

C A M P A I G N F O R

**ACCOUNTABILITY**

June 5, 2023

**VIA E-MAIL: [eoclass@irs.gov](mailto:eoclass@irs.gov)**

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

**Re: Complaint Against True the Vote, Inc. (EIN: 27-2860095)**

Dear Sir or Madam:

Campaign for Accountability (“CfA”)<sup>1</sup> respectfully submits this Tax-Exempt Organization Complaint to the Internal Revenue Service (“IRS”) regarding True the Vote, Inc. (EIN: 27-2860095), a Texas nonprofit corporation (“True the Vote”). Based on publicly available information, including Form 990 tax-exempt organization returns and court records, CfA is concerned that True the Vote may have violated both Texas and federal law by allowing substantial amounts of its income and assets to inure to the benefit of its current or former directors and officers. In addition, True the Vote appears to have failed to appropriately disclose various business transactions with its current or former directors and officers, as well as certain other service providers, on its Form 990 tax-exempt organization returns and/or other information returns.

Specifically, True the Vote may have diverted substantial portions of its income and assets, directly or indirectly, to the personal benefit of its President and Executive Director, Catherine Engelbrecht, and former director, Gregg Phillips. True the Vote has advanced large loans to Ms. Engelbrecht, potentially in violation of a Texas law that generally prohibits loans to directors of Texas nonprofit corporations. True the Vote has also made substantial payments to a for-profit business entity wholly owned by former director Mr. Phillips. CfA is concerned these payments may have materially exceeded the fair market value of the good or services provided to True the Vote in return (if any). True the Vote failed to adequately disclose these and various other payments on its Form 990 tax-exempt organization returns and/or information returns. Such disclosure lapses heighten suspicion regarding whether True the Vote and/or its current or former officers and directors intended to conceal the payments from the public or IRS.

Neither CfA nor the general public is able to access all of the underlying business records (*e.g.*, contracts, invoices, receipts, intercompany communications etc.) of True the Vote or the business entities of Ms. Engelbrecht or Mr. Phillips to determine whether the sums paid were equal in value to the goods and services received. The IRS, however, with its summons, investigatory, and other enforcement powers, could compel the production of information necessary to unravel the web of potential private inurement, excess benefit, and/or and private benefit at the center of

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

True the Vote's extensive and seemingly inadequately documented or disclosed business dealings with its current and former officers and directors.

Form 13909 is enclosed with this letter.

## **FACTUAL BACKGROUND**

### *Formation and Activities of True the Vote*

Catherine Engelbrecht and her co-founders incorporated True the Vote as a Texas nonprofit corporation on June 7, 2010. The IRS currently recognizes True the Vote as a Section 501(c)(3) public charity.<sup>2</sup> Ms. Engelbrecht founded True the Vote as part of her political activity in the Tea Party movement.<sup>3</sup> Upon formation, True the Vote represented its primary tax-exempt purpose as educating, informing, and registering voters.<sup>4</sup> Beginning in 2012, True the Vote revised its primary tax-exempt purpose to equipping citizens “to take a stand for free and fair elections.”<sup>5</sup> In practice, True the Vote's activities appear to have involved alleging extensive voter fraud across multiple election cycles, including the 2012, 2016, and 2020 U.S. general elections.<sup>6</sup>

Illustratively, then-director of True the Vote, Gregg Phillips, gained national notoriety by claiming that non-citizens cast at least three million votes in the 2016 U.S. presidential election.<sup>7</sup> Mr. Phillips used True the Vote data to make this specific allegation, which went viral when conspiracy theory website InfoWars published and amplified his election fraud claims.<sup>8</sup> Media sources report that Mr. Phillips has declined to provide final numbers or release the underlying raw data for his and True the Vote's sweeping election fraud claims.<sup>9</sup> While continuing to partner with Mr. Phillips and, as discussed below, paying his wholly owned business hundreds of thousands of dollars for research and data analysis, True the Vote has continued to make similar questionable election fraud claims. For instance, True the Vote has suggested that up to 364,541

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<sup>2</sup> Publication 78 data, available at <https://apps.irs.gov/app/eos/details/>.

<sup>3</sup> Cassandra Jaramillo, *She Helped Create the Big Lie. Records Suggest She Turned It Into a Big Grift, Reveal*, June 8, 2022, available at <https://revealnews.org/article/true-the-vote-big-lie-election-fraud/>.

<sup>4</sup> True the Vote, 2010 Form 990-EZ, Part III, Line 28.

<sup>5</sup> True the Vote, 2012 through 2019 Form 990, Part 1, Line 1.

<sup>6</sup> See, e.g., Stephanie Saul, *Looking, Very Closely, for Voter Fraud*, *New York Times*, Sept. 16, 2012 (“True the Vote's plan is to scrutinize the validity of voter registration rolls and voters who appear at the polls. Among those in their cross hairs: noncitizens who are registered to vote, those without proper identification, others who may be registered twice, and dead people. In Ohio and Indiana, True the Vote recently filed lawsuits to force officials to clean up voter rolls.”), available at <https://www.nytimes.com/2012/09/17/us/politics/groups-like-true-the-vote-are-looking-very-closely-for-voter-fraud.html>; Melissa Chan, *Meet the Man Who May Have Convinced President Trump Voter Fraud Exists*, *TIME*, Jan. 27, 2017, available at <https://time.com/4651634/gregg-phillips-voter-fraud-donald-trump/>; Cassandra Jaramillo, *6 Takeaways From Our Investigation Into a Prominent Voter Fraud Nonprofit*, *Reveal*, June 8, 2022, available at <https://revealnews.org/article/true-the-vote-donations-takeaways/>.

<sup>7</sup> Jerry Mitchell, *Voter fraud probe traced back to ex-MS welfare head*, *The Clarion-Ledger*, Jan. 26, 2017, available at <https://www.clarionledger.com/story/news/2017/01/26/voter-fraud-probe-traced-back-to-ex-mississippi-welfare-head/97094430/>.

