies, conceals, or covers up by any trick, scheme, or device a material fact.”⁵² Violations are punishable by up to five years in prison.⁵³ If Trees of Liberty’s false representation about its spending on political campaign activity on its 2014 tax return was made knowingly and willfully, the group violated 18 U.S.C. § 1001.

II. Trees of Liberty Engaged in a Substantial Amount of Non-Exempt Political Campaign Activities, Exceeding the Level That is Permissible for a Section 501(c)(4) “Social Welfare” Nonprofit

At a minimum, Trees of Liberty misled the IRS by claiming it engaged in no political activity in 2014, when in reality it spent at least \$257,000 on advertisements that constituted political campaign intervention for purposes of the tax code. Additionally, the level of political campaign spending by Trees of Liberty exceeds the level of permissible political activity under any reasonable interpretation of the tax code, such that electing candidates to office was Trees of Liberty’s primary activity in 2014.

The tax code is unambiguous when it comes to allowable expenditures by an organization organized under section 501(c)(4): since 1913, the code has provided that what is now known as a section 501(c)(4) organization must be “operated *exclusively* for the promotion of social welfare.”⁵⁴ Starting in 1959, the IRS has interpreted section 501(c)(4) to require organizations to be “*primarily* engaged” in promoting social welfare.⁵⁵

⁴⁹ 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); *see also* 2012 Instructions for Form 990, at 7.

⁵⁰ 26 U.S.C. § 7206(1).

⁵¹ 18 U.S.C. § 1001(a)(2).

⁵² 18 U.S.C. § 1001(a)(1).

⁵³ 18 U.S.C. § 1001(a).

⁵⁴ 26 U.S.C. § 501(c)(4) (emphasis added).

⁵⁵ Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) (emphasis added); T.D. 6391, 1959-2 C.B. 139. 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.

Trees of Liberty exceeded the level of permissible political activity under even the most liberal reading of “primarily engaged.” In 2014, Trees of Liberty devoted well over half of its overall resources toward directly and indirectly intervening in political campaigns for elective office.

The \$257,000 that Trees of Liberty spent on the Iowa ads, taken alone, constitutes over 58 percent of the group’s total expenses for the 2014 tax year.

Additional facts and circumstances indicate that Trees of Liberty was not only *primarily engaged* in political campaign activity in violation of its tax-exempt status, it may have been close to *exclusively engaged* in such activity.

Of Trees of Liberty’s \$438,084 in total expenditures in 2014, the group devoted \$412,006 to “advertising campaigns on television, radio, and online.” At least \$257,000 was spent on the advertising campaign attacking Mark Jacobs; it is not known how the remainder of the advertising funds were spent, but there is no evidence that Trees of Liberty did anything besides engage in the Republican primary for Iowa’s U.S. Senate seat. The \$412,006 spent on these advertising campaigns amount to 94 percent of Trees of Liberty’s total spending for the year.

Accordingly, Trees of Liberty appears to have violated its tax-exempt status under section 501(c)(4).

III. Trees of Liberty Operated for the Private Benefit of Sen. Ernst and the Koch Political Network

Section 501(c)(4)(B) of the tax code provides that no part of the net earnings of groups like Trees of Liberty, which are organized exclusively for the promotion of social welfare, may inure to the private benefit of any individual or entity.

An organization that conducts its activities to benefit a particular candidate or private group serves private interests, and an organization that primarily serves private interests does not qualify for an exemption under section 501(c)(4).

By spending a majority of its expenditures on ads supporting Sen. Ernst’s primary campaign for the Republican Senate nomination in Iowa, Trees of Liberty operated primarily for the benefit of Ernst and the Koch political network.

a. Section 501(c)(4) social welfare organizations may not primarily serve private interests

Non-profit groups organized under section 501(c)(4) are exempt from taxation so long as they are not operated for profit, and are operated exclusively for the promotion of social welfare.⁵⁶

Such groups are operated exclusively for the promotion of social welfare if they primarily engage in promoting “the common good and general welfare of the people of the community.”⁵⁷

⁵⁶ Treas. Reg. § 1.501(c)(4)-1(a)(i)-(ii).

⁵⁷ Rev. Rul. 2004-06; *Comm’r v. Lake Forest, Inc.*, 305 F.2d 814, 818 (4th Cir. 1962).

