

October 23, 2024

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Re: Complaint against True the Vote

Dear Commissioner Werfel,

Campaign Legal Center (“CLC”)¹ requests an immediate Internal Revenue Service investigation regarding True the Vote Inc. (EIN 27-2860095), a Texas-based organization registered as a tax-exempt entity under Section 501(c)(3) of the Code. True the Vote appears to have violated that section’s clear textual mandate that such organizations may not “participate in, or intervene in...any political campaign on behalf of (or in opposition to) any candidate for public office.”²

On June 25, 2024, the Georgia Republican Party entered into a conciliation agreement with the Federal Election Commission (“FEC” or “Commission”) in settlement of reporting violations. Specifically, the Party and the Commission agreed that “True the Vote made, and [the Georgia Republican Party] accepted in-kind contributions in the form of coordinated expenditures.”³ While TTV has “declined to provide information regarding the costs of the services at issue,” the Party and the Commission have agreed to value these in-kind contributions from TTV to the Party at \$500,000 as a “good-faith estimate derived from available information.”⁴

Publicly available information, including the FEC conciliation agreement described above and attached hereto, provides grounds for an IRS investigation regarding TTV’s apparent failure to comply with federal tax law and potential enforcement action for any violations, including the imposition of civil fines, injunctive relief, and/or the revocation of its tax-exempt status.

Factual Background

TTV is a Houston, Texas-based organization first registered in that state on June 7, 2010.⁵ It is a 501(c)(3) organization that appears on the IRS’s Publication 78 list of organizations eligible to receive tax-deductible charitable contributions.⁶

¹ CLC is a nonpartisan, 501(c)(3) nonprofit organization whose mission is to advance democracy through law.

² 26 U.S.C. § 501(c)(3).

³ FEC Conciliation Agreement, MUR 7894R, at 6 (July 29, 2024), https://www.fec.gov/files/legal/murs/7894R/7894R_15.pdf.

⁴ *Id.* at 7.

⁵ Texas Comptroller of Public Accounts, Taxable Entity Search, <https://mycpa.cpa.state.tx.us/coa/> (last visited September 26, 2024) (search for “True the Vote”).

⁶ Internal Revenue Service, Tax Exempt Organization Search, <https://apps.irs.gov/app/eos/> (last visited September 26, 2024) (search for “True the Vote”).

On December 14, 2020, True the Vote announced a “partnership” with the Georgia Republican Party “to assist with the Senate runoff election process.” This partnership included “publicly available signature verification training, a statewide voter hotline, monitoring absentee ballot drop boxes, and other election integrity initiatives.” Following the announcement of this partnership, True the Vote challenged the eligibility of 364,541 Georgia voters.⁷

On March 14, 2021, Common Cause Georgia, its Executive Director, Treanna Dennis, and Campaign Legal Center Action (“CLCA”)⁸ filed a complaint before the FEC based on information and belief that True the Vote and the Georgia Republican Party violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.* Specifically, the complaint alleged that True the Vote made, and the Georgia Republican Party accepted, illegal corporate contributions in the form of coordinated expenditures, and the Georgia Republican Party failed to report those services as in-kind contributions.⁹

On December 9, 2021, the FEC’s Office of General Counsel issued a report recommending that the Commission find reason to believe that True the Vote and its president and founder, Catherine Engelbrecht, violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) and (e) “by making and consenting to make prohibited corporate in-kind contributions”; and that the Georgia Republican Party violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(d) “by knowingly accepting prohibited corporate in-kind contributions” as well as 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing “to report receiving these contributions.”¹⁰

On August 11, 2022, the Commission failed by a vote of 2-3 to approve these recommendations and instead voted to close the file, effectively dismissing the administrative complaint.¹¹ On October 10, 2022, Common Cause Georgia and Treanna Dennis filed suit in federal district court alleging that the Commission’s dismissal of their administrative complaint was arbitrary, capricious, and otherwise contrary to law.¹²

On September 29, 2023, the U.S. District Court for the District of Columbia issued a decision agreeing with the FEC’s General Counsel and Common Cause Georgia and Ms. Dennis, and finding that the Commission’s dismissal of the administrative complaint against True the Vote and the Georgia Republican Party was contrary to law.¹³ The court concluded, *inter alia*, that “True the Vote’s public statements gave the Commission clear reasons to believe that it coordinated with, or acted at the request or suggestion of, the Georgia Republican Party during the 2021 runoff,” that “[t]he context of True the Vote’s comments made the nature of its activities even clearer,” and that the FEC had reason to believe the failure to disclose such apparent

⁷ See FEC Conciliation Agreement at 5, 9.