<sup>8</sup> Vann R. Newkirk II, *Trump's Favorite Voter-Fraud Activist Hedges His Claims*, *The Atlantic*, Jan. 31, 2017, available at <https://www.theatlantic.com/politics/archive/2017/01/gregg-phillips-trump-voter-fraud/515046/>.

<sup>9</sup> *Id.*

ineligible voters may have voted in Georgia in 2020.<sup>10</sup> Nonpartisan news organizations have unceremoniously described Mr. Phillips and Ms. Engelbrecht as “[t]wo leaders of a Texas nonprofit with a history of spreading false claims about voter fraud. . .”<sup>11</sup>

### *Validate the Vote 2020*

Shortly after the November 3, 2020, U.S. presidential election, True the Vote began soliciting donors to support a \$7,325,000 program called “Validate the Vote 2020.”<sup>12</sup> Donor solicitation documents for the program stated that True the Vote intended to use donated money to uncover proof of election fraud (e.g., illegal ballots cast and counted), file lawsuits in federal court, and ultimately overturn the results of the presidential election in seven swing states.<sup>13</sup> Ultimately, True the Vote only filed lawsuits in four out of the seven states and voluntarily dismissed each of them within a few days of filing, notably, before any court hearings were convened.<sup>14</sup> This seemed to effectively signify the end of Validate the Vote 2020, which was confirmed when True the Vote’s general counsel, James Bopp Jr. stated that as of November 16, 2020 “there were no other cases pending from the group” challenging the results of the 2020 presidential election.<sup>15</sup>

Despite quickly terminating Validate the Vote 2020 within a few days of its inception, True the Vote paid out a substantial portion of the funds raised for the program, including \$750,000 to OPSEC Group, LLC, a for-profit business wholly owned by former True the Vote director Mr. Phillips.<sup>16</sup> True the Vote also paid over \$280,000 to the law firm of its general counsel, James Bopp Jr., a figure that has been questioned as hard to justify based on the amount of legal work involved.<sup>17</sup> Fredric Eshelman, a wealthy pharmaceutical entrepreneur who had donated \$2.5 million to support the Validate the Vote 2020, sued True the Vote for the return of his money, alleging True the Vote had failed to use his donations as promised, pursuing state lawsuits.<sup>18</sup>

Substantial information regarding True the Vote’s business dealings with its current and

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<sup>10</sup> True the Vote Partners with Georgians in Every County to Preemptively Challenge 364,541 Potentially Ineligible Voters, *True the Vote*, Dec. 18, 2020, available at <https://www.truethevote.org/true-the-vote-partners-with-georgians-in-every-county-to-preemptively-challenge-364541-potentially-ineligible-voters/>.

<sup>11</sup> True the Vote leaders jailed after being found in contempt, *Reuters*, Oct. 31, 2022, available at <https://www.reuters.com/world/us/true-vote-leaders-jailed-after-being-found-contempt-2022-10-31/>.

<sup>12</sup> Donor solicitation document for True the Vote’s Validate the Vote 2020, available at <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1804085/gov.uscourts.txsd.1804085.1.1.pdf>. This document was an exhibit in *Eshelman v. True the Vote, Inc.*, 4:20-cv-04034, (S.D. Tex.).

<sup>13</sup> *Id.*

<sup>14</sup> Richard Salame, Was Election Denial Just a Get-Rich Quick Scheme? Donors’ Lawsuits Look for Answers, *The Intercept*, Feb. 6 2021, available at <https://theintercept.com/2021/02/06/election-deniers-profit-lawsuits>.

<sup>15</sup> Nomaan Merchant, Conservative group alleging voter fraud ends its lawsuits, *AP News*, AP Nov. 16, 2020, available at <https://apnews.com/article/election-2020-joe-biden-donald-trump-houston-pennsylvania-056cf0e2512a3382a900814b6a8e5599>.

<sup>16</sup> Cassandra Jaramillo, She Helped Create the Big Lie. Records Suggest She Turned It Into a Big Grift, Reveal, , June 8, 2022, available at <https://revealnews.org/article/true-the-vote-big-lie-election-fraud/>.

<sup>17</sup> *Id.*

<sup>18</sup> Richard Salame, Was Election Denial Just a Get-Rich Quick Scheme? Donors’ Lawsuits Look for Answers, *The Intercept*, Feb. 6 2021, available at <https://theintercept.com/2021/02/06/election-deniers-profit-lawsuits>.

former directors and officers, including those True the Vote failed to disclose on its Form 990 exempt organization returns, became public through Mr. Eshelman’s lawsuit.<sup>19</sup> Although Mr. Eshelman’s efforts to recoup his donations have not yet proven successful, through discovery he has obtained and released a plethora of documents suggesting True the Vote may have used Validate the Vote 2020 to divert substantial amounts of its income and assets to current or former officers and directors or other service providers.

