

INTERNAL REVENUE SERVICE

In the matter of:

THE FRANKLIN
EDUCATION FORUM and THE
FRANKLIN FORUM.

**MEMORANDUM IN SUPPORT OF
TAX-EXEMPT ORGANIZATION REFERRAL**

The Patriots Foundation submits this memorandum in support of the enclosed Form 13909, Tax-Exempt Organization Complaint (Referral), alleging that The Franklin Education Forum and The Franklin Forum have engaged in serious and deliberate violations of the Internal Revenue Code of 1986, as amended (“IRC”), and abused their tax-exempt status.

Specifically, as detailed below, The Franklin Education Forum and The Franklin Forum lack proper tax-exempt purposes under section 501(c)(3) and 501(c)(4), respectively, and have abused their tax-exempt status. The Franklin Education Forum’s sole activity is providing grants to The Franklin Forum, a related section 501(c)(4) organization which engages in partisan media training to benefit the Democratic Party. Under this arrangement, the singular role of The Franklin Education Forum is to improperly funnel tax-deductible donations provided to it as a section 501(c)(3) organization, to a section 501(c)(4) organization which cannot provide tax-deductibility to its donors. Moreover, The Franklin Forum provides an impermissible private benefit to the Democratic Party and Democratic candidates through its operation of partisan media training programs focused on recruiting, training, and placing Democratic media pundits in positions to advance Democratic candidates and ideas. The improper activities engaged in by both groups are inconsistent with any proper tax-exempt purpose.

FACTS

The Franklin Education Forum was incorporated in Washington D.C. on June 19, 2013.¹ It received a formal determination letter from the IRS on October 2, 2015, recognizing it as a tax-exempt organization under section 501(c)(3).² In its Form 1023, Application For Recognition Of Exemption Under Section 501(c)(3) Of The IRC, The Franklin Education Forum described itself as: “an educational organization that provides grants for media training and ongoing coaching in order to improve and develop the capabilities of progressive messengers.”³ To that end, The Franklin Education Forum “provide[s] restricted grants to Franklin Forum, an affiliated entity organized under section 501(c)(4) of the Internal Revenue Code, to fund intensive media training boot camps for rising and seasoned progressive pundits ... [to] prepare progressive leaders to tell their stories and make progressive ideas compelling.”⁴ The Franklin Education Forum and The Franklin Forum also share office space and staff expenses, and have a majority-overlapping Board of Directors.⁵

The Franklin Forum describes itself as “a communications organization that provides media training and support, including message development and speaker promotion, to strengthen top progressive messengers and messaging.”⁶ Its mission is to “broaden the appeal of the progressive cause,” and to serve as “a one-stop shop for progressive talker development and support.”⁷ The Franklin Forum offers “intensive media training boot camps for rising and seasoned

¹ Articles of Incorporation, The American Advocacy Education Center (June 19, 2013), as amended by Articles of Amendment, The Franklin Education Forum (Dec. 19, 2013) (attached as Exhibit 1).

² Letter 947 (Oct. 2, 2015) (attached as Exhibit 2).

³ The Franklin Education Forum, Form 1023, Application For Recognition Of Exemption Under Section 501(c)(3) Of The IRC, Attachments, Part IV (attached as Exhibit 3).

⁴ *Id.*

⁵ *Id.*

⁶ About Us, The Franklin Forum (last accessed Jan. 22, 2020), <https://thefranklinforum.org/about-us>.

