

Internal Revenue Service
TEGE Referrals Group
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October 18, 2023

SUPPLEMENT, Complaint, American Federation of Teachers (“AFT”) EIN # 36-0725240

On September 7, 2022, Landmark Legal Foundation (“Landmark”) submitted a Complaint requesting the Internal Revenue Service’s Tax Exempt and Government Entities Division (“TEGE”) investigate the conduct and tax filings of the American Federation of Teachers. Landmark respectfully submits this Supplement providing more evidence supporting the allegations in the Complaint.

In its Complaint, Landmark alleged that AFT made significant general treasury expenditures for political activities and failed to report those expenditures on its respective tax returns. Landmark presented evidence of activities that directly supported the election or defeat of candidates to public office that appeared to be financed via general treasury funds. For example, Landmark showed how AFT President Randi Weingarten (who collects an annual salary financed through the collection of union dues) spends much of her time advocating for the election of identified candidates to public office.¹ Despite these expenditures, AFT reports on its tax returns that it does not engage in direct or indirect political campaign activities.

Responding to these allegations, AFT stated that “AFT conducts its business through the appropriate accounts, including AFT Solidarity 527, and reports its activities extensively.” AFT continued, “We are fully transparent about what we spend and why.” Exhibit 1. Evidence presented in this Supplement, however, bolsters Landmark’s original allegations indicating that AFT does indeed make taxable political expenditures that do not originate from AFT Solidarity 527. In short, there are multiple expenditures itemized on AFT’s disclosure reports filed with the Department of Labor and under the heading “Political Activities and Lobbying” that are **not reported** on AFT Solidarity’s disclosure statements. Some of these expenditures appear to qualify as either direct or indirect political campaign activities and appear to be related to expenditures described in Landmark’s Complaint.

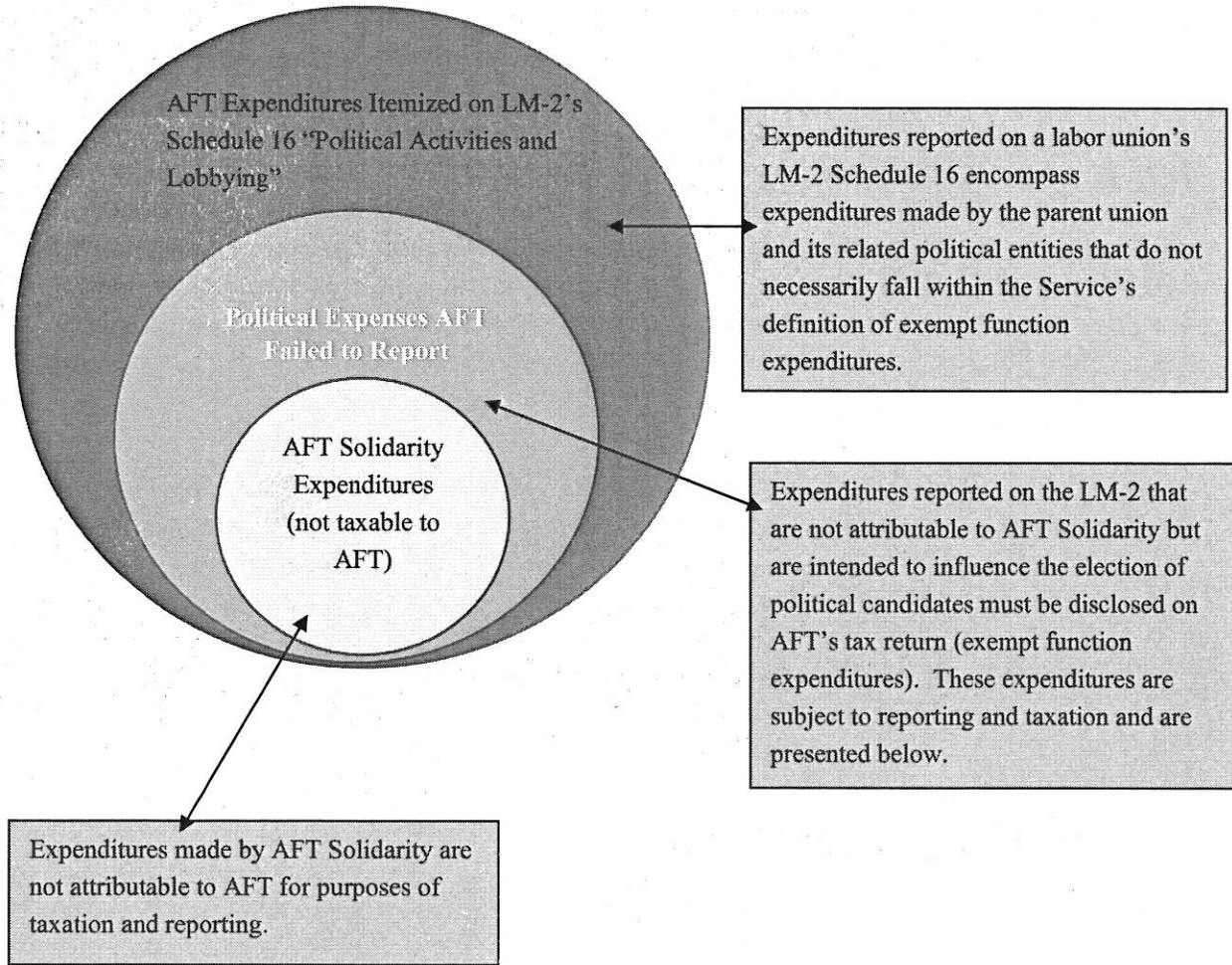
AFT is therefore obligated to report and pay taxes on these expenditures if they were made using general treasury funds derived from the assessment and collection of union dues. Landmark has identified over \$3,000,000 in expenditures made during the 2018 and 2020 election cycles that appear to be made from AFT’s general treasury revenue and appear to be made for either direct or indirect political campaign activities. Again, these expenditures are not accounted for on AFT Solidarity’s disclosure reports.