### *Payments to OPSEC Group, LLC*

Mr. Phillips became a director of True the Vote in 2014 and continued to be listed on the group’s Form 990s as a director through 2019.<sup>20</sup> True the Vote has taken inconsistent positions, however, about when or if Mr. Phillips ceased serving as a director. True the Vote initially filed a 2019 Form 990 listing Mr. Phillips as a director, but, when a media organization inquired about his director status, True the Vote created a new version of its 2019 Form 990 that did not include Mr. Phillips as a director and sent the new version to both the media organization and tax-exempt organization data aggregators, such as Guidestar.<sup>21</sup>

Mr. Phillips organized OPSEC Group, LLC (“**OPSEC Group**”), as an Alabama limited liability company on September 17, 2020.<sup>22</sup> He represented in a federal court declaration that he is the entity’s president and sole owner.<sup>23</sup> Donor solicitation documents for Validate the Vote 2020 suggested that OPSEC Group’s role would be to “[a]ggregate and analyze data to identify patterns of election subversion[.]”<sup>24</sup> Although True the Vote effectively abandoned Validate the Vote 2020 within a few days of its inception, OPSEC Group nevertheless sent True the Vote an invoice on November 9th, 2020 for \$350,000 and on December 7, 2020 for \$400,000,<sup>25</sup> both of which True the Vote paid in full.<sup>26</sup> It is possible the total amount paid to OPSEC Group exceeded the \$750,000 disclosed in connection with Mr. Eshelman’s lawsuit, given that OPSEC Group’s invoices to True the Vote listed data, analysis, and litigation support in the description of services performed and True the Vote categorized \$1,434,680 and \$1,372,612 of 2020 expenses as “litigation support” and

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<sup>19</sup> *Eshelman v. True the Vote, Inc.*, 4:20-cv-04034, (S.D. Tex.), records available at: <https://www.courtlistener.com/docket/18692637/eshelman-v-true-the-vote-inc/>.

<sup>20</sup> True the Vote, 2014 and 2019 Form 990 at Part VII, Section A.

<sup>21</sup> Cassandra Jaramillo, [She Helped Create the Big Lie. Records Suggest She Turned It Into a Big Grift](https://revealnews.org/article/true-the-vote-big-lie-election-fraud/), *Reveal*, June 8, 2022, available at <https://revealnews.org/article/true-the-vote-big-lie-election-fraud/> (“In one instance, True the Vote produced two different versions of the same document. A copy of the 2019 tax return Engelbrecht provided to Reveal does not match the version on the IRS website. The IRS version showed Phillips as a board member. Engelbrecht’s version did not.”); <https://www.guidestar.org/profile/27-2860095>.

<sup>22</sup> [Alabama state records continue to list Gregg A. Phillips as registered agent](https://arc-sos.state.al.us/cgi/corpdetail.mbr/detail?corp=000649217), available at <https://arc-sos.state.al.us/cgi/corpdetail.mbr/detail?corp=000649217>.

<sup>23</sup> Declaration of Gregg Phillips at Paragraph 1, *Eshelman v. True the Vote, Inc.*, 4:20-cv-04034, (S.D. Tex.), available at <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1804085/gov.uscourts.txsd.1804085.47.2.pdf>.

<sup>24</sup> Donor solicitation document for True the Vote’s Validate the Vote 2020, available at <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1804085/gov.uscourts.txsd.1804085.1.1.pdf>.

<sup>25</sup> The November 9, 2020 invoice indicated that it was for Validate the Vote and vaguely listed services, such as “Data - State Files Political Files Identity Residency Felony” and “Analysis - Ground queries Network / Cluster based Time based Person based Residency based Teams (3x2, 1x3)[.]” The December 7, 2020 invoice indicated that it was for a separate project called “Eyes on Georgia”.

<sup>26</sup> *Id.* at page 43 of 161.

“data purchase & analysis,” respectively.<sup>27</sup> Although it is also possible True the Vote either spent these amounts internally or paid them to other vendors, it seems unlikely given that True the Vote had zero employees in 2020 and OPSEC Group may have been the organization’s primary research and data analysis vendor.<sup>28</sup>

It is difficult to determine precisely what services, if any, OPSEC Group provided to True the Vote that would have justified payments of \$750,000 or more for research, data analysis, and other similar services. In a written declaration submitted in the Eshelman case, Mr. Phillips claimed to have formed OPSEC Group to use his experience, talent, and expertise in voter integrity matters, and further represented that he owns a vast database of voter registration records that True the Vote and other election integrity research organizations have used for extensive research and analysis projects.<sup>29</sup>

Investigative journalists have sought to verify whether OPSEC Group has any other clients or uncover other information indicating the firm provides bona fide services, but have not been able to do so because OPSEC Group has no website or other digital footprint, aside from its record of organization with the state of Alabama.<sup>30</sup> OPSEC Group’s lack of public profile is unusual. Typically, a for-profit data analysis, consulting, or similar company dealing at arm’s length would publicly market, advertise, or describe its offerings so that customers could find and then purchase its services.

Without the IRS’ summons, investigatory, and other enforcement powers, it is difficult for the public to verify Mr. Phillip’s self-serving declarations regarding the value and substance of OPSEC Group’s services. Questions arise, however, as to whether OPSEC Group provided research and data analysis services worth at least \$750,000, given that Mr. Phillips is perhaps most famous for popularizing the discredited claim that over three million non-citizens voted in the 2016 U.S. presidential election, specifically asserting to have research and analysis to back up that claim using his proprietary algorithms, while never releasing the underlying data, research, or analysis.<sup>31</sup>

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<sup>27</sup> True the Vote 2020 Form 990, Part IX, Line 24 (a) and (b).

<sup>28</sup> True the Vote 2020 Form 990, Part V, Line 2(a).

<sup>29</sup> Declaration of Gregg Phillips at Paragraphs 1, 2, and 5, *Eshelman v. True the Vote, Inc.*, 4:20-cv-04034, (S.D. Tex.), available at: <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1804085/gov.uscourts.txsd.1804085.47.2.pdf>.

<sup>30</sup> Cassandra Jaramillo, [She Helped Create the Big Lie. Records Suggest She Turned It Into a Big Grift](https://revealnews.org/article/true-the-vote-big-lie-election-fraud/), *Reveal*, June 8, 2022, available at <https://revealnews.org/article/true-the-vote-big-lie-election-fraud/>.