⁷ *Id.*

progressive pundits.”⁸ Potential attendees for its media training boot camps are required to submit comprehensive applications including their resume, job title, why they feel they are a good spokesperson for progressive issues, description of previous experiences with the media, and past interview clips.⁹ As part of its selection process, The Franklin Forum also reaches out to progressive organizations and seeks recommendation from past graduates.¹⁰ The Franklin Forum’s program consists of messaging and practical media skills training, as well as coaching.¹¹ Previous trainings have included: “Net Neutrality Training;” “Clean Energy Training;” and “Transgender Spokesperson Training.”¹²

The Franklin Forum also offers “media and communications training sessions for progressive organizations’ principals, top leaders and staff” and “one-on-one training for top progressive leaders.”¹³ One example on its website illustrates the training provided by The Franklin Forum. On a page titled “A Trust Deficit,” The Franklin Forum highlighted a story, describing it like this: “Today Republicans abandoned a plan to force the government to default on its debts unless cuts Republicans demanded a few months ago were undone.”¹⁴ The Franklin Forum then offered some “toplines” for this story which began with this simple directive: “Talk about trust issue: Republicans can’t even be trusted to pay the bills they’ve run up.” It then provided three points labeled “Show how your opponents differ:”

- “Republican leadership calls it ‘irresponsible’ to pay the bills they ran up without first threatening to tank our entire economy.”

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Training, The Franklin Forum (last accessed Jan. 22, 2020), <https://thefranklinforum.org/media-training>.

¹⁴ A Trust Deficit, The Franklin Forum (last accessed Jan. 22, 2020) <https://thefranklinforum.org/a-trust-deficit>.

- “For weeks they’ve been planning to hold our government hostage but couldn’t agree on what to demand for ransom. Most recently, they wanted to demand we restore the very cuts they made just a few months ago.”
- “Fortunately, Republicans don’t want to appear too radical too close to the 2014 elections so they seem to be backing off their threat to manufacture another crisis.”

This example illustrates the kind of messaging training offered by The Franklin Forum, and provides context to the kind of recruits they seek for their training. In addition, The Franklin Forum is led by long-time Democratic Party operatives, and trains Democratic candidates on communications strategy and television skills, as well as other Democratic speakers, including those who presented at the podium for the 2016 Democratic National Convention.¹⁵ This work has not gone unnoticed by the Democratic Party. In 2017, the Democratic National Committee (“DNC”) hired The Franklin Forum’s President, John Neffinger, to serve as its interim communications director.¹⁶ In announcing the hire, Donna Brazile, at the time interim chair of the DNC, described Neffinger as a “talented and dedicated Democrat[.]” and praised his work “train[ing] an entire generation of Democratic leaders.”¹⁷

The Forms 990, Return of Organization Exempt From Income Tax, for The Franklin Forum and The Franklin Education Forum further detail their close relationship. According to The Franklin Education Forum’s Forms 990 for 2015, 2016, and 2017, the overwhelming majority of its activities each year consists of making grants to the Franklin Forum. In 2015, The Franklin Education Forum reported \$200,850 in total revenue, of which \$134,583—or 67%—was provided

¹⁵ Phillip Rucker, *The Democratic Party Builds A War Room To Battle Trump*, WASH. POST (Jan. 3, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/01/03/the-democratic-party-builds-a-war-room-to-battle-trump>.

¹⁶ *Id.*

¹⁷ *Id.*

as a grant to The Franklin Forum.¹⁸ In 2016, The Franklin Education Forum reported \$713,850 in total revenue, of which \$634,208—or 89%—was provided as a grant to The Franklin Forum.¹⁹ In 2017, The Franklin Education Forum reported \$410,000 in total revenue, of which \$223,500—or 55%—was provided as a grant to The Franklin Forum.²⁰

Similarly, The Franklin Forum's Forms 990 for 2015, 2016, and 2017, show that the percentage of its support from grants made by The Franklin Education Forum increased significantly after The Franklin Education Forum received recognition of tax-exempt status under section 501(c)(3). In 2015, for example, The Franklin Forum reported \$1,334,147 in total revenue, of which only \$134,583—or 10%—was received as a grant from The Franklin Education Forum.²¹ However, in 2016, The Franklin Forum reported \$1,017,182 in total revenue, of which \$634,208—or 62%—was received as a grant from The Franklin Education Forum.²² Similarly, in 2017 The Franklin Forum reported \$446,648 in total revenue, of which \$223,500—or 50%—was received as a grant from The Franklin Education Forum.²³ Of course, these amounts do not include the value of the benefit conferred on each organization from the sharing of offices, paid employees, and other office materials.

