

October 29, 2024

VIA MAIL AND EMAIL

Director, Exempt Organizations Division
Internal Revenue Service
TEGE Referrals Group - MC 4910 DAL
1100 Commerce Street
Dallas, TX 75242
eoclass@irs.gov

Re: Complaint re: USATransform

To Whom It May Concern:

On behalf of Accountable.US, I respectfully request that the Internal Revenue Service (“IRS”) initiate an investigation of USATransform (EIN 82-4819179) for, through its support of a group known as Ziklag, (i) violating the prohibition against political intervention by organizations described under section 501(c)(3) of the Internal Revenue Code (“Code”), and (ii) engaging in a substantial amount of private benefit activity as prohibited under the Code, and as described in detail below.

In particular, I request that an investigation be opened immediately to determine whether USATransform should be assessed a penalty for political expenditures under Code section 4955(a)(1), whether its tax-exempt status should be revoked, and whether any additional action should be taken by the IRS.

I. Description of USATransform and Ziklag

It is my understanding that Ziklag and USATransform are, for the purposes of this letter, synonymous.

USATransform is recognized by the IRS as a tax exempt public charity under section 501(c)(3) of the Code.¹ Ziklag describes itself as a “private, confidential, invitation-only community of high-net-worth families,” where members “pool resources” to support “vetted” nonprofit projects.² Ziklag has publicly claimed that “The Ziklag organization is a 501(c)(3).”³ However, a query of the IRS Tax Exempt Organization Search does not produce any organization with the name Ziklag that appears to correspond with this group.⁴ Meanwhile, the donation page on Ziklag’s website, as of May 2024, made clear that contributions are “made with the

¹ See USATransform Determination Letter, available at https://apps.irs.gov/pub/epostcard/dl/FinalLetter_82-4819179_USATRANSFORM_03212018.tif.

² *What Is Ziklag?*, Ziklag.org (archived May 9, 2024), https://web.archive.org/web/20240509190018/https://ziklag.org/what-is-ziklag?hs_preview=GenwbrkN-165697905675&hsLang=en.

³ *Id.*

⁴ The search for “Ziklag” produces an organization called “Ziklag City Inc” and “Ziklag Leaders Incorporated.” Neither organization appears to be related to the matters described in this letter.

understanding that USA Transform [sic] has complete discretion and control over the use of the donated funds.”⁵ Given Ziklag’s statements, and absent any evidence to the contrary, it appears USATransform and Ziklag are the same entity for purposes of 501(c)(3) tax status.

II. Factual Background

Ziklag has demonstrated a pattern of engaging in activities aimed at electing Republican candidates for public office. These activities – described recently by the publication ProPublica as intended to “mobilize Republican-leaning voters and purge more than a million people from the rolls in key swing states, aiming to tilt the 2024 election in favor of former President Donald Trump” – qualify as prohibited political campaign intervention.⁶

a. Meeting of the Ziklag FAM Committee (September 27, 2023)

In a September 27, 2023 meeting of the Ziklag “FAM Committee,” Ziklag’s officials outlined its goals for affecting the outcome of the 2024 Presidential election.

A presentation from the meeting stated that Ziklag had “pinpointed” states and counties “that are crucial for determining the outcome of an Presidential election” and stated that “75,000 people in these 11 counties will win the White House.”⁷ With the slide displayed on the screen, Ziklag’s chief executive Andrew Hiss stated that “We want to focus a coalition and carve it out where it’s aimed, right at these swing states, right at these counties.”⁸ Hiss stated that “we believe that if they go after these nine states and 19 counties with vigor, it’s going to change the trajectory of our election outcome in this coming season.”⁹

A member of the committee, Mark Bourgeois, also highlighted the goal of changing election outcomes stating, “if it truly only takes 75,000 more votes in those nine counties to win the entire election. Dude, let’s go after that hard.”¹⁰ Mr. Bourgeois emphasized that he did not care about a march in Washington, D.C., instead saying “I want to know about nine cities or nine counties. How do you win the friggin election?”¹¹

Mr. Bourgeois pushed Ziklag to explain how its activities were “going to actually get the vote on the right side of the ledger this time.”¹²

⁵ *Invest*, Ziklag.org (archived May 9, 2024),

https://web.archive.org/web/20240509190504/https://ziklag.org/invest?hs_preview=gUUpQUBP-165700496746.