<sup>31</sup> Jerry Mitchell, [Voter fraud probe traced back to ex-MS welfare head](https://www.clarionledger.com/story/news/2017/01/26/voter-fraud-probe-traced-back-to-ex-mississippi-welfare-head/97094430/), *The Clarion-Ledger*, Jan. 26, 2017, available at <https://www.clarionledger.com/story/news/2017/01/26/voter-fraud-probe-traced-back-to-ex-mississippi-welfare-head/97094430/> (“Phillips tweeted out, “We have verified more than three million votes cast by non-citizens. We are joining @truethetvote to initiate legal action.” Then he tweeted: “Completed analysis of database of 180 million voter registrations. Number of non-citizen votes exceeds 3 million. Consulting legal team.” . . . Asked if the 3 million votes cast by non-citizens is accurate, Phillips responded, “That’s our opinion based on our research and analysis that we conducted and are prepared to stand by. If I’m wrong, I’m just going to say I’m wrong. I screwed up.” He paused and said, “I’m not wrong.” He said he collected and analyzed more than 180 million voting records, using his algorithm. He said he had also analyzed records since ballots were cast.”)



Furthermore, Mr. Phillips has been publicly referred to as someone who spreads “false claims” about voter fraud.<sup>32</sup>

Allegedly deriving enormous financial gains from transactions in which he had a conflict of interest is consistent with prior investigations into Mr. Phillips’ business dealings with state and local governments. In several prior instances, Mr. Phillips has allegedly diverted hundreds of thousands of dollars to himself or his business entities. For instance, Mr. Phillips formerly served as the head of the Mississippi Department of Human Services. A year following his resignation, a joint legislative committee of the Mississippi Legislature accused him of approving transactions in which he had a conflict of interest, after finding that a company he worked for received a \$878,000 contract from the Mississippi Department of Human Services.<sup>33</sup> The Houston Chronicle later accused Mr. Phillips of similar conflicts of interest when he profited from a \$670,000 Texas state contract awarded to a company he founded, while serving as the deputy commissioner of the Texas Health and Human Services Commission.<sup>34</sup>

Regardless of whether True the Vote’s payments to OPSEC Group were in exchange for services worth \$750,000, True the Vote failed to appropriately disclose them on its 2020 Form 990 exempt organization returns, including where business transactions with former directors are specifically required to be disclosed. In 2020, True the Vote filled out Form 990, Part IV, Line 28 as follows:

<b>28</b>	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions, for applicable filing thresholds, conditions, and exceptions):		
<b>a</b>	A current or former officer, director, trustee, key employee, creator or founder, or substantial contributor? <i>If "Yes," complete Schedule L, Part IV</i> .....	<b>28a</b>	<b>X</b>
<b>b</b>	A family member of any individual described in line 28a? <i>If "Yes," complete Schedule L, Part IV</i> .....	<b>28b</b>	<b>X</b>
<b>c</b>	A 35% controlled entity of one or more individuals and/or organizations described in lines 28a or 28b? <i>If "Yes," complete Schedule L, Part IV</i> .....	<b>28c</b>	<b>X</b>

True the Vote responded “no” to each question despite the fact that the organization paid \$750,000 to a for-profit company 100% owned by Mr. Phillips, who served as a director of True the Vote from 2013 through either 2018 or 2019, depending on which version of True the Vote’s 2019 Form 990 is accurate. True the Vote also failed to attach Schedule L to its 2020 Form 990, where further details about the transactions with OPSEC Group should have been disclosed. The Schedule L instructions plainly state that a former director within the last five tax years is considered an “interested person” for purposes of Form 990, Part IV, Line 28 and Schedule L.

<sup>32</sup> [True the Vote leaders jailed after being found in contempt](https://www.reuters.com/world/us/true-vote-leaders-jailed-after-being-found-in-contempt-2022-10-31/), *Reuters*, Oct. 31, 2022, available at <https://www.reuters.com/world/us/true-vote-leaders-jailed-after-being-found-in-contempt-2022-10-31/>.

<sup>33</sup> Jerry Mitchell, [Voter fraud probe traced back to ex-MS welfare head](https://www.clarionledger.com/story/news/2017/01/26/voter-fraud-probe-traced-back-to-ex-mississippi-welfare-head/97094430/), *The Clarion-Ledger*, Jan. 26, 2017, available at <https://www.clarionledger.com/story/news/2017/01/26/voter-fraud-probe-traced-back-to-ex-mississippi-welfare-head/97094430/>.

<sup>34</sup> John H. Glenn, [A conspiracy theorist with questionable financial dealings ran for ALGOP vice chair](https://www.alreporter.com/2023/02/27/a-conspiracy-theorist-with-questionable-financial-dealings-ran-for-algop-vice-chair/), *Alabama Political Reporter*, Feb. 27, 2023, available at <https://www.alreporter.com/2023/02/27/a-conspiracy-theorist-with-questionable-financial-dealings-ran-for-algop-vice-chair/>; R.G. Ratcliffe, [Privatization role reveals ethics gap in state law](https://www.chron.com/news/houston-texas/article/Privatization-role-reveals-ethics-gap-in-state-law-1940898.php), *Houston Chronicle*, Jan. 2, 2005, available at <https://www.chron.com/news/houston-texas/article/Privatization-role-reveals-ethics-gap-in-state-law-1940898.php>.

True the Vote not only concealed the payments to OPSEC Group from the portions of the Form 990 where business transactions with current and former officers and directors must be disclosed, but also withheld them from the general portions of the Form 990 where all large payments to independent contractors must be disclosed. True the Vote’s Form 990, Part VII, Section B appears as follows:

Section B. Independent Contractors		
1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.		
(A) Name and business address	(B) Description of services	(C) Compensation
2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization <input type="checkbox"/>		0

In this portion of its 2020 Form 990, True the Vote specifically represented that zero independent contractors received over \$100,000 in 2020, even though, as described above, OPSEC Group received at least \$750,000.

