

**American Family Voices • Americans for Tax Fairness • Campaign for Accountability • Center for American Progress • Center for Biological Diversity • Center for Media and Democracy • Citizens for Responsibility and Ethics in Washington (CREW) • Common Cause • Demand Progress Action • End Citizens United • Free Speech For People • Public Citizen**

July 26, 2018

The Honorable David J. Kautter  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, D.C. 20224

Re: New York State Attorney General referral of apparent tax-code violations  
by the Donald J. Trump Foundation (ETN # 13-3404773)

Dear Acting Commissioner Kautter:

We write to urge you to vigorously pursue civil penalties against the above-referenced Donald J. Trump Foundation and its officers, including President Trump, for violations of the Internal Revenue Code outlined in the [June 14, 2018, referral to your office](#) from the Charities Bureau of the New York State Attorney General's Office (OAG). As you know, the OAG made its referral in connection with a state civil suit it has filed against the Foundation and its leaders, including President Trump.

Further, based on the facts laid out in the referral letter and the civil [complaint](#) filed by the OAG, there were also potentially criminal acts associated with these violations. We urge the IRS to conduct a criminal investigation and, should its investigation establish that crimes were committed, refer the case to the United States Department of Justice (DOJ) for prosecution.

The OAG detailed its findings as follows:

“Specifically, and as detailed in the attached IRS Form 13909, the Investigation found that: (1) the President of the Foundation's board, Mr. Trump, used Foundation assets for personal gain; (2) the Foundation impermissibly intervened in a political campaign by, among other things, attempting to influence the outcome of the 2016 presidential election; (3) the Foundation failed to report excise tax liability properly; and (4) the Foundation engaged in deceptive and/or improper fundraising practices.<sup>2</sup> The Investigation further found that the Foundation engaged in impermissible political activity and a related-party transaction during the 2016 presidential Trump Campaign, as well as on one occasion in 2013.<sup>3</sup> The Investigation also revealed that the Foundation entered into at least six related-party transactions that directly benefitted Mr. Trump or entities that he controlled, and in some instances failed to properly report excise tax liability with the IRS.

The most egregious Code violation outlined in the referral was the blatant exploitation of the Foundation's charitable giving to promote the presidential candidacy of Donald Trump. The OAG found that the Trump campaign "extensively directed and coordinated" the Foundation's hosting of a widely-publicized fundraiser for veterans' causes held in Iowa a few days before the Iowa caucuses, the crucial kick-off event in the presidential primary process. As you know, as a tax-exempt organization, the Foundation may not according to [Section 501\(c\)\(3\)](#) of the Code "participate in, or intervene in...any political campaign on behalf of...any candidate for public office."

Despite that clear prohibition, according to the referral the Trump campaign "planned, organized, and paid for" the Foundation's Iowa event, with senior campaign staffers directing how the Foundation would use nearly \$3 million raised, "including the timing, amounts, and recipients of...grants." That included the future president personally distributing giant presentation checks at Trump campaign rallies.

The degree to which the Trump Foundation disregarded the Revenue Code's prohibition on political activity is, in the estimation of at least one expert, unprecedented. Attorney Marcus Owens, who [headed the Exempt Organizations Division](#) of the IRS for 10 years, [has been quoted](#) as saying he's unaware of "any other private foundation" having "the degree of involvement in a political campaign as the Trump Foundation has had."

Even a skeptic about the OAG's lawsuit as a whole [has been quoted](#) as asserting "the charges of 'coordination' between the Foundation and the Trump campaign have substance." Non-profit law professor Bruce Hopkins, author of his profession's standard text, *The Law of Tax-Exempt Organizations*, has been further quoted as predicting the Foundation's "political activity, coupled with the surrounding private inurement, could cause retroactive revocation of the Trump Foundation's tax-exempt status."

The OAG's belief that the Foundation's Iowa fundraiser was completely, impermissibly political is shown by [the restitution sought: \\$2.8 million](#)—that is every dollar raised at the Trump campaign event and deposited in the Foundation's account rather than immediately passed along to veterans' groups.

The OAG's referral also documents how, in addition to using his Foundation to further his political career, prior to running for president Trump also improperly used it for his own personal financial benefit and that of his businesses. On five separate occasions between 2007 and 2015, the Foundation spent a total of over \$300,000 to settle legal claims or cover other costs incurred by Mr. Trump's for-profit businesses. These included purchasing for \$10,000 a portrait of the president that hung in one of his golf clubs, spending \$158,000 to help settle a lawsuit filed by a golfer at another Trump club complaining that he hadn't been rewarded as promised for shooting a hole-in-one, and making a \$100,000 payment to a charity, Fisher House Foundation, to settle legal claims between the [City of Palm Beach and Mar-A-Lago](#), which is owned by Mr. Trump.

As you know, Section 501(c)(3) prohibits a non-profit corporation like the Trump Foundation from using funds for “the benefit of any private shareholder or individual.” Private foundations are also subject to penalty taxes on transactions with insiders – so-called “self-dealing.”

The OAG states in its state civil complaint (p. 21) that Mr. Trump signed several Foundation tax returns attesting – falsely – that the Foundation did not engage in self-dealing or impermissible political activity. The complaint presents evidence that Mr. Trump was aware of the relevant tax laws, indicating that he signed the false tax returns willfully and knowingly. These facts provide compelling grounds to explore criminal prosecution.

Our laws grant tax-exempt status to foundations and other charitable organizations on the condition that they operate exclusively for charitable purposes—not to promote political candidates or pay off private debts. Yet according to the OAG’s two-year investigation, the Trump Foundation repeatedly and blatantly engaged in just such prohibited activities. Failure by the IRS to respond energetically to such shocking allegations of misconduct would send the wrong message to other Americans about the need to adhere to our tax laws and the impartiality of their application.

If the OAG’s allegations of Revenue Code violations prove accurate, the IRS must pursue appropriate penalties, including the relevant excise taxes, back taxes and penalties, and loss of tax-exempt status. Further, should your investigation uncover instances where it appears that the Trump Foundation and/or its officers, including President Trump, willfully violated the law, we urge you to refer those matters to DOJ for criminal prosecution.

Sincerely,

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