⁶ Andy Kroll, *Inside Ziklag, the Secret Organization of Wealthy Christians Trying to Sway the Election and Change the Country*, ProPublica (July 13, 2024)

<https://www.propublica.org/article/inside-ziklag-secret-christian-charity-2024-election>.

⁷ FAM Committee Meeting Part 1, Ziklag (Sept. 27, 2023) <https://vimeo.com/1001297249>.

⁸ *Id.* at [0:00 - 0:06].

⁹ FAM Committee Meeting Part 2, Ziklag (Sept. 27, 2023) <https://vimeo.com/1001299114> at [0:27 - 0:39].

¹⁰ FAM Committee Meeting Part 3, Ziklag (Sept. 27, 2023) <https://vimeo.com/1001302857> at [0:00 - 0:12].

¹¹ *Id.* at [5:25 - 5:46].

¹² FAM Committee Meeting Part 1, Ziklag (Sept. 27, 2023) <https://vimeo.com/1001297249> at [2:06 - 2:42].

b. Vision & Strategy Video (Fall 2023)

In the fall of 2023, Ziklag released a “member-only” video in advance of its December 2023 summit. In this video, podcaster Lance Wallnau interviewed Andrew Hiss and discussed how Ziklag’s support for ballot initiatives could drive election outcomes in other elections.

In the Ziklag video, Mr. Wallnau stated that Ziklag would be funding ballot initiatives in three of the identified battleground states, which he described as an “amazing tool for mobilizing engagement” among voters. Mr. Wallnau explained that ballot initiatives can be a way to “deliver swing states” by turning out voters who may be unmotivated by a particular candidate saying “So suddenly people that are just like lethargic about the election or worse yet, they’re going to be all Trump traumatized with the news cycle. This issue will get people to come out and vote.”¹³

c. Post-Summit “Triple T” Video (Dec. 2023)

Following the December 2023 Ziklag member/donor summit, Ziklag again released a video describing its political activities, specifying support for plans that would turn out Republican voters.

The video states that Ziklag will be working with certain “partners” to “go after low propensity voters in Arizona.”¹⁴ The video explains that the “partners have a detailed plan to build relationships and gain voter registrations sympathetic to Republicans in general, but [who] did not vote in 2016 or 2020.”¹⁵ Ziklag states that it “estimate[d] these efforts will gain us 10,640 additional unique votes in the election.”¹⁶

Ziklag also describes funding “a messaging and data lab that will focus on the issue of parental rights as a wedge issue that can be the difference maker in the 2024 election, and will provide winning messaging to all our partner groups to create unified focus among all on the right.”¹⁷

d. Hosting of J.D. Vance Campaign Event on the Courage Tour (Sept. 2024)

On September 28, 2024, in Monroeville, Pennsylvania, Republican vice-presidential nominee J.D. Vance held an official campaign event in partnership with the “Courage Tour,” a series of Christian political mobilization rallies hosted by Lance Wallnau and reportedly paid for by Ziklag.¹⁸

Vance spoke onstage between 1:00 and 2:00 p.m., during which he “urged audience members to vote and get others to vote as well in November,” according to the news publication

¹³ Vision and Strategy Video Part 2, Ziklag (Fall 2024) <https://vimeo.com/991564992>.

¹⁴ “Triple T” Video, Ziklag (Dec. 2023) <https://vimeo.com/998109156> at [0:50 - 2:37].

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at [0:00 - 0:16].

¹⁸ Andy Kroll, Phoebe Petrovic, and Nick Surgey, *JD Vance Campaign Event With Christian Right Leaders May Have Violated Tax and Election Laws, Experts Say*, ProPublica (October 18, 2024), <https://www.propublica.org/article/vance-ziklag-courage-tour-christian-right-tax-election-laws>.