True the Vote’s failure to make appropriate disclosures with respect to the payments to OPSEC Group may evince a desire to conceal payments, as opposed to a mere oversight or failure to understand its compliance obligations. True the Vote historically responded appropriately to the prompts at Form 990, Part IV, Line 28 and Schedule L when making several smaller and less consequential payments to its officers, directors, and their business entities. Illustratively, in 2014, 2015, and 2016 True the Vote paid \$23,683, \$24,000, and \$28,170 to Mudd Lee LLC and/or Mudd CPA LLC, both companies associated with then-director Brent Mudd, for accounting services and appropriately disclosed such payments on its Form 990 exempt organization returns.<sup>35</sup> Given the organization’s previously demonstrated ability to properly disclose required information, True the Vote’s failure to disclose the payments to OPSEC Group seems less likely the result of an oversight.

*Payments to The Bopp Law Firm, PC*

James Bopp Jr. serves as the “General Counsel”<sup>36</sup> to True the Vote and his law firm, The Bopp Law Firm, PC (“**The Bopp Law Firm**”) has been an independent contractor for True the Vote in various litigation efforts. True the Vote tasked The Bopp Law Firm with leading legal strategy for Validate the Vote 2020, describing The Bopp Law Firm’s role as filing “federal suits in the seven closest battleground states to investigate voter fraud, expose it, and to nullify the results of the state's election, so that the Presidential Electors can be selected in a special election or by the state legislature.”<sup>37</sup>

<sup>35</sup> True the Vote’s 2014 and 2015 Forms 990, Part IV, Line 28 and Schedule L, Part IV.  
<sup>36</sup> True the Vote 2020 Form 990, Schedule O (“litigation strategies led by TTV General Counsel Jim Bopp”).  
<sup>37</sup> Donor solicitation document for True the Vote’s Validate the Vote 2020, *available at* <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1804085/gov.uscourts.txsd.1804085.1.1.pdf>. Document was an exhibit in *Eshelman v. True the Vote, Inc.*, 4:20-cv-04034, (S.D. Tex.).

In connection with Validate the Vote 2020, True the Vote paid a \$500,000 retainer to The Bopp Law Firm on November 10, 2020.<sup>38</sup> True the Vote did not report this entire amount as legal expenses for 2020 but may have reported all or a portion of it as a prepaid expense asset on its balance sheet.<sup>39</sup> The Bopp Law Firm only filed four out of seven planned lawsuits for Validate the Vote 2020 and then voluntarily withdrew each of the four lawsuits within a week.<sup>40</sup>

In communications with Ms. Engelbrecht, James Bopp Jr. initially estimated legal costs of up to \$5,325,000 for Validate the Vote 2020, including \$500,000 for each district court case, \$75,000 for each Court of Appeals case, and \$350,000 for each Supreme Court case.<sup>41</sup> Ultimately, none of the four filed cases proceeded past the complaint stage due to their voluntary dismissals before any hearings could be held.<sup>42</sup> Court records indicated that The Bopp Law Firm billed True the Vote approximately \$280,000 over a five to seven day period (including \$183,000 in attorneys fees and \$97,000 to supervise those attorneys) to draft what were allegedly substantially identical complaints in four states.<sup>43</sup> Mr. Bopp has justified the costs to file the complaints as legitimate because each state had different laws requiring special tailoring.<sup>44</sup> Regardless of potential special tailoring, such legal fees seem excessive for a few days of work in lawsuits that never proceeded past an initial complaint and which The Bopp Law Firm voluntarily dismissed shortly after filing.

Like the payments to OPSEC Group, True the Vote failed to appropriately disclose its payments to The Bopp Law Firm in 2020. As noted above, Form 990, Part VII, Section B, Line 1 requires a tax-exempt organization to list all independent contractors paid over \$100,000. True the Vote not only did not list any payments to James Bopp Jr. or The Bopp Law Firm but further specifically represented that zero independent contractors received more than \$100,000, despite evidence that The Bopp Law Firm received well over \$100,000, reportedly in excess of \$280,000 (even if True the Vote categorized a portion of the \$500,000 retainer as a prepaid expense).

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<sup>38</sup> Mimi Swartz, How True the Vote Fabricates Claims of Election Fraud, for Fun and Profit, *Texas Monthly*, Aug. 22, 2022, available at <https://www.texasmonthly.com/news-politics/true-the-vote-election-fraud/>; Amended Complaint at Paragraph 23, *Eshelman v. True the Vote, Inc.*, 4:20-cv-04034, (S.D. Tex.), available at: <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1804085/gov.uscourts.txsd.1804085.20.0.pdf>.

<sup>39</sup> True the Vote 2020 Form 990, Part IX, Line 11(b) (only shows \$170,351 of legal expenses); True the Vote 2020 Form 990, Part X, Line 8 (shows \$719,039 of prepaid expenses).

<sup>40</sup> Amended Complaint at Paragraph 18, *Eshelman v. True the Vote, Inc.*, 4:20-cv-04034, (S.D. Tex.), available at: <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1804085/gov.uscourts.txsd.1804085.20.0.pdf>.

<sup>41</sup> Email from James Bopp to Catherine Engelbrecht, Exhibit 3 to Declaration of Defendant Catherine Engelbrecht, Page 47 of 129, available at: <https://storage.courtlistener.com/recap/gov.uscourts.txsd.1804085/gov.uscourts.txsd.1804085.47.1.pdf>

<sup>42</sup> Richard Salame, Was Election Denial Just a Get-Rich Quick Scheme? Donors' Lawsuits Look for Answers, *The Intercept*, Feb. 6 2021, available at <https://theintercept.com/2021/02/06/election-deniers-profit-lawsuits>.

<sup>43</sup> Cassandra Jaramillo, She Helped Create the Big Lie. Records Suggest She Turned It Into a Big Grift, *Reveal*, June 8, 2022, available at <https://revealnews.org/article/true-the-vote-big-lie-election-fraud/>.

