

C A M P A I G N F O R

ACCOUNTABILITY

January 23, 2023

VIA E-MAIL: eoclass@irs.gov

TEGE Referral Group
1100 Commerce Street
MC 4910 DAL
Dallas, TX 75242
FAX: (214) 413-5415

Re: Complaint Against Texas Public Policy Foundation (EIN: 74-2524057)

Dear Sir or Madam:

Campaign for Accountability (“CfA”)¹ respectfully submits this Tax-Exempt Organization Complaint to the Internal Revenue Service (“IRS”) regarding the activities of Texas Public Policy Foundation (“TPPF,” EIN: 74-2524057), a Texas corporation recognized as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).² Form 13909 is enclosed with this letter.

BACKGROUND

TPPF is a Texas corporation formed in 1987 and recognized by the IRS as a tax-exempt section 501(c)(3) organization in 1989. On its most recent publicly available Form 990, TPPF described its mission as “to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.”³ Since 2015, TPPF has described its three programmatic activities in support of its mission as: (a) support research to inform specific positions on various issues of public policy, (b) sponsor various public policy events, and (c) support the Center for the American Future, Inc. (EIN: 46-3338627), a Texas corporation and Section 501(c)(4) social welfare organization (the “Center”).⁴

Consistent with its professed programmatic activity of sponsoring public policy events, TPPF hosts various events throughout the year. Last year this included the “2022 Victory Summit: Forging the Future of the Republic” (“2022 Victory Summit”), held September 22-24, 2022 at the Hyatt Regency Lost Pines in Cedar Creek, Texas. TPPF billed this as a political fundraising opportunity, urging:

“Please join top conservative leaders from Texas and around the country in our premier donor retreat. Victory Summit isn’t just a donor retreat. It’s a council of war: the war to save our country, our liberty, and our inheritance — for ourselves

¹ CfA is a Code Section 501(c)(3) tax exempt organization (EIN: 81-4080431) that serves as a non-partisan, nonprofit ethics watchdog.

² References to Section or § are references to sections of the Code, unless otherwise noted.

³ TPPF 2020 Form 990, Part I, Line 1.

⁴ TPPF 2020 Form 990, Part III, Line 4.

and for the generations to come. We need fighters. We need you. Won't you please join us, alongside the finest and boldest conservative minds in the country, for this second annual Victory Summit? Three days to save a nation is a small investment for the biggest prize of all: the American future.” (emphasis added)⁵

Speakers at the “donor retreat” and “council of war” included at least five Republican candidates up for election or reelection⁶ – just six weeks following the summit – on November 8, 2022, but did not include any of their opponents or, in fact, any other Democratic or third-party candidates. It is possible, although highly doubtful, that a Democratic or third-party candidate was invited to speak at the 2022 Victory Summit and declined, but even had any such candidates been invited, they would not have been welcome given that the 2022 Victory Summit was marketed as an event for donors to visit with “top conservative leaders” holding a “council of war” to fight for “the American future” with “the finest and boldest conservative minds in the country” (*i.e.*, not a nonpartisan event or debate with any non-supporters).

Several of the Republican candidates who spoke at the 2022 Victory Summit made clear statements in support of their own candidacy for elected office and/or attacked their opponents for the same elected office. These political campaign statements not only were actively encouraged by TPPF executive staff and board members who served as moderators or hosts, they also were expressly affirmed and supported by TPPF executive staff and board members who stood on the stage next to the political candidates before an audience of donors. In other words, Republican candidates running for election in November 2022 appeared at the 2022 Victory Summit in their capacity as candidates before likely Republican party campaign donors, made political statements that TPPF specifically endorsed on behalf of the exempt organization, and it does not appear that any of the speakers' opponents were invited to attend or would have been plausibly welcome to attend. The 2022 Victory Summit may have been one of TPPF's most recent and/or brazen forays into political campaign participation/intervention but, as further discussed below, it was not the sole such case.

VIOLATIONS

Violation 1 - TPPF engages in political campaign participation and intervention by hosting events where candidates appear from only one political party appear without their opponents or any other representatives of opposing major or minor parties.

