



November 20, 2018

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 Freedom Frontier

Dear Commissioner Rettig:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the Internal Revenue Service (“IRS”) investigate whether Freedom Frontier, 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

In 2016, Freedom Frontier contributed \$4.425 million to political organizations, and those expenditures accounted for 74.9% of its total spending during the year. Similarly, over the course of the entire 2015-16 election cycle, political spending accounted for 68.9% of Freedom Frontier’s total spending. In fact, from its formation in 2011 through 2016, Freedom Frontier has dedicated more than two-thirds of its overall spending to political expenditures. As a result, political activity appears to be the group’s primary activity.

Perhaps in an effort to avoid the legal implications of its political spending, Freedom Frontier also filed its 2016 Form 990 tax return more than 400 days late. The tax code authorizes fines for failing to file tax returns on time, which should be levied against Freedom Frontier.

Freedom Frontier’s Political Activity

Freedom Frontier is a nonprofit corporation established in Texas in 2011 and granted tax-exempt status the same year.²

As a section 501(c)(4) tax-exempt organization, Freedom Frontier 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

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

² Freedom Frontier, 2015 Form 990, Amended, available at http://990s.foundationcenter.org/990_pdf_archive/451/451582354/451582354_201512_990O.pdf; Freedom Frontier, Form 1024, available at <https://www.documentcloud.org/documents/3249807-Freedom-Frontier-IRS-Form-1024.html>.

“political expenditures.”³ “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.”⁴

On its 2016 Form 990 tax return, Freedom Frontier disclosed spending \$4,425,000 on political activity, describing that spending as “contributions to federal independent expenditure only Political Action Committees.”⁵ Independent expenditure-only PACs, commonly known as “super PACs,” are organized and operated primarily for the purpose of making independent political expenditures, and thus are political organizations under section 527.⁶ Specifically, between June 1, 2016 and October 5, 2016, Freedom Frontier made nine contributions to LG PAC, a federal super PAC, totaling \$4,395,000.⁷ Freedom Frontier was the only source of contributions that LG PAC reported to the Federal Election Commission (“FEC”) in 2016.⁸ Freedom Frontier also made contributions to two other federal super PACs in 2016, giving \$25,000 to Security is Strength PAC on May 4, 2016 and \$5,000 to The Palmetto PAC on March 23, 2016.⁹

The three super PACs in turn spent significant sums on political ads. For LG PAC, the money was spent on political ads in Missouri state elections. In June and July 2016, the group spent \$4.361 million on “media,” labeling some of the expenditures as for a “state race.”¹⁰ An analysis of ad spending by the Center for Public Integrity found that LG PAC spent at least \$3.9 million on ads in the Missouri gubernatorial race, not including the cost of making ads or of funding ads aired on local cable systems.¹¹ Those ads attacked candidates John Brunner and Catherine Hanaway while defending candidate Eric Greitens.¹² Security is Strength PAC similarly spent significant funds on political ads in 2016. From April 2016 through October 2016, Security is Strength PAC spent \$331,000 on digital and television advertising supporting

³ Form 990, Part IV, Question 3; 2015 Instructions for Form 990, at 12; 2015 Instructions for Schedule C, at 1, 3.

⁴ *Id.* at 1; 2015 Instructions for Form 990, at 66.

⁵ Freedom Frontier, 2016 Form 990, Schedule C, Parts I-A, I-C, and IV, *available at* https://apps.irs.gov/pub/epostcard/cor/451582354_201612_990O_2018082215608722.pdf.

⁶ 26 U.S.C. § 527(e)(1).

⁷ Freedom Frontier, 2016 Form 990, Schedule C, Part I-C; LG PAC, [FEC Form 3x, 2016 July Quarterly Report](#), July 15, 2016, *available at* <https://bit.ly/2zx7aUJ>; LG PAC, [FEC Form 3x, 2016 October Quarterly Report](#), Oct. 14, 2016, *available at* <https://bit.ly/2F4hn0t>; [FEC Form 3x, 2016 Pre-General Report](#), Oct. 27, 2016, *available at* <https://bit.ly/2SVEcGC>.

⁸ LG PAC, Receipts, 2015-2016, Federal Election Commission, *available at* <https://bit.ly/2Izn2c2>.

⁹ Freedom Frontier, 2016 Form 990, Schedule C, Part I-C; Security is Strength PAC, [FEC Form 3x, 2016 July Quarterly Report, Amended](#), Oct. 27, 2016, *available at* <https://bit.ly/2AOuMFR>; The Palmetto PAC, [FEC Form 3x, 2016 April Quarterly Report](#), Apr. 15, 2016, *available at* <https://bit.ly/2D8MFkm>.