¹⁸ Compare The Franklin Education Forum, Form 990, Return Of Organization Exempt From Income Tax, Part I, Summary (2015), with The Franklin Education Forum, Form 990, Schedule I, Grants And Other Assistance To Domestic Organizations (2015) (attached as Exhibit 4).

¹⁹ Compare The Franklin Education Forum, Form 990, Part I (2016), with The Franklin Education Forum, Form 990, Schedule I (2016) (attached as Exhibit 5).

²⁰ Compare The Franklin Education Forum, Form 990, Part I (2017), with The Franklin Education Forum, Form 990, Schedule I (2017) (attached as Exhibit 6).

²¹ Compare The Franklin Forum, Form 990, Part I (2015), with The Franklin Forum, Form 990, Schedule R, Related Organizations And Unrelated Partnerships (2015) (attached as Exhibit 7).

²² Compare The Franklin Forum, Form 990, Part I (2016), with The Franklin Forum, Form 990, Schedule R (2016) (attached as Exhibit 8).

²³ Compare The Franklin Forum, Form 990, Part I (2017), with The Franklin Forum, Form 990, Schedule R (2017) (attached as Exhibit 9).

VIOLATIONS

A. The Law.

Organizations granted tax-exempt status under sections 501(c)(3) and 501(c)(4) of the IRC must be “operated exclusively for one or more of the purposes specified in such section.”²⁴ In the case of an organization under section 501(c)(3) it must be operated for a religious, charitable, scientific, or educational purpose.²⁵ In contrast, a section 501(c)(4) organization must be operated for the promotion of social welfare.²⁶ The differences between these two organizations extend to the benefits conferred on each by Congress. For example, while both kinds of organizations are exempt from tax, generally, only contributions to a 501(c)(3) organization may be deducted by the contributor. The United States Supreme Court has explained Congress’ choice not to provide the same benefit to 501(c)(4) organizations that it provides to those organized under 501(c)(3):

Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to that organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual’s contribution. The system Congress has enacted provides this kind of subsidy to nonprofit civic welfare organizations generally, and an additional subsidy to those charitable organizations that ... [only engage in 501(c)(3) activities]. In short, Congress chose not to subsidize [501(c)(4) activities] as extensively as it chose to subsidize other activities that nonprofit organizations undertake to promote the public welfare.²⁷

In light of the different tax benefits provided to each organization, the Supreme Court has recognized that a 501(c)(3) organization cannot use its deductible funds to subsidize a 501(c)(4) organization as an end run around Congress’ decision.²⁸ For the Court, its decision was buttressed

²⁴ 26 C.F.R. § 1.501(c)(3)-1(a)(1); *see also* 26 C.F.R. § 1.501(c)(4)-1(a)(1)(ii).

²⁵ 26 U.S.C. § 501(c)(3).

²⁶ *Id.* at (c)(4).

²⁷ *Regan v. Taxation with Representation*, 461 U.S. 540, 544 (1983) (unanimous Court).

²⁸ *See id.*

by the distinct benefits Congress granted each organization.²⁹ While the Court recognized that section 501(c)(3) and 501(c)(4) organizations could be related, and could work toward similar goals, their respective activities would have to be limited based on their tax-exempt classification.³⁰ So, for example, a 501(c)(3) organization could not engage in excessive lobbying or political campaign intervention activity, even if a 501(c)(4) could. Therefore, where a 501(c)(3) and 501(c)(4) organization are related, they “of course, ha[ve] to ensure that the § 501(c)(3) organization [does] not subsidize the § 501(c)(4) organization; otherwise, public funds might be spent on an activity Congress chose not to subsidize.”³¹

