

C A M P A I G N F O R

ACCOUNTABILITY

September 26, 2017

By Email: IRS.Commissioner@IRS.gov

Commissioner John Koskinen
Internal Revenue Service
950 L'Enfant Plaza SW
5th Floor
Washington, DC 20024

Re: The Heidi Group, EIN 74-2757919

Dear Commissioner Koskinen:

Campaign for Accountability (“CfA”) respectfully requests an Internal Revenue Service (“IRS”) investigation into the activities of the Heidi Group, a public charity that is exempt from taxation pursuant to Internal Revenue Code (“IRC”) § 501(c)(3). As set forth more fully below, the Heidi Group has engaged in unreported lobbying activity and prohibited electioneering in violation of the IRC. Because of the serious nature of the tax law violations, it may be appropriate for the IRS to revoke the Heidi Group’s tax-exempt status and impose appropriate penalties on the organization.

Lobbying Activities

Under IRC § 501(c)(3), an organization qualifies as a public charity and is eligible for tax-exempt status if it operates in a manner “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.” IRS rules elucidate that attempting to influence legislation, or lobbying, occurs when an organization “[c]ontacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation” or “[a]dvocates the adoption or rejection of legislation.”¹ In this context, legislation means “action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.”²

Any public charity that engages in lobbying activities must report such activities to the IRS on its annual return.³ The penalty for failure to report the activity, with respect to each

¹ 26 C.F.R. §1.501(c)(3)-1(c)(3)(ii)(a) and (b).

² 26 C.F.R. §1.501(c)(3)-1(c)(3)(ii)(b).

³ IRC § 6033(b)(8) and (16); Internal Revenue Service, *Compliance Guide for 501(c)(3) Public Charities* at 8, available at <https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>.

annual return, is a fine of \$20 per day, not to exceed “the lesser of \$10,000 or 5 percent of the gross receipts of the organization for the year.”⁴

Moreover, if an organization’s lobbying activity exceeds a substantial part of its overall activities, it is no longer eligible for 501(c)(3) tax-exempt status.⁵ There are two tests to determine whether an organization’s lobbying activity exceeds a substantial part of its activities. The first, and default, is the “no substantial part” test, which relies on a factual analysis of the organization’s activities. Under this test, there is no bright-line rule regarding what might be substantial, but courts have indicated that more than 5% of an organization’s activities is enough to call into question the organization’s status.⁶ An organization that exceeds its lobbying limits under this test is subject to revocation of its tax-exempt status, a 5% tax on the lobbying expenditures for the year, and a tax on any manager who willfully and without reasonable cause consented to the excess lobbying.⁷

The second test is the “expenditure” test laid out in IRC § 501(h) and 26 C.F.R. § 1.501(h)-1, -2, and -3. Under the expenditure test, which an organization must affirmatively elect, lobbying is limited by a scaled percentage test that is no more than 20% of overall expenditures.⁸ Of that overall limit, only one-quarter of the expenditures may be used for grassroots lobbying, while the remainder may be used for direct lobbying of legislators.⁹ An organization that exceeds its lobbying limits under this test faces a 25% tax on the excess lobbying expenditures, plus revocation of its tax-exempt status if the lobbying exceeds 150% of the overall lobbying limit over a four-year period.¹⁰

Based on the public materials that we have reviewed, there is little question that the Heidi Group has participated in significant lobbying activities during the past six years. Its CEO, Carol Everett, has advocated on behalf of the organization multiple times before the Texas legislature:

- a) On June 20, 2013, Ms. Everett testified before the House Committee on State Affairs in support of HB 60, which would ban abortion after the 20th week of pregnancy, require abortion providers to seek admitting privileges at a nearby hospital, apply ambulatory surgical center requirements to abortion clinics, and limit the use of medication abortion. At the same hearing, she also registered

⁴ IRC § 6652(c)(1)(A).

⁵ 26 C.F.R. § 1.501(c)(3)-1(a)(1) and (c)(3).