¹⁰ LG PAC, Disbursements, 2015-2016, Federal Election Commission, *available at* <https://bit.ly/2IuTSyK>.

¹¹ [Missouri leads nation in TV ad spending for governor’s race](#), *Associated Press*, Oct. 13, 2016, *available at* <https://bit.ly/2KCJ5iS>.

¹² Travis Zimpfer, [\\$2 million donation shows clear difference between the federal and Missouri system](#), *The Missouri Times*, July 20, 2016, *available at* <https://bit.ly/2CQS9k9>.

then-Sen. Kelly Ayotte (R-NH).¹³ While The Palmetto PAC only spent money on legal and office expenses in 2016,¹⁴ it spent more than \$1 million on ads in nonfederal elections in 2018.¹⁵

In 2016, Freedom Frontier spent a total of \$5,905,454.¹⁶ The \$4,425,000 the group spent on contributions to super PACs constituted 74.9% of that amount.

On its amended 2015 Form 990 tax return, Freedom Frontier also disclosed spending \$250,000 on “a contribution to a federal independent expenditure only Political Action Committee,” this time a \$250,000 contribution to Security is Strength PAC on November 25, 2015.¹⁷ In 2015, Security is Strength PAC spent \$3,497,576 on advertising supporting Sen. Lindsey Graham (R-SC) in the Republican presidential primary.¹⁸

In 2015, Freedom Frontier spent a total of \$873,707, making its spending across the entire 2015-16 political cycle \$6,779,161. Of that amount, the group spent \$4,675,000, or 68.9%, on super PAC contributions.¹⁹

From its formation in 2011 through 2014, Freedom Frontier filed Form 990-N tax returns, reporting that the organization had gross receipts no greater than \$50,000 in any of those years.²⁰ Even if Freedom Frontier didn’t spend any additional money on political activity during those years, the group’s spending on super PAC contributions between 2011 and 2016 accounted for at least 66.9% of its overall spending in that time period.

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.”²¹ 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.”²² The regulations further provide that “direct or indirect participation or intervention in political

¹³ Security is Strength PAC, Independent expenditures, 2015-2016, Federal Election Commission, *available at* <https://bit.ly/2DuoJIP>.

¹⁴ The Palmetto PAC, Disbursements, 2015-16, Federal Election Commission, *available at* <https://bit.ly/2QWWFAL>.

¹⁵ The Palmetto PAC, Disbursements, 2017-18, Federal Election Commission, *available at* <https://bit.ly/2PhNiPB>.

¹⁶ Freedom Frontier, 2016 Form 990, Part I, Line 18.

¹⁷ Freedom Frontier, 2015 Form 990, Amended, Schedule C, Parts I-A, I-C, and IV; Security is Strength PAC, FEC Form 3x, 2015 Year-End Report, Amended, Oct. 27, 2016, *available at* <https://bit.ly/2ywVjpJ>.

¹⁸ Security is Strength PAC, Independent expenditures, 2015-2016, Federal Election Commission, *available at* <https://bit.ly/2DuoJIP>.

¹⁹ Freedom Frontier, 2016 Form 990, Part I, Line 18; Freedom Frontier, 2015 Form 990, Amended, Part I, Line 18.

²⁰ Freedom Frontier, Tax Exempt Organization Search, Internal Revenue Service, *available at* <https://bit.ly/2PJmtjE>.

²¹ 26 U.S.C. § 501(c)(4).

²² 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 Freedom Frontier’s conduct using the “primarily” standard. Under a correct interpretation of the statute, Freedom Frontier’s political spending unquestionably would violate its tax-exempt status.

campaigns on behalf of or in opposition to any candidate for public office” does not promote social welfare.²³

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.²⁴ 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%)*.”²⁵

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,²⁶ and prohibited political intervention for section 501(c)(3) organizations constitutes political activity for section 501(c)(4) groups like Freedom Frontier.²⁷ Accordingly, Freedom Frontier’s contributions to LG PAC, Security is Strength PAC, and The Palmetto PAC constitute political campaign activities.