APPLICABLE LAW

To qualify as a Code Section 501(c)(3) tax-exempt organization, an organization must “not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” Any organization that “participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office” is considered an “action organization” that is not operated for one or more Code Section 501(c)(3) tax-exempt purposes.

⁵ Screen captures of 2022 Victory Summit homepage are attached as **Exhibit A**.

⁶ Hon. Paul Bettencourt (Texas State Senator, District 7), Kari Lake (Governor, Arizona), Hon. Mike Lee (United States Senator, Utah), Hon. Dan Patrick (Lieutenant Governor, Texas), and Hon. Chip Roy (United States Representative, Texas).

This prohibition against participation or intervention in a political campaign is absolute.⁷ It is immaterial if the participation or intervention is an insubstantial part of an organization's activities or that the other activities of the organization would, by themselves, support exemption under section 501(c)(3) of the Code.⁸ Unlike activities such as lobbying/influencing legislation for which there is an insubstantiality threshold (*i.e.*, a Section 501(c)(3) tax-exempt organization generally may engage in lobbying/influencing legislation, as long as these activities are not the primary purpose of the organization), there is no insubstantiality, primary purpose, or other de minimis threshold permitting any political campaign activity whatsoever.⁹ Indeed, the Chief Counsel of the IRS has proclaimed “an organization described in section 501(c)(3) is precluded from engaging in any political campaign activities.”¹⁰

When an organization is an “action organization” or is otherwise not organized and operated exclusively for purposes described in Code Section 501(c)(3), then “it is not exempt.”¹¹ The IRS has the authority to revoke the determination letter recognizing an organization as exempt if the organization no longer qualifies as exempt under the Code section for which it originally applied for recognition of tax-exempt status.¹²

Political campaign activity may take various forms, including, but not limited to, contributing to the political campaign of a candidate for office, distributing statements in support of or in opposition to any candidate, other communications to the public (such as endorsements or get-out-the-vote drives), providing facilities, allowing the use of other assets, lending of employees, voter registration efforts, hosting of debates, speeches, or events, and establishment and use of a political action committee.

Given the depth, breadth, and complexity of these various forms of potential political campaign intervention, in 2007 the IRS issued formal guidance as to when a Section 501(c)(3) tax-exempt organization has violated the prohibition on political campaign activity, providing 21 illustrative situations accompanied by explanations and discussion.¹³ Several of the examples relate to providing a forum or other event for candidates. While providing such a forum or other event is not, by itself, necessarily prohibited political activity, providing a forum or other event that shows a bias or preference for against a particular candidate (*e.g.*, through biased questioning procedures) does generally constitute political campaign intervention.

Factors that determine whether a candidate appearance is an improper political campaign intervention include:

- Whether the organization provides an equal opportunity to participate to political candidates seeking the same office;

⁷ TAM 9609007 (Mar. 1, 1996)

⁸ See *United States v. Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981), cert. denied, 456 U.S. 983 (1982) and *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2nd Cir. 1988), cert. denied, 490 U.S. 1030 (1989).

⁹ Treas. Reg. § 1.501(c)(3)-1(c)(3).

¹⁰ Gen. Couns. Mem. 39694 (Feb. 1, 1988). (Emphasis added).

¹¹ Treas. Reg. § 1.501(c)(3)-1(a)(1).

¹² Rev. Proc. 2022-5, 2022-1 I.R.B. 256, Section 12.01.