<sup>44</sup> *Id.*



*Loans to Catherine Engelbrecht*

True the Vote paid its President and/or Executive Director, Catherine Engelbrecht the following amounts as compensation from 2012 through 2020.

<b>Year</b>	<b>Amount<sup>45</sup></b>	<b>Hours per week</b>	<b>Title</b>
2012	\$90,000	40	President
2013	\$123,615	40	President
2014	\$120,000	40	Executive Director
2015	\$170,000	40	Executive Director
2016	\$176,250	35	Executive Director
2017	\$112,500	35	Executive Director
2018	\$143,071	65	Executive Director
2019	\$145,000	38	Executive Director
2020	\$197,000	60	President

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<sup>45</sup> True the Vote Form 990, Part VII, Section A.

Despite this steadily rising, six-figure compensation, in 2015, True the Vote began making large loans to Ms. Engelbrecht, potentially in violation of Texas law. True the Vote made the following loans to Ms. Engelbrecht, while she was serving as a director, President, and Executive Director:

<b>Year</b>	<b>Initially Reported Loan Outstanding<sup>46</sup></b>	<b>Revised Reporting of Loan Outstanding (if applicable)</b>
2015	\$40,607	N/A
2016	\$40,607	N/A
2017	\$40,607	N/A
2018	\$61,896	N/A
2019	\$113,396	\$0
2020	\$0	N/A

True the Vote loaned Ms. Engelbrecht \$40,607 in 2015.<sup>47</sup> The reported loan balance outstanding remained the same through 2016 and 2017,<sup>48</sup> but increased to \$61,896 in 2018.<sup>49</sup> In 2019, True the Vote does not appear to have been able to determine whether the loan balance outstanding increased to \$113,396, as initially reported, or was paid off in full, as later reported. True the Vote initially filed a 2019 Form 990 showing a \$113,396 loan balance and later provided another Form 990 showing no loan outstanding at all.<sup>50</sup>

Texas law permits nonprofit corporations to make certain loans to employees or officers in limited circumstances, if reasonably expected to benefit the corporation, but prohibits loans to directors.<sup>51</sup> A loan to an officer must be either (i) for the purpose of financing the officer’s principal residence or (ii) less than 50 percent of the officer’s salary (if made in any year after the first anniversary of the officer’s date of hire).<sup>52</sup> In 2018, True the Vote specifically reported the purpose of the loans to Ms. Engelbrecht as “advances for organizational legal expenses” (*i.e.*, not for the

<sup>46</sup> True the Vote Form 990, Part VII, Section A.

<sup>47</sup> True the Vote 2015 Form 990, Schedule L, Part II.

<sup>48</sup> True the Vote 2016 and 2017 Form 990, Schedule L, Part II.

<sup>49</sup> True the Vote 2018 Form 990, Schedule L, Part II.

<sup>50</sup> True the Vote 2019 and amended 2019 Form 990, Schedule L, Part II.

<sup>51</sup> Section 22.055 (POWER TO ASSIST EMPLOYEE OR OFFICER) of the Texas Business Organizations Code, Chapter 22 (Nonprofit Corporations).

<sup>52</sup> Section 22.055

purpose of financing her principal residence).<sup>53</sup> True the Vote's loans to Ms. Engelbrecht appear to have been improper from the outset in light of her status as a director, but even if her dual status as an officer and director somehow made such a loan permissible, the amount of the 2019 loan, \$113,396,<sup>54</sup> clearly exceeded 50% of Ms. Engelbrecht's \$145,000 salary in apparent violation of the law.

### *Improper filing of Information Returns*

In various years, True the Vote appears to have failed to file Form 1099-series information returns, incorrectly filled out its Form 990 exempt organization returns, or both. In each of 2015, 2016, and 2017, True the Vote specifically reported that it filed zero Form 1099 information returns.<sup>55</sup> In 2015, however, True the Vote paid \$15,000 to ARC Network, LLC and \$7,500 to AO2 LLC, each of which are entities that Ms. Engelbrecht, True the Vote's president and executive director, likely owns in whole or in part based on True the Vote's Schedule L disclosures.<sup>56</sup> Similarly, in 2016, True the Vote paid \$35,000 to ARC Network, LLC, \$25,000 to AO2 LLC, and \$108,114 in legal fees to non-employees.<sup>57</sup> In 2017, True the Vote paid \$12,000 to an individual for "admin" services as an independent contractor,<sup>58</sup> \$28,928 to a web intern for graphics communications,<sup>59</sup> and tens of thousands of dollars in legal professional fees and contract labor fees (presumably to non-employees).<sup>60</sup> Some or all of these payments should have triggered a Form 1099 filing obligation for True the Vote, yet True the Vote does not appear to have filed any such forms.<sup>61</sup>

These apparent failures to file information returns are particularly egregious, given that Forms 1099 are required for payments for legal services of \$600 or more.<sup>62</sup> Additionally, two of the largest payees were entities that Ms. Engelbrecht, True the Vote's president and executive director owned in whole or in part and specifically disclosed on Form 990, Schedule L. This should have put True the Vote on notice that additional information return files were required.

## **VIOLATIONS**

### **I. Private Inurement, Private Benefit, and Excess Benefit Transactions**

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<sup>53</sup> True the Vote 2018 Form 990, Schedule L, Part V.

<sup>54</sup> The purpose of the loan, as reported in the Form 990, merely stated that it was an "advance" and there was no indication that the purpose of the loan was for the purchase of a primary residence.

<sup>55</sup> True the Vote 2015, 2016, and 2017 Form 990, Part V, Line 1(a).

<sup>56</sup> True the Vote 2015 Form 990, Schedule L, Part IV.

<sup>57</sup> True the Vote 2016 Form 990, Schedule L, Part IV and Part IX, Line 11(b).