The IRS has further explained that nonprofit status under 501(c)(3) is not appropriate where the 501(c)(3) organization is operated “for the benefit of [a related 501(c)(4) organization] in order to confer the benefits of tax exemption under 501(c)(3).”³² Evidence of such operation is found in a number of factors, including: the sharing of employees, office space, equipment, and costs; conducting similar activities; shared control between the 501(c)(3) and 501(c)(4) organizations; failure to adequately separate the activities of the two organizations; and no explanation as to which activities are associated with the 501(c)(3) organization and which are associated with the 501(c)(4).³³ The existence of a combination of these factors is evidence that a 501(c)(3) organization is improperly “operating to convey the benefits of tax exemption under IRC section 501(c)(3) to” a related 501(c)(4).³⁴

Although its primary activity is the funneling of tax-deductible 501(c)(3) dollars to its related 501(c)(4) organization, The Franklin Education Fund claimed exemption with the IRS as

²⁹ *Id.* at 543.

³⁰ *Id.* at 544.

³¹ *Id.*

³² PLR 201408030, Letter 4036 at pg. 6-7 (Feb. 21, 2014) (attached as Exhibit 10).

³³ *Id.* at pgs. 7 and 9.

³⁴ *Id.* at 9-10.

an educational organization. The IRS has elaborated on the definition of an “educational” organization under section 501(c)(3). Treasury regulations define an education organization as one that provides “instruction or training of the individual for the purpose of improving or developing his capabilities” or “instruction of the public on subjects useful to the individual and beneficial to the community.”³⁵ However, an organization fails to meet the definition of educational where it “seek[s] to educate individuals, who are members of a particular population, to enable them to be more active and effective in influencing public policy makers.”³⁶ Similarly, an organization is “not operated exclusively for educational purpose where its activities are primarily directed toward encouraging greater involvement in politics and government.”³⁷

Finally, in order to satisfy the requirement that tax-exempt organizations be operated exclusively for exempt purposes, nonprofit organizations are prohibited from operating for private benefit and personal interests.³⁸ The IRS and courts have consistently found that where an organization dedicates its resources to benefit private individuals or groups, rather than the community as a whole, it is not operated exclusively for exempt purposes, and its tax-status should be revoked.³⁹ This is true, as well, when nonprofit organizations improperly benefit partisan political interests and provide benefit to political parties or candidates.

A nonprofit organization may be found to provide an impermissible private benefit to a political party and its candidates when it operates a training program for political campaign

³⁵ 26 C.F.R. § 1.501(c)(3)-1(d)(3).

³⁶ PLR 201408030, Letter 4036 at pg. 7 (Feb. 21, 2014).

³⁷ *Id.* at 8 (citing Rev. Rul. 60-193, 1960-1 C.B. 195).

³⁸ *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1065 (1989).

³⁹ Rev. Rul. 73-306, 1972-2 C.B. 179 (a nonprofit organization formed to represent member-tenants of an apartment complex does not qualify for exemption under section 501(c)(4) because the organization is not primarily engaged in activities for the common good and general welfare of the community); *Retired Teachers Legal Defense Fund v. Commissioner*, 78 T.C. 280 (1982) (organization dedicated to protecting the financial stability of the New York City Teachers' Retirement System was not a charitable organization because it served the private interests of its members rather than the public more broadly).

professionals, including for media and communications officials.⁴⁰ Prohibited private benefits can include any advantage, profit, fruit, privilege, gain, or interest.⁴¹ And where an organization exists to conduct activities with the partisan objective of benefitting one party and its candidates over another, it is conferring a prohibited private benefit.⁴² Key factors that may indicate a training program provides such a partisan advantage include: connections between the governance of the organization and members of one political party; the curriculum and subject matter taught; partisan makeup of the people determining admission to the program; whether the partisan preferences of applicants are asked, or can be easily determined based on admission applications; whether graduates predominantly serve one political party or its candidates after graduating from the program; and the extent to which the training program assists graduates with finding jobs.⁴³

