

June 25, 2019

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 Independence and Freedom Network Inc.

Dear Commissioner Rettig:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the Internal Revenue Service (“IRS”) investigate whether Independence and Freedom Network Inc. (“IFN”), a nonprofit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“Code”), violated federal law with regard to its 2017 tax year.<sup>1</sup> For that year, IFN filed a 990-N (e-Postcard) tax return, which requires minimal reporting and therefore is reserved for tax exempt organizations that normally have gross receipts no greater than \$50,000. In fact, IFN made a \$850,000 contribution to a political action committee during that tax year, and should have filed a detailed, full Form 990. Accordingly, IFN failed to file a proper tax return and failed to report information required to be disclosed, including the amount it spent on political activity and its total receipts and expenditures. IFN’s failures further raise serious questions about whether politics was the group’s primary activity in its 2017 tax year, which would violate its tax-exempt status.

### **Independence and Freedom Network Inc.’s Political Activity**

IFN is a nonprofit corporation established on April 13, 2017 in Ohio.<sup>2</sup> IFN was granted tax-exempt status on April 13, 2018 with an effective date of exemption of April 13, 2017.<sup>3</sup> The organization’s Employer Identification Number is 82-1153081 and its mailing address as reported to the IRS is PO Box 25342, Alexandria, VA 22313.<sup>4</sup>

On March 16, 2018, an organization with the name “Independence and Freedom Network” contributed \$850,000 to Onward Ohio, a federal independent expenditure-only political committee, commonly known as a super PAC, according to Federal Election Commission (“FEC”) records.<sup>5</sup> Though the super PAC reported IFN’s address as 2430 4th Street NE, Washington, DC, 20002, which is different from the Alexandria, VA address IFN has reported to the IRS, it appears to be the same organization as IFN. Multiple news outlets

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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> IFN Articles of Incorporation, Office of the Ohio Secretary of State, Apr. 13, 2017, *available at* <https://bit.ly/2W3pfTm>.

<sup>3</sup> IFN Tax-Exemption Determination Letter from IRS, Apr. 13, 2018, *available at* <https://bit.ly/2O9yU8e>.

<sup>4</sup> *Id.*

<sup>5</sup> Onward Ohio, FEC Form 3X, 2018 April Quarterly Report, Apr. 15, 2018, *available at* <https://bit.ly/2ThW3X8>.

connected the IFN that contributed to Onward Ohio with the IFN that was incorporated in Ohio on April 13, 2017.<sup>6</sup> Representatives of Onward Ohio as well as James G. Ryan, the attorney who filed the Ohio incorporation papers for IFN, declined to dispute the connection by failing to respond to multiple requests for comment from reporters.<sup>7</sup>

IFN's contribution to Onward Ohio directly supported the super PAC's political activity. Onward Ohio was originally formed in 2015 as a section 527 organization that reported its contributions and expenditures to the IRS.<sup>8</sup> The group registered with the IRS on October 14, 2015, around the same time that then-Ohio Lt. Gov. Mary Taylor said publicly that she was "seriously considering" a run for Ohio governor in 2018.<sup>9</sup> Onward Ohio changed its status on December 12, 2016, terminating its requirement to file with the IRS and registering with the FEC as a political committee.<sup>10</sup> Then-Lt. Gov. Taylor was Onward Ohio's honorary chairman until she stepped down from the role in late February 2017 when she formed a campaign committee for her gubernatorial run.<sup>11</sup>

Between October 12, 2017 and April 27, 2018, Onward Ohio spent \$1,447,596.70 on advertising and media production for "Mary Taylor for OH Governor."<sup>12</sup> More than half of Onward Ohio's explicitly Taylor-benefiting expenditures – two advertising payments totaling \$776,771.57 – were made on March 19, 2018, just three days after IFN's \$850,000

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<sup>6</sup> See, e.g., Andrew J. Tobias, Dark money flowing into 2018 Ohio Republican primary elections, *Cleveland Plain Dealer*, Apr. 16, 2018 ("Google, the search engine, registers no results for the Independence and Freedom Network other than its incorporation articles, or news articles or social media posts about the newly uncovered March donation [to Onward Ohio]."), available at <https://bit.ly/2TOdbZK>; Randy Ludlow, Mary Taylor super PAC gets \$850,000 gift; DeWine's in debt, *Columbus Dispatch*, Apr. 16, 2018, available at <https://bit.ly/2FmoJKY>; Maggie Severns, Ohio Super PAC has lone shadowy donor, *Politico*, Apr. 17, 2018, available at <https://politi.co/2JSjjaw>.