¹ Disclosure reports indicate Randi Weingarten’s annual salary plus benefits exceeds \$1 million.

I. AFT reports political expenditures on its LM-2 that it failed to disclose on its tax returns.

As reported in Landmark’s initial Complaint, according to both its 2018 and 2020 tax returns, AFT did not expend any general treasury funds for political purposes.² Nor does AFT acknowledge on its tax returns that it has an affiliated political organization. However, on its Labor Organization Annual Report (“LM-2”) labor disclosure forms covering the 2018 and 2020 election cycles, however, AFT reports millions of dollars in “Political Activities and Lobbying” expenditures.³ At first blush, this would seem problematic – how can AFT report to the IRS that it does not engage in political activities, but report to the Department of Labor millions in “Political and Lobbying Activities”? Expenditures described in a union’s LM-2 do not automatically qualify as exempt function expenditures subject to reporting and taxation because the Department of Labor’s definition of political activities is broader than the IRS definition.

The following diagram is useful in understanding how AFT failed to properly report and pay taxes on direct and indirect political activities:



² Exhibit 2, 3, AFT Form 990, 2018 and 2020.

³ Exhibit 4, 5, AFT LM-2 Schedule 16, "Political Activities and Lobbying", 2018 and 2020.

Landmark examined AFT Solidarity 527's "Report of Contributions and Expenditures" ("Form 8872s") for both 2018 and 2020 election cycles. Although all the expenditures described in AFT Solidarity's disclosures are itemized on the LM-2, there are additional significant expenses itemized on the LM-2 **that are not accounted for on AFT Solidarity's disclosures.** This means that AFT spent funds on reportable political expenditures from sources other than AFT Solidarity. In sum, just over \$3,000,000 in expenditures appear to be reportable on AFT's tax returns as political expenditures. It therefore appears that AFT has failed to follow tax laws and regulations.

II. Reportable political expenditures not disclosed on AFT Solidarity's disclosure reports.

The expenditures described below are outlays that are **not reported** on AFT Solidarity's IRS disclosure reports. They are itemized, however, on AFT's LM-2 and thus appear to be expenditures made using AFT's general treasury funds. They also appear to be reportable because they are designed to influence or attempt to influence the selection, nomination, or election of individuals to public office. 26 U.S.C. 527(e).