B. The Franklin Education Forum Lacks Any Exempt Purpose Under Section 501(c)(3).

The Franklin Education Forum does not operate for an exempt purpose within the meaning of section 501(c)(3) of the IRC. Rather, The Franklin Education Forum was created to funnel tax-deductible contributions to a related nonprofit—The Franklin Forum—that could not itself receive such contributions. It does this by consistently transferring a significant portion of its revenue annually to The Franklin Forum—67%, 89%, and 55% for 2015, 2016, and 2017, respectively. In addition, The Franklin Education Forum and The Franklin Forum share office space, staff, and expenses, and have a majority-overlapping Board of Directors.

⁴⁰ See *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989).

⁴¹ *Id.* at 1065-66.

⁴² *Id.* at 1078-79 (“[W]e find the administrative record supports ... [the IRS’s] contention that ... [the nonprofit] was **formed with a substantial purpose to train campaign professionals for service in Republican entities** and campaigns. ... Had the record established that the Academy’s activities were nonpartisan in nature and that its graduates were not intended to primarily benefit Republicans, we would have a different case. We are not, however, deciding such a case. Accordingly, we conclude that petitioner is operated for the benefit of private interests, a nonexempt purpose.” (emphasis added)).

⁴³ *Id.* at 1070-72.

Such an arrangement does not further any exempt purpose. Instead, the Franklin Education Forum’s true purpose is to circumvent the distinction Congress drew between 501(c)(3) and 501(c)(4) organizations—namely, tax-deductibility of donations. Where 501(c)(3) and 501(c)(4) organizations share employees, office space, and costs, conduct similar activities, have overlapping control, and fail to distinguish between the activities of the 501(c)(3) and those of the 501(c)(4), it can reasonably be said that the 501(c)(3) organization operates solely to convey benefits of its tax exemption to the related 501(c)(4) organization. To avoid revocation of its tax-exempt status a 501(c)(3) organization related to a 501(c)(4) must ensure that it does not subsidize the 501(c)(4) organization; “otherwise, public funds might be spent on an activity Congress chose not to subsidize.”⁴⁴ Here, The Franklin Education Forum has made not such attempt.

In addition, The Franklin Education Forum made material misstatements on its Form 1023, which the IRS relied upon in granting it tax-exempt status. First, in providing the IRS with information on its grant making activity, it failed to disclose that this would be the *only* activity it conducted, and that it would provide grants *solely* to its related 501(c)(4), The Franklin Forum. Facts that become apparent when examining its Forms 990. Additionally, The Franklin Education Forum described itself as “an educational organization” under section 501(c)(3). As its activities to date have demonstrated, this statement was materially false.

There is nothing “educational” about funneling tax-deductible contributions to a 501(c)(4) organization, outside the scheme established by Congress. Moreover, the IRS has clarified that educating members of a particular population (e.g., “progressives”) to enable them to more effectively influence public sentiment is not a proper educational activity. Put another way, an organization is not operated for educational purposes where its activities are designed to encourage

⁴⁴ *Regan v. Taxation with Representation*, 461 U.S. at 544.

greater political involvement for the benefit of one side of the political spectrum. Yet, that is precisely the kind of activity engaged in by The Franklin Forum, which is the sole recipient of The Franklin Education Forum’s grantmaking activities. If The Franklin Forum’s activities would not qualify it as educational, then providing it funds to perform such activities cannot be educational either. The Franklin Education Forum simply does not have any exempt purpose under section 501(c)(3) of the IRC entitling it to tax-exempt status, and because it made material misstatements to the IRS when it applied for such status it should be retroactively revoked.

C. The Franklin Forum Provides An Impermissible Private Benefit To The Democratic Party And Democratic Candidates.

The Franklin Forum—The Franklin Education Forum’s related 501(c)(4) organization—also fails to qualify as a tax-exempt organization because it provides a private benefit to the Democratic Party and its candidates. As a 501(c)(4) organization it is required to operate exclusively for social welfare purposes; yet, it fails to do so. Instead, it dedicates its resources to advancing the interests of the Democratic Party and Democratic candidates, at the expense of serving the community as whole.