<sup>58</sup> True the Vote 2016 Form 990, Part VII, Section B, Line 1.

<sup>59</sup> True the Vote 2016 Form 990, Part IX, Line 24(b).

<sup>60</sup> True the Vote 2016 Form 990, Part IX, Lines 24(c) and 24(d).

<sup>61</sup> It is possible that some of the payees did not require Forms 1099 (*e.g.*, if they were corporations that did not provide legal services).

<sup>62</sup> 2016 Instructions for Form 1099-MISC, Miscellaneous Income (explaining that the "exemption from reporting payments made to corporations does not apply to payments for legal services" and therefore attorneys' fees must be reported).

Code Sections 501(c)(3) and 501(c)(4)(B)

The prohibition against private inurement is a statutory criterion for an organization to qualify as a Section 501(c)(3) tax-exempt organization.<sup>63</sup> An organization “is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.”<sup>64</sup> For purposes of the private inurement doctrine “private shareholder or individual” generally means a person having “a personal and private interest in the activities of the organization” (such as a director, trustee, officer, founder, or major contributor who can control the decisions of the entity, hereinafter an “**Insider**”).<sup>65</sup>

Both Gregg Phillips, as a former director, and Catherine Engelbrecht, as a director and officer, constitute Insiders of True the Vote. In addition, for purposes of the private inurement doctrine, Insiders generally include entities controlled, directly or indirectly, by an individual who is an Insider.<sup>66</sup> Accordingly, OPSEC Group is an Insider to True the Vote because it is a for-profit business entity that Mr. Phillips wholly owns and controls.

In various pronouncements, the IRS has added some additional descriptive color to the meaning of private inurement, including:

- Private inurement is “likely to arise when the financial benefit represents a transfer of the organization’s financial resources to an individual solely by virtue of the individual’s relationship with the organization, and without regard to accomplishing exempt purposes.”<sup>67</sup>
- The “inurement prohibition serves to prevent anyone in a position to do so from siphoning off any of a charity’s income or assets for personal use.”<sup>68</sup>

The IRS generally has discretion to revoke the exempt status of a Section 501(c)(3) tax-exempt organization that has been determined to have violated the prohibition on private inurement.<sup>69</sup>

It is axiomatic that a tax-exempt organization, subject to the private inurement doctrine, may not without violating the doctrine, pay compensation or make other payments when services are not actually rendered at all.<sup>70</sup> Therefore, if OPSEC Group did not perform any substantial research, data analysis, or other valuable services for True the Vote, then True the Vote engaged in private inurement by paying OPSEC Group at least \$750,000.

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<sup>63</sup> Code Section 501(c)(3) (“ . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual”);

<sup>64</sup> Treasury Regulations Section 1.501(c)(3)-1(c)(2).

<sup>65</sup> Treas. Reg. Section 1.501(a)-1(c).

<sup>66</sup> See, e.g., Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) (“it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.”)

<sup>67</sup> GCM 38459.

<sup>68</sup> GCM 39862.

<sup>69</sup> Treasury Regulations Section 1.501(c)(3)-1(f)(2).

<sup>70</sup> *Canada v. Comm’r*, 82 TC 973 (1984); *Senior Citizens of Missouri, Inc. v. Comm’r*, 56 T.C.M. 479 (1988).

If OPSEC Group performed at least some material amount of research, data analysis, or similar services for True the Vote, the key question would be whether the amount paid was *reasonable* in relation to the value of the services rendered. In situations when an Insider actually renders at least some nontrivial good or services to an exempt organization, whether there is private inurement depends on the economic reasonableness of transactions between the exempt organization and the Insider. An Insider cannot receive a payment of funds from an exempt organization except as reasonable payment for goods or services rendered (*i.e.*, payments equal to the fair market value of the goods or services).<sup>71</sup>

A finding of excessive compensation generally results in a finding of private inurement.<sup>72</sup> Whether an amount of compensation is reasonable is a question of fact, determined based on the facts-and-circumstances of each case. Treasury Regulations applicable to business expense deductions<sup>73</sup> and the intermediate sanctions regime<sup>74</sup> define reasonable compensation as the amount that would ordinarily be paid for like services by like enterprises under like circumstances.<sup>75</sup>

CfA does not have access to comprehensive data on the amounts paid to businesses like OPSEC Group (*i.e.*, secretive for-profit entities that purportedly offer research, data analysis, or similar services to but never market, advertise, or otherwise their services to the general public) by tax-exempt organizations like True the Vote. Data on such payments might be helpful in assessing whether the size of the independent contractor payments were reasonable under the circumstances. The IRS, with its summons, investigatory, and other related enforcement powers, may be able to compel the production of additional information about the business transactions between True the Vote and OPSEC Group (*e.g.*, contracts for services, methods used for determining the price of services, whether conflict of interest policies were meaningfully followed, etc.) to aid in a determination of whether the transactions gave rise to private inurement.

#### Code Section 4958

Instead of or in addition to revoking the tax-exempt status of any of True the Vote, the IRS may impose excise taxes under Code Section 4958. Under Code Section 4958, so-called intermediate sanctions may be imposed when a Section 501(c)(3) public charity<sup>76</sup> provides an economic benefit to a “disqualified person” that exceeds the value of the consideration that the tax-exempt organization received in exchange for providing the benefit (the amount of such excess, the “**Excess Benefit**”).<sup>77</sup> For these purposes a disqualified person is generally someone in

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<sup>71</sup> See, *e.g.*, Rev. Rul. 76-441, 1976-2 CB 147; Rev. Rul. 76-91, 1976-1 CB 149.

<sup>72</sup> See, *e.g.*, *Harding Hospital v. U.S.*, 505 F.2d 1068 (6th Cir. 1974).

<sup>73</sup> Treas. Reg. Section 1.162-7(b)(3).