2018 Election Season

For fiscal year 2018 (July 1, 2018, through June 30, 2019), AFT Solidarity 527's disclosure reports **do not** account for the following political expenditures (totaling **\$1,153,531**) that are disclosed on AFT's LM-2.⁴

1. An expenditure of **\$500,000** made on August 14, 2018, to House Majority PAC for "Advocacy."

To the extent that these funds were used to support the election or defeat of identified candidates to public office, they are subject to reporting and taxation. A contribution of \$500,000 made several months before the mid-term elections to a congressional political action committee appears to constitute a reportable expenditure.

2. Two expenditures made on October 19, 2018, and November 5, 2018, totaling **\$253,181** to Resonance Campaigns, LLC for "Advocacy."

Resonance Campaigns describes itself as "A full service direct mail and digital communications firm with a mission to advance progressive candidates and policies."⁵

⁴ The expenditures described below appear under Schedule 16 of AFT's 2018 LM-2. Exhibit 4. They are not reported on AFT Solidarity's IRS disclosure reports.

⁵ Available at <https://resonancecampaigns.com/>.

3. Two expenditures made on October 22, 2018, and November 28, 2018, totaling **\$215,152** to Deliver Strategies, LLC for “Office Services.”

Deliver Strategies, LLC, according to their website, is an organization specializing in direct mail campaigns for political candidates. Clients of Deliver Strategies include Hillary Clinton, Ralph Warnock, Stacey Abrams, and Barak Obama.⁶ If these funds were used to purchase direct mail materials advocating for the election of political candidates, they are subject to reporting and taxation.

4. An expenditure of **\$100,000** made on June 26, 2019, to Emily’s List for “Professional Services.”

EMILY’s List’s mission, according to their website, is to “elect pro-choice women to office.” It devotes its efforts to “[elect] more Democratic pro-choice women to national, state and local office” To that end, “EMILY’s List will consistently infuse our government with leaders who will drive change.” By its own admission, “EMILY’s List is committed to driving progressive change throughout our country by winning elections that put Democratic pro-choice women into office.”⁷

5. Three expenditures in late 2018 totaling **\$75,198** to K & R Industries for “Supply Vendor.”

K & R Industries is a Virginia based company that produces branding products.⁸ In many social media posts cited in Landmark’s September 7, 2022 Complaint, AFT personnel are wearing t-shirts endorsing the election of candidates for public office. For example, in 2016, AFT personnel wear t-shirts with a hybrid Hillary Clinton and AFT logo at campaign events. An expenditure to a branding company for products used to engage in electioneering activities (such as manufacturing t-shirts advocating for the election of political candidates) constitutes a reportable expenditure.

6. An expenditure of **\$10,000** made on February 25, 2019, to America Votes for “Advocacy.”

2020 Election Season

For period from July 1, 2020, through June 30, 2021, AFT Solidarity 527’s disclosure reports **do not** account for political expenditures (totaling **\$2,230,895**) that are disclosed on AFT’s LM-2.⁹ These expenditures appear to be designed to influence or attempt to influence the selection, nomination, or election of individuals to public office and include:

⁶ Available at <https://www.deliverstrategies.com/>.

⁷ Available at <https://emilyslist.org/>.

⁸ Available at <http://www.gokandr.com/AboutUs/>.

⁹ The expenditures described below appear under Schedule 16 of AFT’s 2020 LM-2. Exhibit 5. They are not reported on AFT Solidarity’s IRS disclosure reports.

1. Three expenditures of **\$300,000**, **\$100,000**, and **\$117,428** made on September 23, 2020, October 14, 2020, and December 18, 2020, respectively, to Markham Group LLC to “Support Election Program.”

Markham Group LLC describes itself as “a full-service event management firm serving local, state, national and international campaigns, non-profit organizations, advocacy groups and corporate clients with offices in Washington D.C., Los Angeles, Bentonville, and Little Rock.”¹⁰ This appears to be the organization in charge of setting up stages and events used in the 2020 AFT bus tour described extensively in Landmark’s September, 2022 Complaint.