A prohibited private benefit can be any advantage, privilege, or interest which is given to an individual or particular group. The IRS and Tax Court have found that partisan training programs provide private benefit to political parties and their candidates, and are not proper tax-exempt organizations. This is especially true where, as here, the organization itself announces its partisan preferences. The Franklin Forum makes no attempt to hide that it exists to advance Democratic messengers and ideas in order to benefit a particular party and candidate. It describes itself as an organization designed “to strengthen top progressive messengers and messaging,” and prides itself on its ability to “make progressive ideas compelling.”⁴⁵ Put simply its mission “is to be a one-stop

⁴⁵ About Us, The Franklin Forum (last accessed Jan. 22, 2020), <https://thefranklinforum.org/about-us>.

shop for progressive talker development and support.”⁴⁶ The partisan nature of such a statement is apparent on its face.

Several additional factors show the clear partisan advantage The Franklin Forum seeks to provide the Democratic Party. Its leadership is made up of individuals with deep ties to the Democratic Party. Its curriculum and subject matter are clearly favored toward the Democratic Party. In fact, its website contains examples of talking points explicitly attacking the Republican Party as the opposition. The materials required by applicants make it easy to determine their partisan preference and, in fact, the organization openly requests only applicants sympathetic towards the Democratic Party. It reaches out to progressive organizations and seeks recommendations for quality candidates, and provides media and communications training sessions exclusively for Democratic organizations and candidates. Finally, The Franklin Forum works with graduates to place them in roles designed specifically to benefit the Democratic Party. And the Democratic Party has recognized and thanked The Franklin Forum for “train[ing] an entire generation of Democratic leaders.” On this record, it is clear that The Franklin Forum operates to confer a benefit on one political party, and does not legitimately serve a public interest. For this reason, its tax-exempt status should be retroactively revoked.

D. The Franklin Forum and The Franklin Education Forum Failed To Comply With Public Inspection And Copying Requirements For Their Most Recent Annual Returns As Required By Law.

This complaint does not include reference to The Franklin Forum and The Franklin Education Forum’s most recent Forms 990 filed for the 2018 tax year for one simple reason: they refused to provide them upon request, as required by law. Multiple in-person attempts made to secure the requested returns where met with resistance and avoidance, and calls to the

⁴⁶ *Id.*

organizations to discuss disclosure where never returned. The requirement for tax-exempt organizations to comply with inspection requests for their most recent annual returns is not optional.⁴⁷ And the penalty for noncompliance is clear: “\$20 for each day during which such failure continues” with a maximum penalty per return of \$10,000, and an additional \$5,000 per return for each willful failure to comply.⁴⁸ Accordingly, the IRS should assess appropriate penalties, including one for a willful failure to comply.

CONCLUSION

The Franklin Education Forum and The Franklin Forum have engaged in activity that violates the IRC and constitutes an abuse of their tax-exempt status under section 501(c)(3) and 501(c)(4), respectively. Accordingly, the IRS should undertake an examination of The Franklin Education Forum and The Franklin Forum to determine the extent to which they have misused their tax-exempt status. Further, the IRS should determine that The Franklin Education Forum and The Franklin Forum have engaged in egregious and systemic violations of their tax-exempt status, and take appropriate action as warranted including, but not limited to: revoking their tax-exempt status; imposing applicable excess benefit transaction excise taxes under section 4958; imposing any unrelated business income tax; treating the organizations in their entirety as a taxable entity; imposing any appropriate penalties and additions to tax; and referring violations to the Department of Justice for possible criminal prosecution.

⁴⁷ See 26 U.S.C. § 6104(d); 26 C.F.R. § 301.6104(d)(1).

⁴⁸ 26 U.S.C. §§ 6652(c)(1)(C) and 6685.