⁶ See *Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955)(5% of overall activities is not substantial); *Haswell v. United States*, 500 F.2d 1133 (Ct. Cl. 1974), *cert. denied*, 419 U.S. 1107 (1975)(16.6% to 20.5% of total expenditures is substantial). See also Judith E. Kindell and John Francis Reilly, Internal Revenue Service, Exempt Organizations Continuing Professional Education Technical Instruction Program – Lobbying Issues, 1997 at 280 (“Under *Seasongood*, a five percent safe harbor has been frequently applied as a general rule of thumb regarding what is substantial.”), available at <https://www.irs.gov/pub/irs-tege/eotopicp97.pdf>.

⁷ IRC § 4912; 26 C.F.R. § 1.501(c)(3)-1(a)(1) and (c)(3).

⁸ IRC § 4911(c)(2).

⁹ IRC § 4911(c)(4).

¹⁰ 26 C.F.R. § 56.4911-1; 26 C.F.R. § 1.501(h)-3(b).

support for HB 16, which would impose a 20-week ban.¹¹ She made clear during her testimony that her support for both bills was on behalf of the Women's Wellness Coalition,¹² an assumed name for the Heidi Group.¹³

- b) On July 2, 2013, Ms. Everett registered support before the House Committee on State Affairs for HB 2, the omnibus abortion bill which would eventually become law and be successfully challenged in the U.S. Supreme Court.¹⁴ She again did so on behalf of the Women's Wellness Coalition.¹⁵

Carol Everett frequently supported legislation without noting her affiliation with the Heidi Group, as well. For instance, she went on record in support of SB 16 (requiring a physician to perform an ultrasound and describe the image to a woman before an abortion can take place) in 2011,¹⁶ HB 15 (requiring a physician to perform an ultrasound and describe the image to a woman before an abortion can take place) in 2011,¹⁷ SB 257 (regarding "Choose Life" license plates) in 2011,¹⁸ SB 5 (requiring a physician to have admitting privileges at a nearby hospital and prohibiting abortion after 20 weeks of pregnancy) in 2013,¹⁹ SB 13 (prohibiting abortion after 20 weeks) in 2013,²⁰ SB 18 (restricting the use of medication abortions) in 2013,²¹ SB 24 (applying ambulatory surgical center requirements to abortion facilities) in 2013,²² and HB 3567 (allowing those with religious objections to refuse to provide services to same-sex couples) in 2015.²³ She also registered opposition to HB 708 (which would remove medically inaccurate information from the state's "informed consent" script) in 2015.²⁴

While lobbying by an individual will not typically be attributed to an organization, such lobbying can be considered to have been done by the organization if it is done under actual or

¹¹ Witness List, State Affairs Committee, June 20, 2013, *available at* <http://www.legis.state.tx.us/tlodocs/83R/witlistmtg/html/C4502013062013001.HTM>.

¹² Texas House of Representatives, Committee on State Affairs, *available at* http://tlchouse.granicus.com/MediaPlayer.php?view_id=28&clip_id=6849.

¹³ *See, e.g.*, Signature Document for The Health and Human Services Commission, Contract No. 529-16-0132-00006, Health Texas Women's Grant Program, July 15, 2016, at 135, *available at* <https://www.scribd.com/document/323185252/The-Heidi-Group-Healthy-Texas-Women-contract>.

¹⁴ Witness List, State Affairs Committee, July 2, 2013, *available at* <http://www.legis.state.tx.us/tlodocs/83R/witlistmtg/html/C4502013070215301.HTM>.

¹⁵ *Id.*

¹⁶ Witness List, State Affairs Committee, Feb. 9, 2011, *available at* <http://www.legis.state.tx.us/tlodocs/82R/witlistmtg/html/C5702011020909001.HTM>.

¹⁷ Witness List, State Affairs Committee, Feb. 23, 2011, *available at* <http://www.legis.state.tx.us/tlodocs/82R/witlistmtg/html/C4502011022300001.HTM>.