2. An expenditure of **\$350,000** made on October 22, 2020, to NAACP to “Support Election Program.”

The IRS should determine whether an outlay, made weeks before a general election (during a presidential election year) to support the NAACP’s “election program” does not constitute an expenditure made to influence the election of candidates for public office.

3. Four expenditures of **\$89,186**, **\$10,638**, **\$193,110**, and **\$53,049** made on September 10, 2020, September 29, 2020, November 24, 2020, and December 10, 2020, to Mosaic for “Election Material.”

Mosaic works to “create one-of-a-kind experiences that result in high impact growth and engagement.” To that end, Mosaic “offer[s] printing techniques that create impact and tactility, with innovative approaches that give you the best of this tried and true medium for truly unique customer experiences.”¹¹ Again, spending over \$350,000 on printed election materials in the final quarter of an election year appears to constitute a reportable exempt function expenditure.

4. An expenditure of **\$250,000** made on September 28, 2020, to Working America to “Support Election Program.”

Working America is a program funded by the AFL-CIO as outreach to non-union, working-class individuals. Employees for Working America “go door-to-door in neighborhoods across the country, and build strength in numbers by joining together to demand action.”¹² Again, a quarter-million dollar outlay in September of a presidential election year to “support election program” appears to be an expenditure for political purposes subject to reporting.

5. Two expenditures of **\$15,000** and **\$199,342** made on July 7, 2020, and July 14, 2020, to Strategic Consulting Group, NA, for “Communications Support.”

Strategic Consulting Group describes itself as “a full-service political consulting firm that combines the latest approaches to political messaging and voter contact with old-fashioned

¹⁰ Available at <https://www.markhamgroup.com/team/>.

¹¹ Available at <https://mosaic.buzz/>.

¹² Available at <https://www.workingamerica.org/>.

grassroots organizing.” Its employees “have decades of experience developing and managing hundreds of issue and electoral campaigns, as well as voter mobilization programs.”¹³

6. An expenditure of **\$150,000** made on July 13, 2020, to Chong & Koster, LLC to “Support Election Program.”

Chong & Koster, LLC “is an advertising and media agency that specializes in delivering measurable outcomes at scale. [Chong & Koster] grow[s] brands, drive[s] revenue, acquire[s] customers, convert[s] donors, win[s] elections, and evolve[s] marketing organizations.”¹⁴ If any of the \$150,000 directed to Chong & Koster was used to produce media advocating the election or defeat of candidates, such expenditures are subject to reporting and taxation.

7. Expenditures of **\$51,652, \$26,951, \$21,355, \$10,800** and **\$27,074** made in October 2020, to The Campaign Workshop to “Support Election Program.”

The Campaign Workshop “is an award-winning political consulting firm that specializes in targeted communications, digital, mail and video for advocacy and political campaigns.” It specializes in “strategic political consulting,” “direct mail,” and “campaign and advocacy training.”¹⁵ To the extent these funds were used for political purposes, they are subject to reporting and taxation.

8. Two expenditures of **\$59,934** and **\$56,402** made on October 22, 2020, and November 16, 2020, to K & R Industries for “Materials for Members.”

Again, K & R Industries is a branding company that appears to be the vendor that produced campaign materials on display during political rallies sponsored by AFT. These rallies were not limited to membership and purchasing political-related t-shirts and other materials constitutes a reportable and taxable expenditure.

9. An expenditure of **\$75,000** made on July 6, 2020, to “Recall Dunleavy” to “Support Election Program.”

Funds expended on a recall petition appear to be reportable political expenditures in that they are designed to influence the election or defeat of candidates for public office.

10. An expenditure of **\$27,858** made on October 22, 2020, to Freestone Communications, LLC to “Support Election Program.”

A profile in Bloomberg describes Freestone Communications as an entity “that offers quality control, live paid call, and phone campaign management services.”¹⁶ If AFT funds were used to support phone-banks encouraging the public to vote for candidates, this expenditure is subject to reporting and taxation.