⁸ Campaign Legal Center Action is a Section 501(c)(4) nonprofit organization affiliated with CLC.

⁹ See *supra* note 7.

¹⁰ FEC First General Counsel’s Report, MUR 7894 (Dec. 9, 2021), https://www.fec.gov/files/legal/murs/7894/7894_14.pdf.

¹¹ FEC Certification, MUR 7894 (Aug. 12, 2022), https://www.fec.gov/files/legal/murs/7894/7894_15.pdf.

¹² Complaint for Declaratory and Injunctive Relief, *Common Cause Georgia v. FEC*, No. 22-cv-3067 (D.D.C. Oct. 10, 2022).

¹³ Memorandum Opinion, *Common Cause Georgia v. FEC*, No. 22-cv-3067 (D.D.C. Sept. 29, 2023), ECF No. 24, https://campaignlegal.org/sites/default/files/2023-10/24%20Mem.%20opinion_9.29.23.pdf.

coordinated spending between the TTV and the Party violated FECA.¹⁴ Consistent with the scope of judicial review of FEC dismissal decisions under the Federal Election Campaign Act, the court remanded the matter to the FEC and ordered the Commission to conform to its judgment.¹⁵

On remand from the district court, the FEC reopened the administrative matter, and on June 25, 2024, the FEC and the Georgia Republican Party entered into a conciliation agreement in which both parties agreed that True the Vote made, and the Georgia Republican Party accepted, in-kind contributions in the form of coordinated expenditures. Specifically, the parties agreed that “the coordinated expenditures included, at a minimum, the provision of various services to implement a state-wide ballot challenge, a voter hotline, ballot-curing support, signature verification training, absentee ballot drop box monitoring, and other election integrity initiatives.” Additionally, the conciliation agreement stated that “True the Vote has declined to provide information regarding the costs of the services at issue and [the Georgia Republican Party] intends to report the amount of the in-kind contribution at \$500,000 based upon consultation with Commission staff and an agreed upon good-faith estimate derived from available information.”¹⁶

Summary of the Law

Section 501(c)(3) states that public charities may 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.” 26 U.S.C. § 501(c)(3).

Treasury regulations further provide that an organization is not operated exclusively for an exempt purpose “if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.” 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii). Whether an organization is intervening or participating in a political campaign depends on all the facts and circumstances, but the regulations make clear that such activities “include, but are not limited to, the publication or distribution of written statements or the making of oral statements on behalf of or in opposition to such a candidate.”¹⁷ For instance, while Section 501(c)(3) organizations are permitted to engage in *nonpartisan* “voter education activities” like publishing a compilation of candidate positions or voting records, as well as other nonpartisan activity that promotes electoral participation—*e.g.*, voter registration and “get out the vote” (GOTV) drives—engaging in these types of activities “in a biased manner that favors (or opposes) one or more candidates is prohibited.”¹⁸

¹⁴ *Id.* at 13. The court limited its remand order to the reporting violation because it found that the plaintiffs lacked Article III standing with respect to the alleged illegal contributions. However, the fact that the Georgia Republican Party made in-kind contributions to True the Vote was a necessary predicate for any finding that the Party violated its disclosure obligations; without the in-kind contributions, there would have been nothing to disclose.

¹⁵ Order, *Common Cause Georgia v. FEC*, No. 22-cv-3067 (D.D.C. Sept. 29, 2023), ECF No. 23, https://www.fec.gov/files/legal/murs/7894R/7849R_01.pdf.

¹⁶ See note 4.

¹⁷ IRS Rev. Rul. 2007-41 at 2 (2007), <https://www.irs.gov/pub/irs-drop/rr-07-41.pdf>.

¹⁸ *Id.* at 2-3; see also IRS Rev. Rul. 2004-6 (2003), <https://www.irs.gov/pub/irs-drop/rr-04-6.pdf>.

Violations of the prohibition against campaign intervention can result in revocation of tax-exempt status and the imposition of excise and other taxes. *See* 26 U.S.C. §§ 4945, 4955; IRS Fact Sheet 2006-17.