¹³ Rev. Rul. 2007-41, 2007-25 I.R.B. 1422 *et. seq.*

- Whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate's attendance); and
- Whether any political fundraising occurs.¹⁴

It also is possible for an individual who is a candidate to be invited to appear somewhere for another reason such as because they hold public office, are expert in a non-political field, or have had a distinguished career in a field outside of politics are candidates.¹⁵ The IRS has stated that a “candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention.”¹⁶ If a candidate speaks at an event for an organization, factors that determine whether the candidate's appearance results in political campaign intervention include:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual or any representative of the organization makes any mention of his or her candidacy or the election;
- Whether any campaign activity occurs in connection with the candidate's attendance;
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.¹⁷

In addition, the IRS has explained that while the political campaign intervention prohibition is not intended to restrict organization leaders from freely expressing opinions on political matters when speaking for themselves, or prevent them from commenting on public policy, they are prohibited from making partisan comments in official organization publications or at official functions of the organization.¹⁸

APPLICATION OF APPLICABLE LAW TO CANDIDATE APPEARANCES TPPF'S 2022 VICTORY SUMMIT

At the 2022 Victory Summit, TPPF hosted several political candidates who attended and spoke in their capacity as political candidates. Analyzed in accordance with Rev. Rul. 2007-41,

¹⁴ *Id.* at

¹⁵ Rev. Ru. 2007-41, 2007-25 I.R.B. 1423

¹⁶ *Id.*

¹⁷ *Id.* at 1423-24.

¹⁸ *Id.* at 1422.

the appearances of these candidates constitute prohibited political campaign intervention by a Section 501(c)(3) tax-exempt organization. Specifically:

- Equal opportunity provided to all candidates seeking the same office. Five Republican candidates up for election on November 8, 2022 appeared at the 2022 Victory Summit.¹⁹ None of these candidates' political opponents from any party appeared at the event and there is no indication any such opponents were invited.
- No indication of support for or opposition to any candidate making an appearance (including candidate introductions and communications concerning the candidate's appearance). TPPF executive staff serving as moderators and/or hosts offered strong support for each invited candidate's campaign for elected office, providing glowing remarks in introductions, responses during question-and-answer sessions, and/or closing statements. Furthermore, TPPF executive staff serving as moderators and/or hosts frequently immediately affirmed political candidate statements in support of their own candidacy or attacks on their opponents, with responses like "Amen" and showed approval or praise by enthusiastically clapping.²⁰
- Presence of Political Fundraising. TPPF advertised the 2022 Victory Summit as a venue for political fundraising, specifically a "donor retreat" for "top conservative leaders from Texas and around the country" and noting that this was a "war to save our country. . . alongside the finest and boldest conservative minds. . ." ²¹

It is clear the Republican candidates who spoke at the 2022 Victory Summit, appeared in their capacity as candidates, as opposed to as non-candidates, for purposes of the Rev. Rul. 2007-41 factors, because the candidates made repeated references to their own candidacy, their political opponents, and/or the then-upcoming November 8th election.

On Friday, September 23rd, 2022, at the Victory Summit, Arizona Republican gubernatorial candidate Kari Lake delivered "keynote remarks." Ms. Lake was warmly introduced by TPPF Chief Executive Officer Greg Sindelar, who praised Ms. Lake and encouraged her to talk about her political campaign. Ms. Lake made a brief speech and participated in an extended question-and-answer session, moderated by Mr. Sindelar. Both Ms. Lake and Mr. Sindelar made statements that constituted political campaign intervention. Ms. Lake, for example, spoke in support of her own candidacy and attacked her Democratic opponent, Katie Hobbs. Mr. Sindelar expressed his approval of Lake's statements. These statements included the following:

¹⁹ State Senator Paul Bettencourt (R-TX, District 7), Kari Lake (Republican gubernatorial candidate, Arizona), U.S. Senator Mike Lee (R-UT), Lieutenant Governor Dan Patrick (R-TX), and U.S. Representative Chip Roy (R-TX).

²⁰ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 27:36.

²¹ See <https://www.texasvictorysummit.com/about> visited on December 27, 2022 ("Please join top conservative leaders from Texas and around the country in our premier donor retreat. Victory Summit isn't just a donor retreat. It's a council of war: the war to save our country, our liberty, and our inheritance — for ourselves and for the generations to come. We need fighters. We need you. Won't you please join us, alongside the finest and boldest conservative minds in the country, for this second annual Victory Summit? Three days to save a nation is a small investment for the biggest prize of all: the American future.")