¹³ Available at <http://www.stratcongroup.com/about.php>.

¹⁴ Available at <https://chongandkoster.com/>.

¹⁵ Available at <https://www.thecampaignworkshop.com/>.

¹⁶ Available at <https://www.bloomberg.com/profile/company/1269657D:US#xj4y7vzkg>.

11. Two expenditures of **\$16,563** and **\$9,553** made on November 20, 2020, and December 31, 2020, to Doyle Printing & Offset Company, Inc. for “Election Material.”

To the extent that these expenditures were made to produce materials used to elect candidates for public office, they are subject to reporting and taxation.

12. An expenditure of **\$10,000** made on October 27, 2020, to Lawyer’s Committee for Civil Rights Under Law to “Support Election Program.”
13. Two expenditures of **\$10,000** each made on September 25, 2020, and December 3, 2020, to People for the American Way for “Voter Mobilization Program.”

Expenditures to support voter mobilization programs that are used to aid in the election or defeat of identified candidates for public office are subject to reporting and taxation.

III. Expenditures described in this Supplement appear to fall within the Service’s definition of reportable political expenditures.

These are specific expenditures disclosed on AFT’s LM-2 that are not accounted for on AFT Solidarity’s disclosure forms. These expenditures exceed \$3,000,000 and do not include salary and benefit outlays to AFT personnel who may have devoted significant time to electioneering activities. If the expenditures identified above originate from AFT’s general treasury fund, the TEGE Referrals Group needs to determine whether they are exempt function expenditures subject to reporting and taxation. On their face, these expenditures appear to fall within the Service’s definition of exempt function activities.

As explained above, every expenditure itemized on Schedule 16 of AFT’s LM-2 **does not** automatically qualify as an expenditure for political purposes and thus subject to reporting and taxation under the tax code. Many of the expenditures itemized on Schedule 16 fall within this category. For example, AFT itemizes millions of dollars in transfers from AFT to its state affiliates on its LM-2s. For purposes on this Supplement, Landmark assumes AFT functioned as pass-through entity where dues funds were bundled together when collected and sent to respective affiliates. Landmark has therefore excluded these expenditures from this Supplement. Landmark has also excluded expenditures reported on AFT’s LM-2 that fall into regulatory safe harbor provisions and thus do not qualify as reportable political expenditures. These include funds used to finance the passage or defeat of ballot initiatives or the use of funds for internal member communications. 26 C.F.R. 1.527-6(b).

When election-related expenditures **do not** qualify under regulatory safe harbor provisions, the Service will consider all facts and circumstances in determining whether they are subject to reporting and taxation. Rev. Rul. 2004-6 (2003). For example, expenditures made through another organization can be subject to reporting and taxation if those funds are used to

influence the election or defeat of a candidate to public office. John Francis Reilly and Barbara A. Braig Allen, *Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations*, 2003 EO CPE Text.

The expenditures described in this Supplement all appear to be subject to taxation and reporting. Outlays to finance the staging and production of political rallies are subject to reporting and taxation. Outlays exceeding \$100,000 in the month before a presidential election to a group calling itself “The Campaign Workshop” for AFT’s election program appear to be a reportable and taxable expenditures. Outlays to other entities (such as Emily’s List or the NAACP) that are used for electioneering purposes are subject to reporting and taxation. AFT cannot send hundreds of thousands of dollars to organizations whose stated purpose is to elect pro-choice women without incurring tax liability.

Finally, AFT acknowledges that expenditures for political purposes are made through AFT Solidarity – yet AFT does not acknowledge this related organization on any of its 990 tax returns. As discussed in Landmark’s September 7, 2022, Complaint, tax regulations obligate AFT to identify any separate segregated funds on Schedule C of its tax return. The Service should investigate why AFT has failed to acknowledge the existence of an affiliated political organization on its tax returns.

The evidence presented in this Supplement and Landmark’s original Complaint makes it all the more important that the TEGE division investigate AFT’s apparent failure to fully report taxable political expenditures.

Respectfully submitted,



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