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Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, D.C. 20224

September 23, 2013

**BEFORE THE INTERNAL REVENUE SERVICE**  
**REQUEST FOR INVESTIGATION**

**Re: Freedom Partners**

Freedom Partners, headquartered in Arlington, Virginia, is registered with the Internal Revenue Service as a 501(c)(6) business league. Initial disclosures of the first IRS filing by Freedom Partners call into question whether the members are primarily using the organization for the purpose of funneling secret money into elections rather than functioning as a 501(c)(6) business league. Public Citizen requests that the IRS investigate Freedom Partners to determine whether the organization properly qualifies as a business league and whether the organization may avoid a proxy tax and its members may deduct from their taxes a portion of the donations to Freedom Partners as a business expense.

**A. Freedom Partners: The Organization**

News accounts suggest that Freedom Partners may be operating as little more than a conduit for about 200 members to funnel nearly a quarter billion dollars into electioneering and political activities while keeping the identities of the donors secret. Freedom Partners appears to owe its origins to a series of annual conferences of political operatives organized by David and Charles Koch. The organization is structured and functions in a unique manner very different from most 501(c)(6) business leagues. Freedom Partners appears to exist solely for the purpose of making grants to politically active tax exempt organizations, which may be using the money primarily for electioneering and other political intervention purposes.

Freedom Partners appears to make no direct expenditures of its own, but instead has raised \$256 million and made grants totaling \$236 million to politically active nonprofit groups since it was founded in November 2011 (originally named the Association for American Innovation). This makes Freedom Partners one of the largest entities financing various political activities in the 2012 election cycle, second only to the Crossroads GPS/American Crossroads juggernaut. Only eight 501(c)(6) business leagues of more than 16,000 during 2011 reported having more revenue than Freedom Partners, such as the PGA Tour and the New York Shipping Association.<sup>1</sup>

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<sup>1</sup> Robert Maguire and Viveca Novak, "Koch group's IRS report unlocks a few mysteries," OpenSecretsBlog (Sep. 18, 2013) at: <http://www.opensecrets.org/news/2013/09/koch-groups-irs-report-unlocks-mysteries-details-giant-trade-group.html>

Almost half of the grants from Freedom Partners – \$115 million – went to the Center to Protect Patient Rights (CPPR), a 501(c)(4) social welfare organization that also has no activities of its own other than giving grants to politically active tax exempt organizations. The \$115 million grant from Freedom Partners is more than CPPR’s total previous budget in all years combined since it was established in 2009. The Center’s grants have gone to such organizations as the American Future Fund, which spent \$11 million in support of Mitt Romney’s presidential bid; a mysterious group named Free Enterprise America, of which little is known except that it shares the same address as that of DC London, a political consulting firm run by Sean Noble (who is also president of CPPR); and American Commitment, a nonprofit group that spent heavily to support the senatorial election of then-Rep. Jeff Flake (R-Ariz.) and which also shares the same mailing address as DC London.<sup>2</sup>

Freedom Partners has also given \$32.3 million to Americans for Prosperity, a 501(c)(4) social welfare organization started by David Koch and Richard Fink and largely dedicated to the election of Republican congressional and presidential candidates; \$15.7 million to 60 Plus, a 501(c)(4) social welfare organization that has spent heavily on broadcast ads promoting Republican congressional and presidential candidates; \$13.6 million to American Future Fund, a 501(c)(4) social welfare organization that spends money in support of candidates who back “conservative principles that sustains free market ideals focused on bolstering America’s global competitiveness across the country”; and millions of dollars more in grants to a variety of other politically active nonprofit groups ranging from the National Rifle Association to the Tea Party Patriots.<sup>3</sup>

Registered as a nonprofit organization, Freedom Partners need not, and does not, disclose its donors. Just as concerning, as a 501(c)(6) business league, Freedom Partners will sidestep new disclosure requirements being established at the state level. Some states, such as New York, are attempting to lift the veil of secrecy on dark money groups that spend money in state elections through the regulatory authority of state attorneys general. State attorneys general in some states can assert charitable trust jurisdiction over 501(c)(4)s due to their social welfare purposes and require the organizations to disclose their donor sources. But this authority does not apply to 501(c)(6) business leagues holding no charitable assets.

Freedom Partners is run by Marc Short, formerly chief of staff for the House Republican Conference, and Richard Fink, executive vice president and board member of Koch Industries, Inc. It has 48 employees and five directors: Short and Fink; Wayne Gable, a longtime Koch Industries employee who was the new group’s first director; Kevin Gentry, a Koch official and vice chairman of the Republican Party of Virginia; and Nestor Weigand, a board member of Regal Entertainment Group and former president of the National Association of Realtors.<sup>4</sup>

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<sup>2</sup> Viveca Novak, “Center to Protect Patient Rights gave millions in 2011 to outside spenders in election,” OpenSecretsBlog, available at: <http://www.opensecrets.org/news/2012/12/center-to-protect-patient-rights-ga.html>

<sup>3</sup> Mike Allen and Jim VandeHei, “The Koch brothers’ secret bank,” *Politico* (Sep. 11, 2013). Public Citizen, ProtectOurElections.org and the Center for media and Democracy filed a complaint against American Future Fund with the Federal Election Commission on October 12, 2010, for not registering as a “political committee” under federal election law.