<sup>74</sup> Treas. Reg. Section 53.4958-4(b)(1)(ii)(A).

<sup>75</sup> *Id.*

<sup>76</sup> Code Section 4958(e)(1).

<sup>77</sup> Code Section 4958(c)(1).



a position to exercise substantial influence over the affairs of the exempt organization, as well as business entities owned 35 percent or more by such disqualified persons.<sup>78</sup>

The initial penalty for an Excess Benefit transaction is:

- 25% of the Excess Benefit, imposed on the disqualified person receiving the Excess Benefit; and
- 10% of the Excess Benefit, imposed on any organizational manager who participated in it, knowing that it was an Excess Benefit transaction (unless such participation was not willful and due to reasonable cause.<sup>79</sup>

In an extreme case, if True the Vote paid OPSEC Group in exchange for no services at all and Ms. Engelbrecht or another officer or director approved the transaction knowing that the payments constituted excess benefit transactions, then the penalties could be as high as (a) \$187,500 on Mr. Phillips/OPSEC Group and (b) \$75,000 on a True the Vote organizational manager who approved it, knowing that it was an Excess Benefit transaction.

#### 26 U.S.C. § 6652

Under Code Section 6652(c)(1)(ii), a tax-exempt organization that, without reasonable cause, fails to include any of the information required on a Form 990 Return of Organization Exempt from Income Tax or fails to provide the correct information is liable for civil penalties. As discussed above, True the Vote failed to report the payments that it made to OPSEC Group and The Bopp Law Firm in 2020 where required on its 2020 Form 990 exempt organization return.<sup>80</sup> True the Vote further failed to disclose that the \$750,000 paid to OPSEC Group was a business transaction with a business entity owned by Mr. Phillips, a former director.<sup>81</sup> These disclosure failures are particularly egregious, given that they may have been deliberate to avoid revealing payments that may have constituted private inurement or excess benefit transactions. Given that True the Vote had gross receipts over \$1,000,000 in 2020, the monetary penalty should be \$100 per day, while the failure continued (*i.e.*, the failure to show the correct information on its Form 990 exempt organization return), up to a maximum of \$50,000.

#### 26 U.S.C. § 6721

As summarized above, True the Vote represented on its Forms 990 in 2015, 2016, and 2017 that it did not file any Form 1099-series information returns, despite making multiple payments over \$600 that would have given rise to an information return filing obligation. Assuming the information returns were required and never filed, True the Vote should be penalized with either

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<sup>78</sup> Code Section 4958(f)(1). Leonard Leo owns at least 35% or more of BH Group. Rule of Law Trust 2019 Form 990, Schedule L, Part V. His ownership percentage of CRC Advisors is not publicly discoverable, but he serves as a Director and the Chairman of CRC Advisors. CRC Advisors 2022 Virginia Annual Report.

<sup>79</sup> Code Section 4958(a).

<sup>80</sup> Form 990, Part VII, Section B.

<sup>81</sup> True the Vote 2020 Form 990, Part IV, Line 28 and Schedule L.

the (a) general penalty of \$250 per never filed information return<sup>82</sup> or (b) the higher \$500 penalty per information return for intentional disregard of the filing requirement.<sup>83</sup>

26 U.S.C. § 7206

Under Code Section 7206(1), any person who “[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter,” is guilty of a felony and subject to up to three years in prison and a fine of up to \$100,000. As noted above, True the Vote failed to disclose its payments to OPSEC Group and The Bopp Law Firm on its 2020 Form 990 exempt organization return.

As True the Vote’s president, Ms. Engelbrecht signed True the Vote’s 2020 Form 990.<sup>84</sup> True the Vote specifically represented that its Form 990 filing process involved preparation by a CPA experienced in Form 990 preparation, disclosure of all Board of Directors’ conflicts of interest, and that all members of the Board reviewed the draft Form 990.<sup>85</sup> Despite these extensive review and preparation procedures, True the Vote responded incorrectly to several questions on its 2020 Form 990 exempt organization return, including Part IV, Line 28 (regarding business transactions with current or former officers and directors), Part VII, Section B (Independent Contractors). These were substantial and material errors and omissions, given that appropriate responses to these questions are critical to the IRS receiving additional disclosures on Form 990, Schedule L and determining if transactions with interested persons resulted in private inurement or other diversions of the exempt organization’s income or assets. Accordingly, Ms. Engelbrecht, as President of True the Vote, appears to have voluntarily and intentionally filed a false, incorrect, and incomplete Form 990 Return of Organization Exempt from Income Tax for 2020 in violation of Code Section 7206.

**CONCLUSION**

In summary, True the Vote may have caused substantial amounts of its income and assets to inure to the benefit of current or former officers and directors. Additionally, True the Vote appears to have failed to comply with multiple disclosure obligations with respect to its Form 990 exempt organization returns and other information returns.

CfA urges the IRS to use its summons, investigatory, and other related enforcement powers examine the activities of True the Vote, OPSEC Group, Catherine Engelbrecht, and Gregg Phillips to uncover further evidence of private inurement, excess benefit transactions, and other activities that violate the Code and True the Vote’s tax-exempt status and take appropriate action if violations are found.

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<sup>82</sup> Lower penalties apply to information return failures that are corrected within certain relatively short time periods that are likely not applicable here for never filed information returns.

<sup>83</sup> Code Sections 6721(a) and 6721(e) (both penalty dollar amount figures subject to inflation adjustment)

<sup>84</sup> True the Vote 2020 Form 990, Part II.

<sup>85</sup> True the Vote 2020 Form 990, Schedule O responses to Part VI, Lines 11(b) and 12(c).

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Sincerely,



Michelle J. Kuppersmith  
Executive Director

Enclosures:

Form 13909

cc (w/o encl.): Charitable Trusts Division  
Texas, Office of the Attorney General