



August 21, 2012

**VIA CERTIFIED MAIL**

The Honorable Douglas L. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

**RE: REQUEST FOR REVOCATION OF TAX-EXEMPT STATUS AND  
INVESTIGATION OF TEXAS ORGANIZING PROJECT AND TEXAS  
ORGANIZING PROJECT EDUCATION FUND**

Dear Commissioner Shulman:

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that uses investigative, legal, and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity.

Earlier this year, the Internal Revenue Service indicated that it is investigating the abuse of charitable organizations and deductions.<sup>1</sup> On May 31, 2012, Cause of Action wrote to you requesting an investigation into the Texas Organizing Project (TOP) and the Texas Organizing Project Education Fund (TOP ED).<sup>2</sup> We want to update you concerning the activities of TOP, a purported 501(c)(4) entity dedicated to lobbying, electoral organizing and issue advocacy,<sup>3</sup> and TOP ED,<sup>4</sup> a 501(c)(3) that may be serving as a financial conduit for tax-deductible contributions to TOP.

First, it appears that TOP is not complying with the public disclosure requirements of the Internal Revenue Code. On August 6, 2012, a Cause of Action employee visited TOP's Houston office located at 2955 Gulf Freeway, Suite B, in Houston, Texas,<sup>5</sup> seeking to view TOP's most recently-filed IRS Form 990. TOP staff indicated to Cause of Action that TOP's IRS forms were only maintained in TOP's San Antonio office. This is problematic because the Cause of Action employee witnessed at least three employees at TOP's Houston-based office. The Internal

<sup>1</sup> Paul Streckfus, *Email Update 2012-31*, EO TAX J., (Feb. 17, 2012), *citing* IR-2012-23.

<sup>2</sup> Letter from Daniel Epstein, Executive Director, Cause of Action, to J. Russell George, Treasury Inspector General for Tax Administration, Department of the Treasury (April 2, 2012) (enclosed).

<sup>3</sup> See TEXAS ORGANIZING PROJECT, FORM 990, at 2 (on file with author).

<sup>4</sup> See TEXAS ORGANIZING PROJECT EDUCATION FUND, FORM 990, (2010) at 1, *available at* <http://www.guidestar.org/FinDocuments/2010/271/481/2010-271481855-07c7a9b4-9.pdf>.

<sup>5</sup> Texas Organizing Project website, Contact Us, *available at* <http://www.organizetexas.org/contact>.

Revenue Code requires that TOP make its 990 available for public inspection at that office.<sup>6</sup> While Cause of Action's request for the 990 was directed to TOP, Cause of Action was given TOP ED's 990. When Cause of Action reiterated that it was interested in TOP's 990, not TOP ED's, TOP's 2010 990 was sent to Cause of Action.

Second, we are concerned that TOP ED may exist as a 501(c)(3) conduit for tax-deductible contributions to TOP. In TOP ED's 2010 report to the IRS, TOP ED spent \$512,105 on costs relating to benefits and salaries for employees.<sup>7</sup> That same year, TOP ED received \$839,046 in grants and contributions.<sup>8</sup> That means that in 2010, TOP ED spent 61% of its funds – the majority – on employee salaries and benefits. TOP and TOP ED have a “cost sharing agreement” in place such that TOP bills TOP ED for its portion of its employees' salaries.<sup>9</sup> As part of that agreement, TOP reported \$502,301 for shared employees with TOP ED in 2010.<sup>10</sup> \$502,301 represents 98.1% of TOP ED's total expenditures on employee salaries and benefits. It is thus obvious that while TOP ED reported no grants to TOP, the “cost sharing” agreement is effectively a means of transferring the majority of TOP ED's funds to TOP.

The Internal Revenue Service (IRS) requires tax-exempt entities to pay a tax for electioneering activities. Treasury Regulation § 1.527-6(b)(1) states that electioneering expenditures are taxable to the extent provided by regulation. However, the Treasury Department has not yet promulgated any regulations specifically addressing the taxation of electioneering activities.<sup>11</sup> According to the Congressional Research Service, “[u]ntil the regulation addresses this matter, it appears a § 501(c) organization may engage in [electioneering] activities without tax consequences under IRC § 527(f).”<sup>12</sup> The IRS, through its regulations, is thus speaking out of both sides of its mouth on the issue.

The fact that a large majority of TOP ED's funds are being paid to TOP suggests that TOP and TOP ED might be abusing their status as tax-exempt organizations. If TOP and TOP ED are evading their obligations under the tax code, the IRS should defend the interests of the American public by bringing remedial action immediately. Such remedial action might include assessment of appropriate taxes for electioneering activity (such as TOP's \$7,500 in political campaign expenditures for the 2010 elections)<sup>13</sup> or modification of either organization's tax-

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<sup>6</sup> I.R.C. § 301.6104(d)-1.

<sup>7</sup> See TEXAS ORGANIZING PROJECT EDUCATION FUND, FORM 990, (2010) at 1, available at <http://www.guidestar.org/FinDocuments/2010/271/481/2010-271481855-07c7a9b4-9.pdf>.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 32.

<sup>10</sup> *Id.* at 30.

<sup>11</sup> TREAS. REG. § 1.527-6(B)(3).

<sup>12</sup> MEMORANDUM FROM L. PAIGE WHITAKER, LEGISLATIVE ATTORNEY, CONGRESSIONAL RESEARCH SERVICE AND ERIKA LUNDER, LEGISLATIVE ATTORNEY, CONGRESSIONAL RESEARCH SERVICE, 2 (Aug. 4, 2009) (on file with author). See T.D. 7744, 1981-1 C.B. 360 (stating that when the matter is eventually addressed, the regulation will apply on a prospective basis); see also JUDITH E. KINDELL AND JOHN FRANCIS REILLY, ELECTION YEAR ISSUES, IRS 2002 EO CPE TEXT, AT 437 (2002), available at <http://www.irs.gov/pub/irs-tege/eotopic02.pdf>.

<sup>13</sup> See Candidate/Officeholder Campaign Finance Report for Kristi Thibaut at 53, available at <http://204.65.203.5/public/458165.pdf> (TOP spent \$2,500); Candidate/Officeholder Campaign Finance Report for Angelita Gomez at 7 available at <http://204.65.203.5/public/458388.pdf> (TOP spent \$5,000).

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exempt status. It also may be appropriate to consider TOP and TOP ED as IRC § 527 entities given their main purpose of electioneering and political activities.

Should you have any questions, comments, or concerns, please do not hesitate to contact Jack Thorlin (Jack.Thorlin@causeofaction.org) or me (Karen.Groen.Olea@causeofaction.org) at 202-507-5882. Thank you for your attention to this matter.

Sincerely,



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KAREN GROEN  
CHIEF COUNSEL FOR OVERSIGHT

Encl: Letter from Karen Groen, Senior Counsel, Cause of Action, to J. Russell George, Treasury Inspector General for Tax Administration, Department of the Treasury (May 31, 2012).