A social welfare organization must be a community movement designed to accomplish community ends, not benefit a small, interconnected group.⁵⁸

As a result, an organization can qualify as exempt under section 501(c)(4) only if its activities primarily benefit “the community as a whole,” rather than particular individuals or groups.⁵⁹ As the court emphasized in *Mutual Aid Association of Church of the Brethren v. United States*, “[we have] characterized the promotion of social welfare as involving . . . the promotion of the “welfare of mankind”.”⁶⁰

Accordingly, as the IRS has noted, “conferring a sufficient amount of private benefit on select individuals will preclude exemption under section 501(c)(4) for an organization that would otherwise qualify.”⁶¹ The IRS has also noted that political intervention promoting the interests of a political party or a few candidates is an example of serving private interests.⁶²

American Campaign Academy v. Commissioner, for instance, involved an organization that trained political campaign professionals affiliated with the Republican Party.⁶³ The organization had close ties to the Republican Party: it was incorporated by the general counsel of the National Republican Campaign Committee, two of its three directors were party executives, it was entirely funded by a Republican foundation, and the content of its curriculum exclusively promoted the party’s interests.⁶⁴ As a result, the Tax Court concluded that it operated for the substantial, non-exempt private purpose of benefitting private interests, namely Republican entities and candidates.⁶⁵

b. Trees of Liberty provided a private benefit to Ernst

As explained above, Trees of Liberty’s primary—if not exclusive—activity in 2014 was paying for an advertising campaign that attacked Ernst’s main opponent in the Iowa Republican Senate primary. The television advertisement clearly was designed to promote Ernst’s campaign, and thus served her private interests.

Trees of Liberty spent a minimum of 58 percent of its expenditures, and likely far more, on this private benefit. As a result, Trees of Liberty’s primary activity in 2014 provided a private

⁵⁸ *Erie Endowment v. United States*, 316 F.2d 151, 154-56 (3d Cir. 1963).

⁵⁹ *Comm’r v. Lake Forest, Inc.*, 305 F.2d at 818-19; *Mutual Aid Assoc. of Church of the Brethren v. United States*, 759 F.2d 792, 795 (10th Cir. 1985); *Contracting Plumbers Coop. Restoration Corp. v. United States*, 488 F.2d 684, 687 (2d Cir. 1973).

⁶⁰ *Mutual Aid Assoc. of Church of the Brethren*, 759 F.2d at 795 (citing *People’s Educ. Camp Soc’y, Inc. v. Comm’r*, 331 F.2d 923, 930 (2d Cir. 1964) (quoting *Debs Memorial Radio Fund, Inc. v. Comm’r*, 148 F.2d 948, 951 (2d Cir. 1945))).

⁶¹ Priv. Ltr. Rul. 201221025.

⁶² Priv. Ltr. Rul. 201403020.

⁶³ 92 T.C. 1053 (1989).

⁶⁴ *Id.* at 1070-72.

⁶⁵ *Id.* at 1072, 1078. While the organization at issue in *American Campaign Academy* was organized under section 501(c)(3), the standard for determining what constitutes a private benefit applies equally to section 501(c)(4) entities. See, e.g., Priv. Ltr. Rul. 201224034; Priv. Ltr. Rul. 201221028 (revoking exemption for section 501(c)(4) organization Emerge America, which trained Democratic women to run for office).

benefit to Ernst, not a benefit to the community as a whole, violating its tax-exempt status under section 501(c)(4).

c. Trees of Liberty provided a private benefit to the Koch political network

In addition to serving Ernst's private interests, Trees of Liberty's 2014 activities also primarily served the private interests of the Koch political network.

By many measures the Koch political network engages in the same activities as traditional political parties, and rivals the influence of both major parties.

The Koch political network plans to spend at least \$889 million in the 2016 election cycle, which is on par with spending by each major political party.⁶⁶ The network not only runs political ads through an array of non-profit political organizations, but also runs an expansive data analytics operation, trains grassroots activists, conducts get-out-the-vote efforts, and develops massive voter lists that it sells to candidates—activities traditionally reserved for political parties.⁶⁷ Additionally, as Trees of Liberty's activities in Iowa demonstrate, the Koch political network has also begun to hand-pick political candidates.

Accordingly, the private benefits that accrue to the Koch political network by way of Trees of Liberty's activities are closely analogous to the benefits that accrue to traditional parties. Thus, *American Campaign Academy* and the IRS's guidance on private benefits provided to political parties are applicable in this instance.