- During his introductory remarks, Mr. Sindelar demonstrated support for Ms. Lake's candidacy in Arizona, telling Ms. Lake: "Well we're so glad you're here and we're so glad and so happy for what you're doing in Arizona."²²
- Mr. Sindelar's first question to Ms. Lake invited her to speak as a political candidate, asking her: "What made you want to switch from the media and get into politics and run for governor of Arizona?"²³ Later, Mr. Sindelar continued to ask about her specific plans as a politician: "If you win you take over as Governor can you talk a little bit about how you would fight to implement that program and how you'd fight to ensure that parents continue to be the number one driver in their kids' education."²⁴
- Ms. Lake initially expressed apprehension about discussing politics and her political campaign, but Mr. Sindelar dismissed her concerns. Ms. Lake stated: "I looked at who was running and I realized that the Democrat running was in my opinion a real danger to Arizona. I know I am not supposed to get into too much politics here but. . . " Mr. Sindelar immediately interjected "Oh it's fine!" and Ms. Lake replied "I can ok."²⁵ Ms. Lake then proceeded to address various political issues in a manner akin to a political campaign stump speech.
- Ms. Lake called herself a candidate when describing her lawsuit to ban electronic vote counting: "I'm involved in a lawsuit in federal court to try to ban the use of electronic vote counting vote tabulating machines and we're working hard on that. We had it denied because of a standing they said I didn't have standing I mean I'm a voter I'm a candidate I mean I think I've got pretty big standing on that but we're appealing it and so uh we're continuing to fight that battle."²⁶ (emphasis added)
- Ms. Lake attacked her political opponent's policy positions, including: "My opponent is all about gun control. Expanding gun-free zones. I call them sitting duck zones. We're never going to budge an inch in Arizona."²⁷
- Ms. Lake attacked her Democratic political opponent in the Arizona gubernatorial race, Katie Hobbs, stating: "I'm running against, by the way, Katie Hobbs who is our secretary of state who oversees the elections. She's not recused herself... Katie Hobbs is the one who gives guidance on how many ballots you're going to need each county. So she gives the guidance on that and in Pinal County, one of our largest counties, they ran out of ballots one hour into election day, and only the Republican ballots they ran out of by the way. So

²² YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 0:28.

²³ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 0:45.

²⁴ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 8:13.

²⁵ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 2:15.

²⁶ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 18:30

²⁷ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 22:28.

this is how messed up our elections are and I'm not ok with that. And, I hope that no Arizonan is ok with that. . . So that's where I stand. It might not be popular for everybody but I'm not in this to be popular. I'm in this to do the right thing."²⁸

Immediately following Ms. Lake's attack on her political opponent, Mr. Sindelar replied "Amen. Thank you, Kari" and clapped approvingly.²⁹

- Mr. Sindelar further demonstrated his approval of Ms. Lake's comments, closing the session stating, "Thank you so much for being here. Thank you for being in the arena and showing true courage. I think a lot of times people think courage is about fearlessness. You clearly have that. You don't seem afraid of anything. But it is actually about sacrificing self for just goals, and you do that every day. We appreciate it."³⁰

In summary, pursuant to Rev. Rul. 2007-41, Ms. Lake's keynote address constituted political campaign activity by TPPF because: 1) Ms. Lake was expressly presented as a political candidate for the office of Governor of Arizona; 2) Ms. Lake's political opponent, Democratic candidate Katie Hobbs, does not appear to have been invited to the 2022 Victory Summit or any equivalent event; 3) Mr. Sindelar, speaking as Chief Executive Officer of TPPF, offered frequent praise and support for Ms. Lake when she made statements about her own candidacy and attacked her opponent; and 4) TPPF advertised the entire 2022 Victory Summit, including Ms. Lake's keynote remarks as a donor retreat (*i.e.*, an opportunity for political fundraising before supporters of top conservative leaders).