TTV's Coordination with the Georgia Republican Party Violated the Statutory Conditions of Its Tax-Exempt Status

A tax exemption under 26 U.S.C. § 501(c)(3) is limited to an organization that “does 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.” True the Vote’s in-kind contribution to the Georgia Republican Party to influence the 2021 Senate runoff elections in Georgia, which per the conciliation agreement may be valued at \$500,000, is a plain violation of that explicit condition.

Organizations claiming tax exemption under Section 501(c)(3) that engage in prohibited political campaign intervention or participation may be subjected to substantial fines and/or lose their tax-exempt status. Accordingly, the Service could revoke True the Vote’s charitable status, and/or, under Section 4955 of the Code, impose a 10% tax on each political expenditure, payable by the organization. *See* I.R.C. § 4955(a)(1). While both actions appear appropriate here, further investigation by the IRS is needed to determine the true value of True the Vote’s in-kind political contribution; whether True the Vote’s managers agreed to this expenditure knowing it was political; and whether True the Vote is continuing to violate the prohibition on participating or intervening in political campaigns.

Conclusion

As set forth above, True the Vote appears to have violated Section 501(c)(3)’s prohibition against intervening or participating in a political campaign by making in-kind contributions to the Georgia Republican Party to influence the 2021 U.S. Senate runoff elections in Georgia. The IRS should immediately investigate and take appropriate action, including revocation of the organization’s tax-exempt status and imposition of relevant taxes, to hold the organization accountable for not complying with the applicable provisions of federal tax law and the Internal Revenue Code.

When organizations claiming tax exemption under Section 501(c)(3) engage in prohibited political conduct, they are, in essence, engaging in “government subsidization of political activity,”¹⁹ as “a tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income.”²⁰ As such, CLC asks the IRS to impose meaningful sanctions, including, if appropriate, monetary penalties, injunctive relief, and the revocation of tax-exempt status, to hold True the Vote accountable and ensure its compliance with federal law.

¹⁹ *Ass’n of the Bar of New York v. Comm’r*, 858 F.2d 876 (2d Cir. 1988).

²⁰ *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 544 (1983).

Thank you for your consideration of this important matter.

Sincerely,

/s/

Erin Chlopak

Roger G. Wieand

Campaign Legal Center

1101 14th St NW, Suite 400

Washington, DC 20005

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)	
)	
Georgia Republican Party, Inc.,)	MUR 7894R
and Laurie L. McClain in her)	
official capacity as treasurer)	

CONCILIATION AGREEMENT

This matter was generated by a complaint filed with the Federal Election Commission. The Commission found reason to believe that the Georgia Republican Party, Inc. and Laurie L. McClain in her official capacity as treasurer (the “Georgia GOP” or “Respondent”) violated 52 U.S.C. § 30104(b) of the Federal Election Campaign Act of 1971, as amended (the “Act”) and 11 C.F.R. § 104.3(a), (b) of the Commission’s regulations by failing to report in-kind contributions it received from True the Vote in the form of the various expenditures that True the Vote made in coordination with the Georgia GOP regarding the 20 Senate runoff election in Georgia.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this Agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to respond to the Complaint and the Commission’s finding of Reason to Believe in this matter to demonstrate to the Commission that no action should be taken in this matter.
- III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

- . Respondent is a state committee of the Republican Party.
 - . True the Vote is a non-profit corporation organized under section 501(c)(3) of the tax code that has described itself as the “country’s largest voters’ rights organization” and as being “well-known for our ability to lead unified national plans to protect election integrity.”
 - . True the Vote’s founder and president, Catherine Engelbrecht, wrote in an email announcement that the organization had received “a request from the [Georgia GOP] to provide publicly available nonpartisan signature verification training, a 24x7 voter hotline, ballot-curing support, and more.”
 - . In a press release on December 14, 2020, True the Vote announced what it termed its “partnership” with Respondent to assist with the Senate runoff election process. The announcement included a statement from Respondent’s then-Chairman David Shafer, noting that: “[w]e are grateful for the help of the True the Vote team in the fight for election integrity. . . . The resources of True the Vote will help us to organize and implement the most comprehensive ballot security initiative in Georgia history.”
 - . Three days after announcing its partnership with the Respondent, True the Vote challenged the eligibility of 364,541 registered Georgia voters, which required that it locate a Georgia resident in each of Georgia’s 159 counties to challenge the ballots identified by True the Vote for their county.
6. In court filings, True the Vote, along with its vendor OpSec, described its efforts in Georgia as involving the ability to “design a methodology that will provide challengers with the data necessary to challenge elections by identifying specific unqualified voters on a

county[-]by[-]county basis.” True the Vote also claimed in its filing that it “also successfully helped submit the largest pre-election set of challenges in American history in Georgia.”