<sup>7</sup> *Id.*; Ludlow, *Columbus Dispatch*, Apr. 16, 2018; Severns, *Politico*, Apr. 17, 2018. Additional public information further suggests that they are the same organization. IFN's incorporator, Mr. Ryan, is an attorney in the law firm Bailey Cavalieri's Columbus, Ohio office, and he has filed corporate paperwork for many entities in Ohio. IFN Articles of Incorporation; James G. Ryan, Member, Bailey Cavalieri, available at <https://bit.ly/2qMoZKu>; "James G Ryan," Search by Organizer or Incorporator Name, Business Search, the Office of Ohio Secretary of State, available at <https://bit.ly/2Y889Wv>. One of the for-profit companies Mr. Ryan incorporated is called Digital+Media Partners. LLC. Digital+Media Partners, Articles of Incorporation, Office of the Ohio Secretary of State, Jul. 25, 2017, available at <https://bit.ly/2TV7V5B>. In two payments reported to the FEC by another super PAC, a vendor called Digital + Media Partners was listed with the address 2430 4th Street NE, Washington, DC 20002 – the same address listed as IFN's in Onward Ohio's FEC report. The Palmetto PAC, FEC Form 3X, 2018 April Quarterly Report, Apr. 11, 2018, available at <https://bit.ly/2Y89w7B>; The Palmetto PAC, FEC Form 3X, 2018 October Quarterly Report, Oct. 15, 2018, available at <https://bit.ly/2UJuyHR>.

<sup>8</sup> Onward Ohio, Form 8871 Political Organization Notice of Section 527 Status, Oct. 14, 2015, available at <https://bit.ly/2HFwXiN>.

<sup>9</sup> *Id.*; Lt. Gov. Mary Taylor Eyes Bid For Ohio Governor In 2018, *Associated Press Ohio*, Oct. 20, 2015, available at <https://bit.ly/2TShqmj>.

<sup>10</sup> Onward Ohio, Form 8871 Political Organization Notice of Section 527 Status, Sept. 19, 2018, available at <https://bit.ly/2TwiKhH>; Onward Ohio, FEC Form 1 Statement of Organization, Dec. 12, 2016, available at <https://bit.ly/2Th6XMD>.

<sup>11</sup> @Onward Ohio, Twitter, Feb. 18, 2016, available at <https://bit.ly/2Tj1HXg>; Lt. Gov. Mary Taylor forms committee for Ohio governor bid, *Associated Press*, Feb. 24, 2017, available at <https://bit.ly/2TNwhPL>.

<sup>12</sup> Onward Ohio, Disbursements, 2017-2018, Federal Election Commission, available at <https://bit.ly/2HuaJAT>.

contribution.<sup>13</sup> Onward Ohio, which had \$293,712.90 cash on hand before the IFN contribution, would not have been able to pay for the ads without the \$850,000 influx.<sup>14</sup>

### **Independence and Freedom Network’s Representations to the IRS**

As a section 501(c)(4) tax-exempt organization, IFN is required to file annual Form 990 tax returns.<sup>15</sup> There are several types of Form 990 tax returns, and which form an organization must file generally depends on its amount of financial activity.<sup>16</sup> Organizations with gross receipts that are normally less than or equal to \$50,000 are eligible to file Form 990-N, the “Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990EZ,” though they can choose to file a full return.<sup>17</sup> Little information needs to be reported on Form 990-N. Only “eight items of basic information” must be reported, including the organization’s EIN, the tax year, the organization’s legal name and mailing address, the name and address of a principal officer, and a website address.<sup>18</sup>