¹⁸ Witness List, Health and Human Services, March 1, 2011, *available at* <http://www.legis.state.tx.us/tlodocs/82R/witlistmtg/html/C6102011030111001.HTM>.

¹⁹ Witness List, Health and Human Services, June 13, 2013, *available at* <http://www.legis.state.tx.us/tlodocs/83R/witlistmtg/html/C6102013061315451.HTM>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Witness List, State Affairs Committee, April 22, 2015, *available at* <http://www.legis.state.tx.us/tlodocs/84R/witlistmtg/html/C4502015042210301.HTM>.

²⁴ *Id.*

purported authority or is subsequently ratified by the organization.²⁵ Given her regular presence at the Texas Legislature, and her frequent statements in her capacity as the CEO of the Heidi Group, it would be reasonable for legislators and the public alike to attribute Ms. Everett's statements to the organization itself. As the Heidi Group's founder, CEO, and, during the relevant time period, only director,²⁶ the link between her and the Heidi Group is significant enough that Ms. Everett would need to explicitly and unequivocally distinguish her personal statements from those made on behalf of the Heidi Group in order to effectively place those statements outside the purview of the organization's work. Having failed to do so, Ms. Everett's frequent testimony in the legislature likely was on behalf of the organization and constitutes lobbying under IRS rules.

In light of Carol Everett's frequent appearance at the state capitol, it is unsurprising that she and the Heidi Group are often referenced as significant anti-abortion forces in the Texas Legislature.

- a) In his statement regarding SB 1 and HB 2, Senator Ted Cruz thanked the Heidi Group by name for its work promoting the legislation:

"Cruz also commended the Texas groups who have worked tirelessly to promote SB 1 and HB 2 including Concerned Women for America Texas, The Heidi Group, Texans for Life, Texas Alliance for Life, Texas Eagle Forum, Texas Right to Life, and Texas Values."²⁷

- b) In an article covering the state's decision to award the Heidi Group with a \$1.6 million grant, the Associated Press described Ms. Everett as follows:

"The Heidi Group's Carol Everett has been a visible abortion opponent at the Texas Legislature. She supported two major anti-abortion restrictions the U.S. Supreme Court struck down in June, and last year, Republican lawmakers incensed by undercover video taken of Planned Parenthood operations and staffers invited her to discuss abortion clinics."²⁸

- c) A similar article in the Austin American-Statesman had this to say about Ms. Everett and the Heidi Group:

²⁵ Judith E. Kindell and John Francis Reilly, Internal Revenue Service, Exempt Organizations Continuing Professional Education Technical Instruction Program – Lobbying Issues, 1997 at 277-278, available at <https://www.irs.gov/pub/irs-tege/eotopicp97.pdf>.

²⁶ See *infra* note 55.

²⁷ Press Release, Office of Senator Ted Cruz, 113th Congress, Without Life, There is no Liberty, available at https://www.cruz.senate.gov/?p=press_release&id=35.

²⁸ Paul J. Weber, Texas women's health program adds abortion opponent's group, *Associated Press*, Aug. 10, 2016, available at <https://apnews.com/47b5dd02a3b2496ca84758b0d14c1b95/texas-womens-health-program-adds-abortion-opponents-group>.

“Last week, the state announced that the Heidi Group, whose founder, Carol Everett, frequently testifies at public hearings against abortion, received the second-largest grant amount among 31 recipients.”²⁹

d) In another article regarding the grant, the Independent said:

“The Heidi Group is led by Carol Everett, a prominent anti-abortion activist and influential conservative force in the Texas Legislature.”³⁰

The Heidi Group has also actively engaged its supporters and social media followers, encouraging advocacy in both the Texas Legislature and the U.S. Congress.