Several other candidates also made political statements at the 2022 Victory Summit, followed or accompanied by open and clear support from TPPF executive staff serving as moderators or hosts. TPPF Chief of Intelligence and Research Josh Trevino and Senior Distinguished Fellow for Border Security Rodney Scott led an Immigration and Border Policy Conversation on September 23rd, 2022 with Representative Chip Roy, then-Republican candidate for reelection to the House of Representative for Texas' 21st District. During the discussion, Rep. Roy made several political statements:

- Referring to Texas Governor Greg Abbott (who also was up for re-election in November 2022) and his border security policy, Rep. Roy stated, "I mean at some point you have to call it what it is and it is an invasion and at some point Texas has to react to that and right now all of my eyes are focused, on a non-political 501c3 basis, between now and November 8th on supporting the governor and on November 9th I'll probably have some things to say about what we ought to be doing on the border, property taxes, schools, crime."³¹
- Rep. Roy called for the potential donors and voters in the audience to tell Republican candidates to stop funding international organizations perceived as supporting illegal

²⁸ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 26:07.

²⁹ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 27:36.

³⁰ YouTube Video of Kari Lake remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=cTaG9kq2wyQ>. Timestamp 27:42.

³¹ YouTube Video of the Hon. Chip Roy remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=vcmhWU2Lxc8>. Timestamp 29:21.

immigration, “It’s your taxpayer dollars going to the United Nations and going to International organizations which are actually printing up programs and brochures and helping to fund these NGOs and running these folks up not now just from the northern triangle where it was two years ago but from all over the world 151 countries. 88 people have been stopped at the border that are known connection to terrorist countries or organizations. These entities that your taxpayer dollars are funding are going to help that and that’s the thing I’ll close on. We should stop funding the things we campaign against. You want to tell every Republican you know stop funding the garbage you keep campaigning against. You want freedom? Stop funding tyranny.” (emphasis added).³²

Mr. Trevino responded, “Amen,”³³ demonstrating TPPF’s support for politically charged remarks that resembled a stump speech on key issues distinguishing candidates in the then-upcoming election.

Similarly, Senator Mike Lee (R-UT) – also up for re-election – delivered a keynote address on Friday, September 23rd during which he made clear he was speaking in his capacity as a candidate:

- Senator Lee opened by noting his close race against Independent candidate Evan McMullin, stating “I am in a tough re-elect fight right now. My opponent ran a poll last night showing him within the low single digits of beating me and he runs on the idea that ‘oh Mike Lee doesn’t know what he’s doing, can’t get anything done’ but he doesn’t know Brooke Rollins [TPPF board member and senior advisor who served as the host for Senator Lee’s speech] and I wish he could hear that message. . . I’ll beat him but he’s making it tough.”³⁴
- Senator Lee stated, “If it were up to me and I do think we need a centralized message here’s what it would look like for me; I would pick three and my three would be if you elect us we will pass the REINS Act because laws should be written by our own elected representatives not unelected unaccountable bureaucrats... Number two would probably be a transition to a flat tax and number three would be procedural spending reform in a package that would include the Full Faith & Credit Act and the Government Shutdown Prevention Act . . .”³⁵ (emphasis added).

TPPF Board Member Brooke Rollins echoed Senator Lee’s call, stating “And I often think that’s why we lose and have lost certain parts of our country that we’ve got to win back because we are not providing the vision. And that’s what I think TPPF changed in Texas and hopefully DeSantis in Florida and others.”³⁶ Ms. Rollins’ comment indicates she believes TPPF’s role is to

³² YouTube Video of the Hon. Chip Roy remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=vcmhWU2Lxc8>. Timestamp 43:51.

³³ YouTube Video of the Hon. Chip Roy remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=vcmhWU2Lxc8>. Timestamp 44:34.

³⁴ YouTube Video of the Hon. Mike Lee remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=LLzDa45HgGo>. Timestamp 2:06.

³⁵ YouTube Video of the Hon. Mike Lee remarks at 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=LLzDa45HgGo>. Timestamp 38:14.

³⁶ YouTube Video of the Hon. Mike Lee remarks at the 2022 Victory Summit, available at: <https://www.youtube.com/watch?v=LLzDa45HgGo>. Timestamp 40:43.

help shape Republican party messaging through close collaboration with Republican candidates actively campaigning for election.