ProPublica.¹⁹ Event organizers claimed that, for legal purposes, his appearance was officially hosted by “The Lance Wallnau Show” and interrupted the tour itself. Despite this, promotional materials disseminated by the Trump-Vance campaign claimed that Vance’s appearance would take place “during [the] Courage Tour,”²⁰ and Wallnau spoke as though his Tour had hosted Vance, telling the audience, “I want you to know when we do a Courage Tour, which will be back in the area... How many of you would like to at least be knowing when we’re there? Who’s with us on the team? If we have another J.D. Vance or Donald Trump or somebody?”²¹

Other details surrounding Vance’s appearance indicate that Ziklag’s involvement was political in nature.. The Courage Tour clearly advertised the Vance campaign appearance alongside the Tour stop in promotional materials. It also pulled together the audience before which Vance spoke and supplied the venue, possibly bearing the financial costs.²²

III. Legal Background

A. Political Campaign Intervention

A section 501(c)(3) 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.”²³ The prohibition on political campaign intervention is absolute; there is no exception for de minimis activities. The IRS has made clear that a communication need not identify a particular candidate by name to qualify as prohibited campaign intervention. Rather, a candidate or group of candidates may also be identified by means such as political party affiliation.²⁴

501(c)(3) organizations that make political expenditures are subject to an excise tax on such expenditures.²⁵ The IRS also has the authority, in the case of flagrant political campaign activity, to seek an injunction in federal court to prevent future political expenditures.²⁶ Violations can also result in the revocation of exemption.²⁷

¹⁹ *Id.*

²⁰ *ICYMI: Vice Presidential Nominee, Senator JD Vance to Participate in Town Hall During Courage Tour in Monroeville, Pennsylvania*, www.donaldjtrump.com (September 25, 2024), <https://archive.is/PFEyLT#selection-317.0-322.0>.

²¹ Andy Kroll, Phoebe Petrovic, and Nick Surgey, *JD Vance Campaign Event With Christian Right Leaders May Have Violated Tax and Election Laws, Experts Say*, ProPublica (October 18, 2024), <https://www.propublica.org/article/vance-ziklag-courage-tour-christian-right-tax-election-laws>.

²² *Id.*

²³ I.R.C. § 501(c)(3); *see also* Treas. Reg. § 1.501(c)(3)-1(c)(3)(i).

²⁴ Rev. Rul. 2007-41, 2007-25 I.R.B., 8 (June 18, 2007). “The concern is that an IRC 501(c)(3) organization may support or oppose a particular candidate in a political campaign without specifically naming the candidate by using code words to substitute for the candidate’s name in its messages, such as ‘conservative,’ ‘liberal,’ ‘pro-life,’ ‘pro-choice,’ ‘anti-choice,’ ‘Republican,’ ‘Democrat,’ etc., coupled with a discussion of the candidacy or the election. When this occurs, it is quite evident what is happening -- an intervention is taking place.” Judith E. Kindell & John Francis Reilly, *Election Year Issues*, in *IRS Exempt Organization Continuing Professional Education Technical Instruction Program 345* (2002), *available at* <https://www.irs.gov/pub/irs-tege/eotopici02.pdf>.

²⁵ I.R.C. § 4955.

²⁶ *Id.* § 7409.

²⁷ *See, e.g.*, *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000); *Christian Echoes Ministries, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973).

B. Private Benefit

501(c)(3) organizations must be organized and operated exclusively for a charitable or educational purpose that serves a public, rather than private, interest.²⁸ 501(c)(3) organizations may only engage in an insubstantial amount of private benefit activity. Any benefits that flow to private interests must be incidental, both qualitatively and quantitatively. To be qualitatively incidental, the benefit must be a mere byproduct of the public benefit; to be quantitatively incidental, it must be an insubstantial amount.²⁹

The IRS has previously considered the private benefit implications of activities that involve benefits to political organizations. In one such instance, a 501(c)(3) organization that sought to “increase civic participation” through hosting “forums, debates, community service projects, and mixers” was denied exemption because the facts and circumstances made it apparent that such activity was limited to increasing the civic participation of members of a specific political party.³⁰ In another instance, the IRS held that activity to increase the number of women in public/political service was not exempt activity because it “benefit[ed] the private interests” of one political party.³¹ In a seminal case, the U.S. Tax Court denied a 501(c)(3) tax-exemption to an organization whose primary activity was to train individuals for Republican political careers.³² The organization trained individuals for careers as political campaign professionals, and was closely affiliated with the National Republican Congressional Committee.³³ In each of these instances described above, the IRS found that the organization operated for a non-incidental private benefit because its activities as a whole primarily benefited the private interests of a particular political party. If a 501(c)(3) organization engages in a substantial amount of private benefit activity the IRS has the authority to revoke its exemption.