Freedom Frontier’s Failure to File Its Tax Return on Time

As a section 501(c)(4) tax-exempt organization, Freedom Frontier is required to file annual Form 990 tax returns.²⁸ The tax returns must be filed within four and a half months after the end of the organization’s fiscal year.²⁹ For organizations like Freedom Frontier that use a calendar year cycle, the annual Form 990 is due on May 15 of the following year.³⁰

Freedom Frontier’s 2016 Form 990 was due May 15, 2017, but it failed to file the return until July 2, 2018, nearly 14 months late.³¹

²³ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

²⁴ Rev. Rul. 68-45, 1968-1 C.B. 259.

²⁵ Exempt Organizations Determinations Unit 2, Student Guide, Training 29450-002 (Rev. 9-2009), at 7-19 (emphasis added), available at <https://bit.ly/2F0srGI>.

²⁶ 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, available at <https://bit.ly/1ev87z2>.

²⁷ 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.”).

²⁸ 26 U.S.C. § 6033(a)(1); Treas. Reg. § 1-6033-2(a).

²⁹ Treas. Reg. § 1-6033-2(e).

³⁰ See <https://www.irs.gov/charities-non-profits/political-organizations/exempt-organization-filing-requirements-form-990-due-date>.

³¹ *Id.*; Freedom Frontier, 2016 Form 990, at 1 and Part II (showing return signed July 2, 2018 and received by the IRS on July 9, 2018).

It is not even clear that Freedom Frontier would have filed its 2016 return at all if not for complaints against the organization filed by CREW with both the IRS and FEC. On March 22, 2018, CREW filed a complaint with the IRS citing Freedom Frontier's failure to file its 2016 tax return on time.³² On June 29, 2018, CREW separately filed a complaint with the FEC alleging that Freedom Frontier was involved in a scheme to conceal millions of dollars in campaign contributions during the 2016 election using federal super PACs and nonprofit organizations.³³ Freedom Frontier filed its 2016 tax return three days after CREW announced its FEC complaint.

Violations

26 U.S.C. § 501(c)(4)

Even under the IRS's misinterpretation of section 501(c)(4), and certainly under the plain language of the statute, Freedom Frontier's political activity in 2016 and in the 2015-16 election cycle exceeded the amount permitted. Freedom Frontier spent 74.9% of its total expenditures on political activity in 2016, and 68.9% of its total spending on political activity in 2015-16, apparently violating the organization's tax-exempt status. Freedom Frontier further appears to have violated its tax-exempt status over its entire existence, spending at least 66.9% of its total expenditures on political activity between its formation in 2011 and the end of 2016.

26 U.S.C. § 6033

Tax-exempt organizations are required to file annual Form 990 tax returns, and must file them on time.³⁴ Those tax returns are due within four and a half months after the end of the organization's fiscal year.³⁵ Tax-exempt organization with more than \$1 million in gross receipts may be penalized up to \$100 per day for filing late.³⁶

Freedom Frontier's 2016 tax return was due May 15, 2017, but the group did not file until at least July 2, 2018, 413 days later. In addition, Freedom Frontier's gross receipts were more than \$1 million.³⁷ As a result, Freedom Frontier should be penalized at least \$41,300 for failing to file its 2016 tax return on time.

Conclusion

Based on the publicly available information, Freedom Frontier's activities do not comport with its claimed status as a section 501(c)(4) tax-exempt organization. Therefore, the IRS should investigate Freedom Frontier and, should it find that Freedom Frontier has violated its tax-

³² Press Release, Citizens for Responsibility and Ethics in Washington, CREW Files IRS Complaint Against Greitens-Backing Nonprofits, Mar. 22, 2018, available at <https://bit.ly/2IYcirb>.

³³ Press Release, Citizens for Responsibility and Ethics in Washington, CREW Files FEC Complaint Against Dark Money Groups That Boosted Greitens Campaign, June 29, 2018, available at <https://bit.ly/2yQXlZy>.

³⁴ 26 U.S.C. § 6033(a)(1); Treas. Reg. § 1-6033-2(a).

³⁵ Treas. Reg. § 1-6033-2(e).

³⁶ 26 U.S.C. § 6033(n); 26 U.S.C. § 6652(c)(1)(A)(ii); Treas. Reg. § 1-6033-2(f). The maximum penalty for late filing for a group with gross receipts of more than \$1 million is \$50,000. 26 U.S.C. § 6652(c)(1)(A)(ii).

³⁷ Freedom Frontier, 2016 Form 990, Part I, Line 12.

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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 Freedom Frontier as a taxable corporation or a section 527 political organization. Further, Freedom Frontier also filed its 2016 tax return at least 413 days late, and thus should be liable for at least \$41,300 in penalties.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director

Encls.

cc: IRS-EO Classification