In sum, throughout the 2022 Victory Summit, TPPF engaged in prohibited political campaign participation and intervention that should be fatal to its tax-exempt status under Section 501(c)(3) and Treasury Regulations Section 1.501(c)(3)-1(c)(3). TPPF hosted at least three Republican candidates who were specifically presented as political candidates, without their opponents (*i.e.*, no equal opportunity provided to all candidates seeking the same office). Throughout the event, TPPF executive staff serving as moderators and hosts voiced strong support for the invited candidates and occasionally voiced opposition to these candidates' opponents who were not present. Finally, the 2022 Victory Summit was primarily advertised as a donor retreat where donors could meet top conservative leaders (*i.e.*, political fundraising occurred or was at least encouraged).

Violation 2- TPPF engages in political campaign participation and intervention through statements and communications through social media, traditional media, and other channels

APPLICABLE LAW

As discussed above, in 2007, the IRS issued formal guidance as to when a Section 501(c)(3) tax-exempt organization has violated the prohibition on political campaign activity.³⁷ The IRS included with this guidance examples of when communications by a Section 501(c)(3) tax-exempt organization constitute issues advocacy (permissible as long as it is no more than a substantial part of the organization's activities)³⁸ or political campaign intervention (completely prohibited).³⁹

Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office, but they must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization risks violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. Key factors in determining whether a communication results in political campaign intervention include:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;

³⁷ Rev. Rul. 2007-41, 2007-1 CB 1421.

³⁸ Treas. Reg. Section 1.501(c)(3)-1(c)(3)(ii).

³⁹ Treas. Reg. Section 1.501(c)(3)-1(c)(3)(iii).

- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- 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
- 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.⁴⁰

APPLICATION OF APPLICABLE LAW TO TPPF’S POLITICAL STATEMENTS AND COMMUNICATIONS

TPPF has engaged in open political campaign intervention through social media posts in situations where there is no plausible argument that the posts were issue advocacy or otherwise permitted communications by a Section 501(c)(3) tax-exempt organization. Shortly after Ms. Lake’s keynote remarks on September 23, 2022, while still at the 2022 Victory Summit, TPPF senior executive Dr. Carol M. Swain, Distinguished Fellow for Constitutional Studies,⁴¹ posted an endorsement of Ms. Lake on Twitter:⁴²



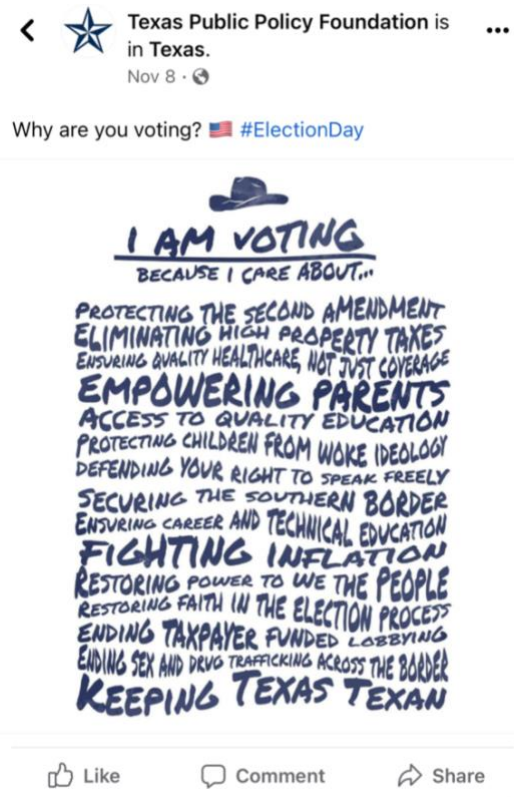
⁴⁰ Rev. Ruling 2007-41, 2007-25 I.R.B. at 1424.