- a) On July 8, 2013, the Heidi Group cosponsored a rally in support of House Bill 2 and Senate Bill 1, the omnibus bills that would restrict abortions in several ways.³¹
- b) An April 1, 2013, Facebook post by the Heidi Group asked followers to contact their state senators to urge support for SB 537 (applying ambulatory surgical center requirements to abortion facilities).³²
- c) An April 3, 2013, tweet by the Heidi Group encouraged followers to contact their state senators to urge support for SB 537.³³
- d) A similar tweet by the Heidi Group was posted on April 4, 2013.³⁴
- e) On April 19, 2013, the Heidi Group again encouraged its Twitter followers from certain districts to contact their legislators to urge them to support SB 537.³⁵

²⁹ Julie Chang, Abortion rights advocates want \$1.6 million grant award investigated, *Austin American-Statesman*, Aug. 16, 2016, available at <http://www.mystatesman.com/news/state--regional-govt--politics/abortion-rights-advocates-want-million-grant-award-investigated/Hj1TK6C2E6cNXjzb5zIetK/>.

³⁰ Paul J. Weber, Texas bid to replace Planned Parenthood with women’s clinics run by anti-abortion group falls at first hurdle, *The Independent*, March 14, 2017, available at <http://www.independent.co.uk/news/world/americas/texas-planned-parenthood-anti-abortion-heidi-group-womens-clinic-pro-life-choice-state-a7628556.html>.

³¹ Texans for Life Coalition, Groups to Rally at Texas Capitol Steps Monday Evening, *Christian Newswire*, July 7, 2013, available at <http://www.christiannewswire.com/news/9175272405.html>.

³² The Heidi Group, Facebook (Apr. 1, 2013), <https://www.facebook.com/HeidiGroup/posts/363412787107735>.

³³ The Heidi Group (@theheidigroup), Twitter (Apr. 3, 2013 9:00 AM), <https://twitter.com/theheidigroup/status/319479535039049731>.

³⁴ The Heidi Group (@theheidigroup), Twitter (Apr. 4, 2013 9:48 AM), <https://twitter.com/theheidigroup/status/319853944039960576>.

³⁵ The Heidi Group (@theheidigroup), Twitter (Apr. 19, 2013 7:15 AM), <https://twitter.com/theheidigroup/status/325251253443645441>.

- f) On June 21, 2013, the Heidi Group took to Twitter and Facebook to invite followers to a rally at the state capitol to show support for the legislation.³⁶
- g) A July 1, 2013, Facebook post by the Heidi Group asked followers to contact the organization if they would like to testify in favor of HB2.³⁷
- h) A July 3, 2013, Facebook post by the Heidi Group asked followers to contact the organization if they would like to testify in favor of SB1.³⁸
- i) On July 10, 2013, the Heidi Group posted to Facebook encouraging followers to come to the state capitol during the debate on HB 2.³⁹
- j) On January 20, 2015, the Heidi Group posted to Twitter and Facebook asking followers to urge their members of Congress to support the “20 WEEK PAIN CAPABLE BAN ON ABORTION.”⁴⁰
- k) On July 29, 2015, the Heidi Group asked its Facebook followers to contact their members of Congress regarding defunding Planned Parenthood.⁴¹
- l) On July 30, 2015, the Heidi Group posted to both Facebook and Twitter asking followers to contact their members of Congress regarding defunding Planned Parenthood.⁴²

As evidenced above, the Heidi Group has absolutely participated in lobbying activities throughout the past six years. It has both advocated for the adoption of legislation in the Texas Legislature on its own behalf, through Carol Everett, and urged its supporters to engage in grassroots lobbying and contact members of the Texas Legislature and the U.S. Congress to support legislation. Nevertheless, it has not reported any lobbying activity to the IRS since at least 2002.⁴³ While public charities are allowed to engage in a limited amount of lobbying

³⁶ The Heidi Group (@theheidigroup), Twitter (June 21, 2013 8:33 PM), <https://twitter.com/theheidigroup/status/348282662651297793>; The Heidi Group, Facebook (June 21, 2013), <https://www.facebook.com/HeidiGroup/posts/519792048070758>.