IV. Legal Analysis

As a 501(c)(3) organization, USATransform and its project Ziklag, are subject to the absolute prohibition on engaging in political campaign intervention. Nevertheless, Ziklag has engaged in overt political activities. In fact, the organization’s agenda for 2024 “reads like the work of a political organization”³⁴:

- Ziklag “pinpointed” particular counties and states that will “win the White House.”³⁵ Their focus on these “swing” states demonstrates a dedication to influencing the outcome of the presidential election. In the words of a Ziklag FAM committee member, they

²⁸ See Treas. Reg. § 1.501(c)(3)-1(c).

²⁹ Private Benefit under IRC 501(c)(3), 2001 EO CPE Text (2001), <https://www.irs.gov/pub/irs-tege/eotopich01.pdf>.

³⁰ Private Letter Ruling 201403020 (Jan. 17, 2014).

³¹ Non-Docketed Service Advice Review 20044008E (Dec. 2, 2003).

³² American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989).

³³ *Id.*

³⁴ Andy Kroll, *Inside Ziklag, the Secret Organization of Wealthy Christians Trying to Sway the Election and Change the Country*, ProPublica (July 13, 2024) <https://www.propublica.org/article/inside-ziklag-secret-christian-charity-2024-election>.

³⁵ FAM Committee Meeting Part 1, Ziklag (Sept. 27, 2023) <https://vimeo.com/1001297249>.

wanted to determine “How do you win the friggin election?”³⁶ and “actually get the vote on the right side of the ledger this time.”³⁷

- Ziklag announced its intention to fund ballot initiatives in order to “deliver swing states,” when voters are unlikely to turnout on their own, in particular if voters are “Trump traumatized.”³⁸
- Ziklag declared it would fund “a messaging and data lab that will focus on the issue of parental rights as a wedge issue that can be the difference maker in the 2024 election, and will provide winning messaging to all our partner groups to create unified focus among all on the right.”³⁹

In each of these instances, Ziklag laid out an impermissible playbook to influence the outcome of the 2024 election. Furthermore, evidence suggests that Ziklag helped plan and host – and potentially fund – a campaign event featuring vice presidential candidate J.D. Vance, who used the platform to promote a get-out-the-vote message to the audience. These activities are blatantly political.

Moreover, Ziklag’s explicitly partisan efforts are clearly for the benefit of the Republican Party. Ziklag explained that it would work with partners with a plan to “gain voter registrations sympathetic to Republicans in general, but [who] did not vote in 2016 or 2020.”⁴⁰ Activities that primarily benefit the Republican party result in private benefit, and accordingly, may not be undertaken by a 501(c)(3) organization unless they are insubstantial. Given Ziklag’s apparent dedication to producing partisan election outcomes, I urge the IRS to investigate whether its activities that primarily benefit the Republican Party are substantial.

V. Conclusion

In light of these apparent violations of federal tax law, we request that the IRS open an immediate investigation of USATransform and Ziklag to determine whether excise taxes for political expenditures should be levied against it, whether its tax-exempt status should be revoked, and whether additional action by the IRS is appropriate.

Respectfully submitted,

DocuSigned by:

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Caroline Ciccone
 President
 Accountable.US

³⁶ FAM Committee Meeting Part 3, Ziklag (Sept. 27, 2023) <https://vimeo.com/1001302857> at [5:25 - 5:39].

³⁷ FAM Committee Meeting Part 1, Ziklag (Sept. 27, 2023) <https://vimeo.com/1001297249> at [2:25 - 2:42].

³⁸ Vision and Strategy Video Part 2, Ziklag (Fall 2024) <https://vimeo.com/991564992>.

³⁹ “Triple T” Video, Ziklag (Dec. 2023) <https://vimeo.com/998109156> at [0:00 - 0:16].

⁴⁰ *Id.* at [1:21 - 1:50].