Tax-exempt organizations with gross receipts less than \$200,000 and total assets less than \$500,000 can file either Form 990-EZ or Form 990, while organizations with gross receipts greater than or equal to \$200,000 or total assets greater than or equal to \$500,000 must file Form 990.<sup>19</sup> Both of those forms require organizations to report far more detailed information about their structure, purpose, accomplishments, personnel, revenue, and expenditures than the Form 990-N does.<sup>20</sup> Both forms require organizations to disclose their political spending, mandating they file a detailed separate schedule for “Political Campaign and Lobbying Activities.”<sup>21</sup> Specifically, tax-exempt organizations that file Form 990 or Form 990-EZ and are engaged in any “direct or indirect political campaign activities on behalf of or in opposition to candidates for public office” must file a Schedule C with their tax returns, which requires disclosure of the amount spent on “political expenditures.”<sup>22</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>23</sup>

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<sup>13</sup> Onward Ohio, FEC Form 3X, 2018 April Quarterly Report, Apr. 15, 2018, available at <https://bit.ly/2ThW3X8>.

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

<sup>15</sup> 26 U.S.C. § 6033(a)(1); Treas. Reg. § 1-6033-2(a).

<sup>16</sup> IRS, Form 990 Series Which Forms Do Exempt Organizations File Filing Phase In, available at <https://bit.ly/2jAKOYR>.

<sup>17</sup> *Id.*; see also IRS, Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), available at <https://bit.ly/1sJsnp0>.

<sup>18</sup> *Id.*; IRS, Information Needed to File e-Postcard, available at <https://bit.ly/2WtkiUP>.

<sup>19</sup> IRS, Form 990 Series Which Forms Do Exempt Organizations File Filing Phase In; 2018 Instructions for Form 990, at 3, available at <https://www.irs.gov/pub/irs-pdf/i990.pdf>.

<sup>20</sup> 2018 Form 990-EZ, available at <https://www.irs.gov/pub/irs-pdf/f990ez.pdf>; 2018 Form 990, available at <https://www.irs.gov/pub/irs-pdf/f990.pdf>.

<sup>21</sup> 2018 Schedule C, available at <https://www.irs.gov/pub/irs-pdf/f990sc.pdf>.

<sup>22</sup> 2018 Form 990, Part IV, Question 3; 2018 Form 990-EZ, Part V, Question 46 (slightly different wording); 2018 Instructions for Form 990, at 12; 2018 Instructions for Schedule C, at 1, 3, available at <https://www.irs.gov/pub/irs-pdf/i990sc.pdf>.

<sup>23</sup> *Id.* at 1; 2018 Instructions for Form 990, at 68.

By filing Form 990-N, a tax-exempt organization acknowledges that it was not required to file Form 990 or Form 990-EZ for that year because its annual gross receipts are not normally greater than \$50,000.<sup>24</sup>

For its 2017 tax period, covering May 1, 2017 to April 30, 2018, IFN filed Form 990-N, thus claiming gross receipts not greater than \$50,000.<sup>25</sup> On the form, IFN reported that its principal officer's name is Ray McVeigh, its mailing address is PO Box 25342, Alexandria, VA 22313, and asserted that it does not have a website.<sup>26</sup>

For organizations like IFN that have been in existence for one year or less, gross receipts are considered to be \$50,000 or less only if the organization "received, or donors have pledged to give, \$75,000 or less during its first taxable year."<sup>27</sup> IFN's political activity, however, demonstrates that the organization's gross receipts in its 2017 tax period were well above \$50,000.

On March 16, 2018, IFN contributed \$850,000 to Onward Ohio.<sup>28</sup> According to the Form 990-N filed by IFN, the organization's 2017 tax year, covering its first year of existence, ended on April 30, 2018, approximately six weeks after the nonprofit contributed to the super PAC.<sup>29</sup> An \$850,000 contribution would be impossible for an organization with gross receipts not greater than \$50,000, particularly one in its first year of existence like IFN, as it could not have assets held over from the previous year.