⁴¹ Dr. Carol Swain, Staff, *Texas Public Policy Foundation*, [texaspolicy.com](https://www.texaspolicy.com/about/staff/dr-carol-swain/), available at <https://www.texaspolicy.com/about/staff/dr-carol-swain/>.

⁴² Dr. Carol M. Swain Twitter, Sept. 23, 2022 (available at <https://twitter.com/carolmswain/status/1573421748854349824>).

While leaders of Section 501(c)(3) tax-exempt organizations are not prohibited from speaking for themselves as individuals or speaking about important public policy issues generally, they may not “make partisan comments in official organization publications or at official functions of the organization.”⁴³ Here, while participating in an official TPPF function with Republican gubernatorial candidate Kari Lake, Dr. Swain – referring to TPPF in her tweet – openly endorsed Ms. Lake’s candidacy.

Further, both close to election day and on election day, TPPF posted to its official Facebook account and tagging with the hashtag of “#ElectionDay”:⁴⁴



Pursuant to Rev. Rul. 2007-41, this statement appears to be political campaign intervention because: (1) it was delivered close in time to and on election day; (2) it repeatedly references voting, including by asking “why are you voting” and answering “I am voting because I care about. . .”; and (3) it lists many wedge issues Republicans relied on to distinguish candidates in the 2022 election cycle, including border security and immigration, inflation, election process, and school curricula. While TPPF might argue that notwithstanding these factors, the intent of the statement was to engage in issue advocacy unrelated to political campaigns, followers of TPPF’s social media accounts understood the post as a call to vote for Republicans, responding with statements including: “Dems are evil!!” and “All that and more. Vote red!”⁴⁵

⁴³ Rev. Ruling 2007-41, 2007-25 I.R.B. at 1422.

⁴⁴ Texas Public Policy Foundation Facebook, Nov. 8, 2022 (available at <https://www.facebook.com/photo/?fbid=498521048981461&set=a.227111659455736>).

⁴⁵ *Id.*

the upcoming election, stating “While only some progressive city councils and left-wing DAs are on the ballot this Nov. 8, most of their ideological allies in Congress must face voters.”

CONCLUSION

TPPF has engaged in numerous political activities that appear to violate its status as Section 501(c)(3) organization. Given the absolute prohibition on political campaign activity by Section 501(c)(3) tax-exempt organizations, which includes no insubstantiality or de minimis threshold, even if only one of TPPF’s numerous alleged violations constitutes political campaign participation or intervention, TPPF’s tax-exempt status should be revoked.⁴⁷

CfA looks forward to the IRS’ investigation of what appears to be a lengthy pattern of TPPF’s political campaign activities, as well as other activities that violate the Code and TPPF’s tax-exempt status.

Sincerely,



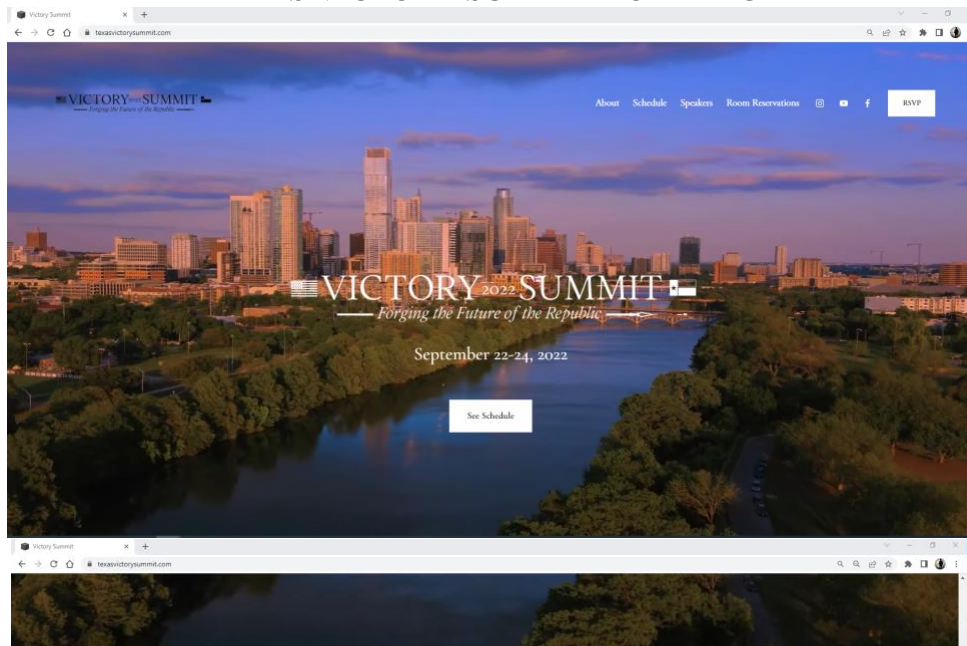
Michelle J. Koppersmith
Executive Director