³⁷ The Heidi Group, Facebook (July 1, 2013), <https://www.facebook.com/HeidiGroup/photos/a.430846366965327.90439.334989073217724/523523454364284/?type=3&theater>.

³⁸ The Heidi Group, Facebook (July 3, 2013), <https://www.facebook.com/HeidiGroup/posts/524351434281486>.

³⁹ The Heidi Group, Facebook (July 10, 2013), <https://www.facebook.com/HeidiGroup/posts/527411127308850>.

⁴⁰ The Heidi Group (@theheidigroup), Twitter (Jan. 20, 2015 2:43 PM), <https://twitter.com/theheidigroup/status/557669898076585984>; The Heidi Group, Facebook (Jan 20, 2015), <https://www.facebook.com/HeidiGroup/posts/781125638604063>.

⁴¹ The Heidi Group, Facebook (July 29, 2015), <https://www.facebook.com/HeidiGroup/posts/867893966593896>.

⁴² The Heidi Group (@theheidigroup), Twitter (July 30, 2015 6:15 AM), <https://twitter.com/theheidigroup/status/626742803154866178>; The Heidi Group, Facebook (July 30, 2015), <https://www.facebook.com/HeidiGroup/posts/867894669927159>.

⁴³ The Heidi Group, IRS FORM 990, Initial Return 2002 at 8, received July 2, 2003, *available at* https://projects.propublica.org/nonprofits/download-filing?path=2003_07_EO%2F74-2757919_990_200212.pdf (hereinafter “IRS 2002”); The Heidi Group, IRS FORM 990, Initial Return 2003 at 8, received Nov. 5, 2004,

activity, they are required by law to report that activity and to comply with the well-defined limitations that are a function of their tax-exempt status. Based on the public materials that we have been able to review, it appears that the Heidi Group has not complied with these laws.

Electioneering

Public charities are categorically prohibited from participating or intervening in any political campaign on behalf of, or in opposition to, any candidate for public office.⁴⁴ As the U.S. Court of Appeals for the Seventh Circuit has stated, an organization’s public charity status is “lost . . . by participation in any political campaign on behalf of any candidate for public office. It need not form a substantial part of the organization’s activities.”⁴⁵ Participation or intervention in a political campaign includes any written or oral statement on behalf of or in opposition to a candidate.⁴⁶ If an organization does participate or intervene in a political campaign, it is no longer eligible for 501(c)(3) tax-exempt status.⁴⁷