<sup>4</sup> *Id.*

The organization allegedly has its origins and draws many of its members from the Koch brothers' semi-annual conferences designed to coordinate resources for conservative causes and politicians.<sup>5</sup> According to Short, the group is dedicated to nurturing the secrecy that surrounds the major financiers of the Koch brothers' causes. "There's a mystery around us that makes an interesting story," Short said. "There's also a vilification that happens that gets exaggerated when your opposition thinks you're secretive. Our members are proud to be part of [the organization]."<sup>6</sup>

## **B. Qualifying Criteria for 501(c)(6) Business Leagues**

IRC 501(c)(6) provides for exemption from taxation of business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues, which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. Reg. 1.501(c)(6)-1 defines a business league as an association of persons having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business ordinarily carried on for profit. A business league's activities must be directed to the improvement of business conditions of one or more lines of business rather than the performance of particular services for individual persons.<sup>7</sup>

Because of the unique operations of Freedom Partners – that of a grant-making entity removed from the daily accounting of how those grants are spent – it is quite unlikely that Freedom Partners will fulfill its tax obligations. When a 501(c)(6) business league is a conduit to 501(c)(4) social welfare organizations that engage in political activity, it is unlikely to properly report the actual amount of political spending the 501(c)(6) engages in, and thus vastly increases the possibility that tax exempt contributions will be used for political purposes.

In fact, that is exactly what appears to be the case in the organization's first tax filing. Despite the fact that the grants from Freedom Partners were largely given to politically active nonprofit groups that engage both in extensive electioneering and lobbying activities, its Form 990 states that Freedom Partners did not engage in any direct or indirect campaign activities and that no amounts of its grants were used by other organizations for "exempt activities" as defined under Section 527 of the tax code (i.e. electioneering activities).<sup>8</sup>

Furthermore, if Freedom Partners is registered as a 501(c)(6) business league, contributions to the organization may be tax deductible as a business expense.<sup>9</sup> Under section 162(e) of the Internal Revenue Code, dues and contributions to a 501(c)(6) are deductible as a business

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> John Francis Reilly, Carter Hull and Barbara Braig Allen, IRC 501(c)(6) Organizations, Exempt Organizations-Technical Instruction Program (2004), available at: <http://www.irs.gov/pub/irs-tege/eotopick03.pdf>

<sup>8</sup> Freedom Partners, Form 990, available at: <https://www.documentcloud.org/documents/797553-freedom-partners-2011-clear.html>

<sup>9</sup> Nicholas Confessore, "Tax filings hint at extent of Koch brothers' reach," *New York Times* (Sep. 13, 2013).

expense to the degree the funds are not used for lobbying or political intervention purposes. Under section 6033(e) of the tax code, Freedom Partners is required either (i) to notify its members of the pro-rated portion of their dues and contributions that will be used for lobbying and political intervention which may not be claimed as a business deduction or (ii) to pay a “proxy tax” designed to cover the improper tax deductions the members may take absent such a notice. However, because Freedom Partners merely makes grants to other nonprofit organizations, these grants are not likely to be classified by the organization as expenses for political intervention and thus may qualify for donors as tax deductible business expenses.

501(c)(6) business leagues, like many other nonprofit organizations, may be dedicated to lobbying activity on policy issues and legislation relevant to the common business interests of their members as well as educational activities. Overall, a 501(c)(6) business league must have as its mission pursuing a common business interest. Groups that are primarily dedicated to electioneering activity, by contrast, are required to register as Section 527 political organizations rather than as Section 501(c) nonprofit groups.

A “common business interest” can be, and has been, broadly defined by the IRS, ranging from promoting professional business standards to anti-regulatory actions by government. Although the members of a business league may have a variety of interests, they must have a common interest of a business nature that the organization promotes.

If the underlying purpose of an organization’s donor base is, for example, political intervention for partisan purposes rather than a business interest, the organization should not qualify as a tax exempt 501(c)(6) business league. Instead, the group should register as a Section 527 “political organization.”

### **C. Freedom Partners Should Be Investigated to Determine Its Primary Purpose**

Public accounts of the purpose and donor base of Freedom Partners raise legitimate concerns that the group may not qualify as a tax exempt 501(c)(6) business league and should register instead as a Section 527 political organization. Freedom Partners appears to have drawn its membership and financial support from a variety of donors who have little in common other than to secretly finance an assortment of political causes and candidacies under the Koch brothers’ vast political umbrella. Freedom Partners functions as a grant-making entity to politically active nonprofit groups while concealing the sources of its funds. The bulk of its grants appear to be awarded to organizations that finance electioneering activities.

In its unique capacity as a grant-making 501(c)(6) business league, Freedom Partners is taking advantage not only of the secrecy of sources of funds awarded to nonprofit organizations, but also potentially evading new state efforts to mandate disclosure of political funds raised and spent by 501(c)(4) social welfare organizations. Meanwhile, the organization and its “members” may qualify for tax benefits for business expenses if accurate accounting of the degree to which its grants finance political and lobbying activity is not provided.

Given the extent of the questions raised as to (i) the underlying purpose of Freedom Partners, and (ii) whether the organization may avoid a proxy tax and its donors may deduct their contributions

as a business expense, Public Citizen requests that the IRS investigate whether Freedom Partners qualifies as a legitimate 501(c)(6) business league and whether it has properly reported the extent of the political and lobbying activities it funds.

Respectfully Submitted,

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