7. When the Commission initially considered this matter, the Commission did not find reason to believe a violation occurred. Complainant sought review by the U.S. District Court for the District of Columbia, in a proceeding Respondent was not a party to, which found the Commissions failure to find reason to believe arbitrary and capricious.

8. Respondent did not consider the activity of True the Vote to be a contribution and therefore did not report any contributions from True the Vote on either its 2020 Year-End Report or in its 2021 February Monthly Report. To date, Respondent has not reported any contributions from True the Vote, nor has it reported any payments to True the Vote for services rendered.

9. Under the Act, the terms “contribution” and “expenditure” include “anything of value” given or made by any person for the purpose of influencing an election. 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i). Additionally, “expenditures made by any person (other than a candidate or candidate’s authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee.” *Id.* § 30116(a)(7)(B)(ii); 11 C.F.R. § 109.20(b). “Coordinated” means “made in cooperation, consultation or concert with, or at the request of suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.” 11 C.F.R. § 109.20(a).

0. The Act and Commission regulations require political committees to file periodic reports accurately disclosing all of their receipts, disbursements, and debts and obligations, including coordinated expenditures. 52 U.S.C. § 30104; 11 C.F.R. § 104.3. Political

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committees must report the total amount of all receipts and disbursements for the reporting period; itemize the name and address of each person from whom the committee received contributions aggregating in excess of \$200 in a calendar year along with the dates and amounts of the contributions; and itemize the name and address of each person to whom the committee made expenditures exceeding, in aggregate amount or value, \$200 per calendar year as well as the date, amount, and purpose of the expenditures. *See id.* A coordinated expenditure must be reported as both a contribution received by, and an expenditure made by, the political committee with whom the expenditure was coordinated. 11 C.F.R. § 104.13(a)(2); *ee also* Coordinated and Independent Expenditures, 68 Fed. Reg. at 422 (explaining that committees must report coordinated expenditures in this manner in order to not overstate cash-on-hand balances).

. True the Vote engaged in various activities that accrued to the benefit of GA GOP, and were subsequently determined by a Court as having been coordinated and an in-kind contribution to the GA GOP. Accordingly, True the Vote made, and Respondent accepted in-kind contributions in the form of coordinated expenditures. The coordinated expenditures included, at a minimum, the provision of various services to implement a state-wide ballot challenge, a voter hotline, ballot-curing support, signature verification training, absentee ballot drop box monitoring, and other election integrity initiatives.

V. Respondent disputes and denies the allegations, and the findings of the U.S. District Court. It is entering into this agreement solely for the purpose of settling this matter expeditiously and avoiding the expense of litigation, without admission with respect to this or any other proceeding, and contends it would have disputed the allegation in court but Respondent neither received notice of the court proceeding nor had the opportunity to participate as a party in the proceeding. Respondent represents that True the Vote has declined to provide

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information regarding the costs of the services at issue and intends to report the amount of the in-kind contribution as \$500,000 based upon consultation with Commission staff and an agreed upon good-faith estimate derived from available information.

VI. Respondent violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by failing to disclose contribution or expenditure information in connection with True the Vote, including the dates, amounts, and purposes of the in-kind contributions.

VII. Respondent will take the following actions:

. Respondent will pay a civil penalty to the Commission in the amount of Fourteen Thousand Five Hundred Dollars (\$14,500), pursuant to 5 U.S.C. § 30109(a)(5)(A).

. Respondent will amend its disclosure reports to report the amount of the in-kind contribution from True the Vote as \$500,000 in consultation with Commission staff and based on a good-faith estimate derived from available information.

. Respondent will cease and desist from violating U.S.C. § 301 04(b) and C.F.R. § 104.3(a) and (b).

VIII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This Agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

X. Respondent shall have no more than 120 days from the date this Agreement

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becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written Agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: **Charles Kitcher**
Charles Kitcher
Associate General Counsel
for Enforcement

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Date

FOR THE RESPONDENT:


(Name)
(Position)

Alex B. Kaufman
General Counsel, Georgia
Republican Party, Inc.

6/3/2024
Date