Trees of Liberty is closely tied to the Koch political network. Much like links between the campaign training group and the Republican Party in *American Campaign Academy*, those connections and the content of Trees of Liberty's activities demonstrate that Trees of Liberty served the private interests of the Koch political network.

Trees of Liberty appears to have been established at the behest of the Koch political network. Soon after Ernst appeared at a Koch political network gathering in Albuquerque, New Mexico, Koch-tied political consultant Karl Crow established Trees of Liberty. Crow operated the group out of the offices of Aegis, the political consulting firm established with the Koch network's blessing, which received over \$1.2 million in consulting fees from Freedom Partners and which created a committee that raised funds at a Koch gathering for Ernst's campaign. Trees of Liberty's directors also have strong Koch network links: Crow is Trees of Liberty's president, and Pam Pryor is its chairman.

⁶⁶ Nicholas Confessore, *Koch Brothers' Budget of \$889 Million for 2016 Is on Par With Both Parties' Spending*, THE NEW YORK TIMES, Jan. 26, 2015 (attached as Exhibit S and available at http://www.nytimes.com/2015/01/27/us/politics/kochs-plan-to-spend-900-million-on-2016-campaign.html?_r=0).

⁶⁷ Peter Overby, *Koch Political Network Expanding 'Grass Roots' Organizing*, NPR, Oct. 12, 2015 (attached as Exhibit T and available at <http://www.npr.org/sections/itsallpolitics/2015/10/12/447999852/koch-political-network-expanding-grassroots-organizing>).

Also similar to the facts of *American Campaign Academy*, Trees of Liberty is almost entirely funded by the Koch political network, with Freedom Partners—the Kochs’ secret bank—providing \$400,000 of Trees of Liberty’s \$440,200 in received contributions.

Trees of Liberty’s activities, which were funded by Freedom Partners, served the specific private interest of the Koch political network of helping elect the network’s preferred candidate, Ernst.

Most of Trees of Liberty’s spending was used to attack Jacobs, Ernst’s top competitor in the Iowa Republican Senate primary. That spending helped propel Ernst to victory in the June 3, 2014 vote.

The Koch political network’s interest in Ernst’s election was demonstrated by Freedom Partners’ \$1 million ad campaign attacking Democratic nominee Bruce Braley that ran in parallel with Trees of Liberty’s campaign, and the \$4.36 million in spending by the Freedom Partners Action Fund super PAC in the general election.

Ernst herself recognized the close links between the Koch political network and her primary victory. Ernst’s appearance at the Koch network meeting began her ascent in the race, and appears to have led to the formation of Trees of Liberty and its spending on her behalf. And two weeks after she won, Ernst “paid another visit to the Koch network, thanking its donors for their help.” Those donors, she said, really started her trajectory—a path paved by Trees of Liberty.

In other words, Trees of Liberty was solidly embedded in the Koch political network, operated exclusively for the benefit of that network, was funded by the Kochs’ secret bank, was headquartered at the same office as the Kochs’ political consultants, and devoted most of its resources toward electing a single candidate supported by that network.

As a result, Trees of Liberty’s primary activity in 2014 provided a private benefit to the Koch political network, not a benefit to the community as a whole, violating its tax-exempt status under section 501(c)(4).

Conclusion

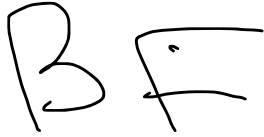
Based on the information provided above, the IRS should investigate:

- whether Trees of Liberty misled the IRS and made false statements when it claimed it was not involved in political campaign activities in 2014;
- whether Trees of Liberty engaged in more non-exempt political intervention and campaign activities in 2014 than is permitted under section 501(c)(4); and
- whether Trees of Liberty operated primarily to advance the private interests of Sen. Ernst and the Koch political network in violation of section 501(c)(4) of the tax code.

If the IRS investigation determines that the facts and circumstances show that Trees of Liberty misled the IRS on its involvement in political campaign activities, is not primarily engaged in the promotion of social welfare, and/or operates for the private benefit of a group of individuals, we request that the IRS assess appropriate civil and criminal penalties.

If the IRS so finds, we believe it would also be appropriate to revoke Trees of Liberty's tax-exempt status.

Sincerely,



Brendan Fischer
General Counsel
Center for Media and Democracy



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in
Washington

Encls.

cc: Carolina D. Ciruolo, Acting Assistant Attorney General,
Tax Division, Department of Justice