available at https://projects.propublica.org/nonprofits/download-filing?path=2004_11_EO%2F74-2757919_990_200312.pdf (hereinafter “IRS 2003”); The Heidi Group, IRS FORM 990, Initial Return 2004 at 8, received Nov. 28, 2005, available at https://projects.propublica.org/nonprofits/download-filing?path=2005_12_EO%2F74-2757919_990_200412.pdf (hereinafter “IRS 2004”); The Heidi Group, IRS FORM 990, Initial Return 2005 at 10, received Aug. 14, 2006, available at https://projects.propublica.org/nonprofits/download-filing?path=2006_09_EO%2F74-2757919_990_200512.pdf (hereinafter “IRS 2005”); The Heidi Group, IRS FORM 990, Initial Return 2006 at 11, received July 2, 2007, available at https://projects.propublica.org/nonprofits/download-filing?path=2007_07_EO%2F74-2757919_990_200612.pdf (hereinafter “IRS 2006”); The Heidi Group, IRS FORM 990, Initial Return 2007 at 11, received Nov. 14, 2008, available at https://projects.propublica.org/nonprofits/download-filing?path=2008_12_EO%2F74-2757919_990_200712.pdf (hereinafter “IRS 2007”); The Heidi Group, IRS FORM 990-EZ, Initial Return 2008 at 4, received Nov. 19, 2009, available at https://projects.propublica.org/nonprofits/download-filing?path=2009_12_EO%2F74-2757919_990EZ_200812.pdf (hereinafter “IRS 2008”); The Heidi Group, IRS FORM 990-EZ, Initial Return 2009 at 4, filed Aug. 16, 2010, available at https://projects.propublica.org/nonprofits/download-filing?path=2010_10_EO%2F74-2757919_990EZ_200912.pdf (hereinafter “IRS 2009”); The Heidi Group, IRS FORM 990-EZ, Initial Return 2010 at 4, filed Nov. 14, 2011, available at https://projects.propublica.org/nonprofits/download-filing?path=2011_12_EO%2F74-2757919_990EZ_201012.pdf (hereinafter “IRS 2010”); The Heidi Group, IRS FORM 990, Initial Return 2011 at 3, filed Aug. 15, 2012, available at https://projects.propublica.org/nonprofits/download-filing?path=2012_10_EO%2F74-2757919_990_201112.pdf (hereinafter “IRS 2011”); The Heidi Group, IRS FORM 990, Initial Return 2012 at 3, filed Aug. 15, 2013, available at https://projects.propublica.org/nonprofits/download-filing?path=2013_12_EO%2F74-2757919_990_201212.pdf (hereinafter “IRS 2012”); The Heidi Group, IRS FORM 990, Initial Return 2013 at 3, filed Aug. 15, 2014, available at https://projects.propublica.org/nonprofits/download-filing?path=2014_10_EO%2F74-2757919_990_201312.pdf (hereinafter “IRS 2013”); The Heidi Group, IRS FORM 990, Initial Return 2014 at 3, filed Aug. 17, 2015, available at https://projects.propublica.org/nonprofits/download-filing?path=2015_09_EO%2F74-2757919_990_201412.pdf (hereinafter “IRS 2014”); The Heidi Group, IRS FORM 990, Initial Return 2015 at 3, filed Aug. 15, 2016, available at https://projects.propublica.org/nonprofits/download-filing?path=2016_11_EO%2F74-2757919_990_201512.pdf (hereinafter “IRS 2015”).

⁴⁴ IRC § 501(c)(3) and 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii). *United States v. Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981), cert. denied, 456 U.S. 983 (1982); *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989) (“no degree of support for an individual’s candidacy is permitted.”).

⁴⁵ *United States v. Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981), cert. denied, 456 U.S. 983 (1982).

⁴⁶ 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii).

⁴⁷ 26 C.F.R. § 1.501(c)(3)-1(a)(1) and (c)(3).

On at least one occasion, the Heidi Group has publicly endorsed a candidate for public office. Specifically, according to a news report, the organization endorsed Greg Garrett's candidacy for Texas's 19th Congressional seat in 2016.⁴⁸ Moreover, Carol Everett has participated in campaigns on numerous occasions while openly being identified as a representative of the Heidi Group:

- a) She opposed Joe Straus for Speaker of the Texas House of Representatives in 2010, as part of a coalition of "statewide pro-life leaders" that was assembled by Texas Right to Life.⁴⁹
- b) She endorsed Rick Green during his run for a seat on the Texas Supreme Court in 2016, and was listed on his campaign website as "Carol Everett, President of the Heidi Group."⁵⁰
- c) Last year, she served as a co-chair of Ted Cruz's "Pro-Life for Cruz Coalition," and was identified in the press release as "the Founder and CEO of The Heidi Group."⁵¹
- d) She also endorsed Donna Parker for Williamson County Commissioner in April of last year, and was identified in the announcement as "Carol Everett, Founder and CEO of The Heidi Group and Life Network PAC."⁵²

The prohibition against participating in political campaigns typically only applies to the organization itself, and not to individual actors. However, similar to the IRS's rules about lobbying limitations, discussed above, such participation in political campaigns can be considered to have been done by the organization if it is done under actual or purported authority or subsequently ratified by the organization.⁵³ The Heidi Group's 2016 endorsement of Greg Garrett for Congress should immediately trigger the loss of the organization's tax-exempt status.