Enclosures:

Form 13909

⁴⁷ Treas. Reg. § 1.501(c)(3)-1(c)(3); Rev. Proc. 2022-5, 2022-1 I.R.B. 256, Section 12.01.

EXHIBIT A TEXAS VICTORY SUMMIT HOMEPAGE



Hyatt Regency Lost Pines
575 Hyatt Lost Pines Rd.
Cedar Creek, TX 78612.

September 22-24, 2022

[Schedule](#)

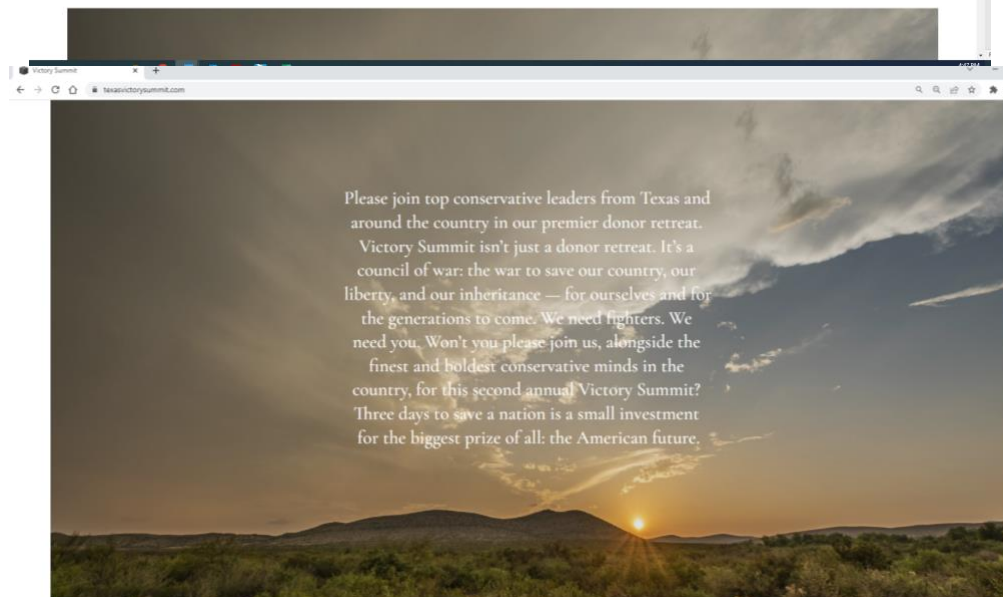
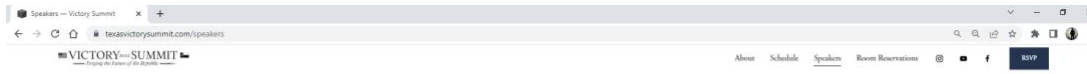


EXHIBIT B TEXAS VICTORY SUMMIT SPEAKERS



Keynote and "Texas" TED Talk Speakers



Hon. William Barr
Former United States Attorney General



Hon. Mike Lee
United States Senator, Utah



Hon. Dan Patrick
Texas Lieutenant Governor



Hon. Chip Roy
United States Congressman (TX-21)



Hon. Mark Meadows
Senior Partner, Conservative Partnership Institute



Hon. Brooke Rollins
President & CEO, America First Policy Institute



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