By filing Form 990-N, IFN did not report whether it engaged in any "direct or indirect political campaign activities on behalf of or in opposition to candidates for public office."<sup>30</sup> IFN also did not file a Schedule C reporting the amount it spent on political expenditures.<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

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<sup>24</sup> Treas. Reg. § 1.6033-6(c)(3); Rev. Proc. 2011-15.

<sup>25</sup> IFN 2017 Form 990-N, available at <https://bit.ly/2Y6GjKc> and <https://bit.ly/2ObkTac>.

<sup>26</sup> *Id.*

<sup>27</sup> IRS, Gross Receipts Normally \$50,000 or Less, available at <https://bit.ly/2A6k1h5>.

<sup>28</sup> Onward Ohio, FEC Form 3X, 2018 April Quarterly Report, Apr. 15, 2018.

<sup>29</sup> IFN 2017 Form 990-N.

<sup>30</sup> *Id.*

<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.

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 that must be disclosed for section 501(c)(4) groups like IFN.<sup>38</sup> Accordingly, IFN’s contribution to Onward Ohio appears to constitute political campaign activity.

Since IFN failed to file a full Form 990 detailing its total revenue and total expenses, it is impossible to assess whether IFN’s political activity in its 2017 tax year exceeded the amount permitted. The organization’s substantial political expenditure, combined with its claim to have gross receipts no greater than \$50,000, raises serious questions about whether political campaign activity was the group’s primary activity in its 2017 tax year.

### **Potential Violations**

#### **26 U.S.C. § 6652**

Under the Code, a tax-exempt organization that, without reasonable cause, fails to file a required Form 990 tax return, 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>

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<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), available at <https://bit.ly/2WvZGKx>.

<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, available at <https://bit.ly/2XFLRKV>; see also, e.g., IRS website, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, March 5, 2014, available at <https://bit.ly/2kiblPh>.

<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 (October 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.”).

<sup>39</sup> 26 U.S.C. §§ 6652(c)(1)(A)(i), 6652(c)(1)(A)(ii), 6652(c)(4); see also 2018 Instructions for Form 990, at 6-7.

IFN made an \$850,000 political contribution in its 2017 tax year, covering its first year of existence. That contribution would be impossible for an organization with gross receipts not greater than \$50,000. Nevertheless, IFN failed to file a full Form 990 for that tax year, instead filing Form 990-N. As a result, IFN appears to have violated 26 U.S.C. § 6652 by failing to file a required tax return. The effect of IFN filing of Form 990-N instead of a full Form 990 further appears to have violated the statute because IFN failed to include on its tax return detailed information about the organization and its activities, including whether it engaged in direct or indirect political campaign activities, a Schedule C detailing the amount that it spent on political expenditures, and its total expenditures. In addition, by filing Form 990-N, IFN acknowledged that it was not required to file Form 990 or Form 990-EZ, and thus reported incorrect information to the IRS. For all these reasons, IFN appears to have violated the Code and should be subject to monetary penalties.

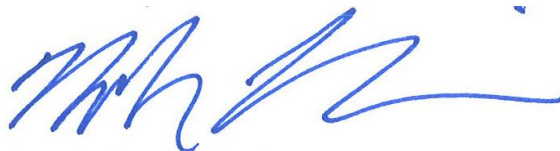
26 U.S.C. § 501(c)(4)

Under the IRS's misinterpretation of section 501(c)(4), and certainly under the plain language of the statute, an organization that spends more than half of expenditures on political activity in a given year has violated its tax-exempt status. IFN's failure to file a full Form 990 means it is not fully clear if IFN's \$850,000 political contribution to Onward Ohio exceeded its permitted amount of political activity. IFN's failure to disclose its political activities and the likelihood that more than half of IFN's expenditures were spent on political activity in its 2017 tax year, however, warrants an investigation into whether IFN violated its tax-exempt status.

**Conclusion**

IFN failed to file a full Form 990 tax return for 2017, and in doing so omitted, among other things, hundreds of thousands of dollars in spending on political activity. The IRS should investigate IFN and, should it find that IFN has violated its reporting obligations under the Code or that it is operating in violation of its tax-exempt status, take appropriate action.

Sincerely,



Noah Bookbinder  
Executive Director