⁴⁸ Matt Dotray, Lubbock sheriff, Farm Bureau among endorsements touted by U.S. 19 candidates, *Lubbock Avalanche-Journal*, Feb. 9, 2016, available at <http://lubbockonline.com/local-news/2016-02-08/lubbock-sheriff-farm-bureau-among-endorsements-touted-us-19-candidates>.

⁴⁹ Jonathan Saenz, Texas Right to Life Blasts Joe Straus, Urges Opposition to Current Speaker, *Texas Values*, Dec. 10, 2010, available at <https://txvalues.org/2010/12/10/texas-right-to-life-blasts-joe-straus-urges-opposition-to-current-speaker/>.

⁵⁰ <http://rickgreen4texas.com/endorsements/>.

⁵¹ Press Release, Cruz for President Announces "Pro-Lifers for Cruz" Coalition with 17,334 Members, Jan. 27, 2016, available at <http://www.presidency.ucsb.edu/ws/?pid=114969>.

⁵² Donna Parker Campaign, Facebook (Apr. 7, 2019), <https://www.facebook.com/DonnaForWilco/photos/a.915715128498914.1073741827.913158735421220/1066705963399829/?type=3&theater>.

⁵³ I.R.S. Gen. Couns. Mem. 34631 (Oct. 4, 1971) ("actions of [] members and officers do not always reflect on the organization. Only (1) acts by [] officials under actual or purported authority to act for the organization, (2) acts by agents of the organization within their authority to act, or (3) acts ratified by the organization, should be considered as activities 'of the organization'"); See also Judith E. Kindell and John Francis Reilly, Internal Revenue Service, Exempt Organizations Continuing Professional Education Technical Instruction Program – Lobbying Issues, 1997 at 277-278, available at <https://www.irs.gov/pub/irs-tege/eotopicp97.pdf>.

Moreover, Ms. Everett's involvement in the campaigns of Joe Straus, Rick Green, Ted Cruz, and Donna Parker are also problematic, because they each tie her to the Heidi Group without any effective indication that they are being made by her in her individual capacity. Again, as the Heidi Group's founder, CEO, and only director during this time,⁵⁴ Ms. Everett should have been much more explicit if she wished to effectively distance her personal statements from those made on behalf of the organization. Having failed to do so, her actions are likely attributable to the Heidi Group, and may have jeopardized the organization's tax-exempt status.

Other Potential Violations

There appear to be several other possible irregularities on the Heidi Group's tax returns that warrant further investigation. First, the organization has had only one director, Ms. Everett herself, since 2011.⁵⁵ Texas law actually requires that a nonprofit corporation have at least three directors, and the Heidi Group appears to be in violation of that provision.⁵⁶ Moreover, the requirement for at least three directors exists for good reason. According to IRS guidance, a small board of directors will "run the risk of not representing a sufficiently broad public interest and of lacking the required skills and other resources required to effectively govern the organization."⁵⁷ In its final report to Congress, the Panel on the Nonprofit Sector concluded that a minimum of three directors will "allow for deliberation of governance matters and more diversity of thinking on such matters as possible conflicts of interest and self-dealing."⁵⁸

The organization also appears to have reported its tax liability improperly. With the exception of 2008 and 2009, the organization has paid at least one employee a salary for every year from 2002 to 2015.⁵⁹ Nevertheless, it appears to have reported payroll taxes in its expenses only for the years 2011, 2014, and 2015.⁶⁰ During the remaining years, no payroll taxes were listed in the organization's tax returns despite the salaries documented.⁶¹ Either the organization did not pay the taxes for which it was liable or it failed to report them properly on its tax returns – each option may constitute a violation of the law.⁶²

Finally, there are some expenses that are suspicious because they seem unrelated to the tax-exempt mission of the Heidi Group. The organization apparently used a significant portion of

⁵⁴ *Infra* note 55.

⁵⁵ IRS 2011 at 7; IRS 2012 at 7; IRS 2013 at 7; IRS 2014 at 7; IRS 2015 at 7.

⁵⁶ Tex. Bus. Orgs. Code § 22.204.

⁵⁷ Internal Revenue Service, Governance and Related Topics – 501(c)(3) Organizations at 2, available at https://www.irs.gov/pub/irs-tege/governance_practices.pdf.

⁵⁸ Panel on the Nonprofit Sector, Strengthening Transparency, Governance, Accountability of Charitable Organizations: A Final Report to Congress and the Nonprofit Sector at 77, June 2015, available at <http://efc.issuelab.org/resources/16334/16334.pdf>.

⁵⁹ IRS 2002 at 4; IRS 2003 at 4; IRS 2004 at 4; IRS 2005 at 5; IRS 2006 at 5; IRS 2007 at 5; IRS 2008 at 2; IRS 2009 at 28; IRS 2010 at 2; IRS 2011 at 7; IRS 2012 at 7; IRS 2013 at 7; IRS 2014 at 7; IRS 2015 at 7.

⁶⁰ The Heidi Group filed 990-EZ forms for tax years 2008, 2009, and 2010, so it is unclear whether the organization reported payroll taxes during those years. IRS 2002 at 2; IRS 2003 at 2; IRS 2004 at 2; IRS 2005 at 2; IRS 2006 at 2; IRS 2007 at 2; IRS 2011 at 10; IRS 2012 at 10; IRS 2013 at 10; IRS 2014 at 10; IRS 2015 at 10.

⁶¹ *Id.*

⁶² IRC §§ 3402 and 6033(b)(16).

its funds in 2003 and 2004 for the Heidi Group Cruise.⁶³ According to its 2003 tax return, the organization expended \$28,604 on the cruise while collecting only \$22,369 for it that year.⁶⁴ In 2004, the organization spent \$64,254 on the cruise and made only \$40,546 for it.⁶⁵ Though we do not have records of who attended the cruise or for what purpose, a single event that accounted for 7% of the Heidi Group's expenses and 5% of its revenue for those years might be worth further investigation. In addition to the cruise, the Heidi Group's 2003 tax return stated that the organization took out a \$26,449 auto loan from Bank of America.⁶⁶ As its 2004 tax return indicates, the organization sold the 2001 Lincoln Town Car for \$17,750 that year.⁶⁷ This is another significant expense, considering the size of the organization's budget.

IRC § 501(c)(3) provides for tax-exempt status for organizations that are "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." The IRS has construed this as "requiring all the resources of the organization to be applied to the pursuit of one or more of the exempt purposes therein specified. The presence of a single nonexempt purpose, if substantial in nature, will preclude exemption."⁶⁸ The purposes for which the Heidi Group went on a cruise and purchased a car are unclear, but are not obviously in furtherance of the organization's charitable mission. Should the organization have allocated substantial resources to non-charitable purposes, its eligibility for tax-exempt status would be in doubt.

Conclusion

Based on the foregoing, CfA respectfully request that the IRS conduct an investigation to determine whether the Heidi Group has engaged in unreported or excessive lobbying, participated or intervened in a political campaign, or otherwise failed to comply with the laws regarding its tax-exempt status. We further request that, should the IRS determine that the organization has not complied, the IRS impose all applicable penalties, including revocation of tax-exempt status. Thank you for your attention to this matter. Please contact me if I can provide additional information or be of further assistance.

Sincerely,



Katie O'Connor
Legal Counsel
Campaign for Accountability

⁶³ IRS 2003 at 13; IRS 2004 at 13.

⁶⁴ IRS 2003 at 13.

⁶⁵ IRS 2004 at 13.

⁶⁶ IRS 2003 at 18.

⁶⁷ IRS 2004 at 13.

⁶⁸ Rev. Rul. 77-366, 1977-2 C.B. 192, available at <https://www.irs.gov/pub/irs-tege/rr77-366.pdf>.