

## Tax-Exempt Organization Complaint (Referral)

1. Name of referred organization

Daily Caller News Foundation

Street address

1920 L Street NW, Suite 205

City

Washington

State

DC

ZIP code

20036

Date of referral

06/17/2020

2. Organization's Employer Identification Number (EIN)

45-2922471

3. Nature of violation

- ☐ Directors/Officers/Persons are using income/assets for personal gain
- ☐ Organization is engaged in commercial, for-profit business activities
- ☐ Income/Assets are being used to support illegal or terrorist activities
- ☐ Organization is involved in a political campaign
- ☐ Organization is engaged in excessive lobbying activities
- ☐ Organization refused to disclose or provide a copy of Form 990
- ☐ Organization failed to report employment, income or excise tax liability properly
- ☐ Organization failed to file required federal tax returns and forms
- ☐ Organization engaged in deceptive or improper fundraising practices
- ☒ Other (*describe*)  
See attached complaint.

4. Details of violation

Name(s) of person(s) involved

See attached.

Organizational title(s)

Date(s)

Dollar amount(s) (*if known*)

Description of activities

5. Submitter information

Name

Daniel Stevens

Occupation or business

Campaign for Accountability

Street address

611 Pennsylvania Ave SE, #337

City

Washington

State

DC

ZIP code

20003

Telephone number

202-780-5750

- ☐ I am concerned that I might face retaliation or retribution if my identity is disclosed

6. **Submission and documentation:** The completed form, along with any supporting documentation, may be mailed to IRS EO Classification, Mail Code 4910DAL, 1100 Commerce Street Dallas, TX 75242-1198, faxed to 214-413-5415 or emailed to [eoclass@irs.gov](mailto:eoclass@irs.gov). **Disclaimer Notice:** Your email submission of Form 13909 and attachments are not encrypted for security.

# C A M P A I G N F O R ACCOUNTABILITY

June 17, 2020

**VIA E-MAIL:** [eoclass@irs.gov](mailto:eoclass@irs.gov)

IRS EO Classification  
Mail Code 4910DAL  
1100 Commerce St.  
Dallas, TX 75242-1198

**Re: Tax-Exempt Organization Complaint Against Daily Caller News Foundation**  
(Referral)  
EIN: 45-2922471

Dear Sir or Madam:

Campaign for Accountability (“CfA”)<sup>1</sup> respectfully submits this Tax-Exempt Organization Complaint (Referral) and supporting documentation to the Internal Revenue Service (“IRS”) regarding the activities of Daily Caller News Foundation (EIN: 45-2922471), a Delaware corporation and tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). Form 13909 is enclosed with this letter.

## **Background**

Tucker Carlson, a political commentator and conservative journalist, and Neil Patel, a professional political advisor and the former chief policy advisor to Vice President Cheney, formed The Daily Caller, Inc. (the “**Daily Caller**”), a Delaware for-profit corporation (EIN: 30-0548743), on March 10, 2009, as a for-profit independent news outlet that generates revenue to support its operations through advertising.<sup>2</sup> On July 26, 2011, Carlson and Patel formed The Daily Caller News Foundation (the “**DCN Foundation**”), a Delaware corporation (EIN: 45-2922471), that received an IRS determination letter granting tax-exempt status under Code Section 501(c)(3) in 2013. According to the description in its 2017 Form 990, Part I, Line 1, the DCN Foundation trains up-and-coming reporters and editors, carries out investigative reporting, and performs deep policy reporting. The DCN Foundation is a sprawling nonprofit and voracious charitable solicitor, having received deductible donations of over \$2.5 million in 2017, \$1.1 million in 2016, and \$3 million in 2015, according to its publicly filed Forms 990 for those tax years.

The Daily Caller has a licensing agreement with the DCN Foundation, which allows the Daily Caller to run all articles and other media content created by the DCN Foundation free of charge.<sup>3</sup> “Virtually everything” produced by the DCN Foundation ultimately appears on the Daily

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<sup>1</sup> CfA is a Code Section 501(c)(3) tax exempt organization non-partisan ethics watchdog.

<sup>2</sup> <https://dailycaller.com/about-us>.

<sup>3</sup> <https://dailycaller.com/about-us>.

Caller's for-profit website, which sells advertisements on the content and keeps the revenue.<sup>4</sup> At any given time, nearly half of the Daily Caller website articles come from the DCN Foundation.<sup>5</sup>

Nominally speaking, in form, other publishers technically have the right to access to the DCN Foundation's content but they do not appear to actually use it to any significant degree in practice. According to the Daily Caller's website About Us section:

All content created by TheDCNF is available in full, free of charge to any reputable publisher that can provide a large audience. TheDCNF currently has over 250 publishers signed onto its free license to run its content on their sites. The Daily Caller is one of these 250 licensees and does run content created by TheDCNF.<sup>6</sup>

An equivalent statement appears on the About Us section of the DCN Foundation's website: "Content created by The Daily Caller News Foundation is available without charge to any eligible news publisher that can provide a large audience."<sup>7</sup> It would be interesting to query why none of the other purported publisher-licensees of the DCN Foundation's content are so gravely concerned about their close relationship with the DCN Foundation that they repeat the DCN Foundation's technical, formalistic claim to tax-exempt status on their own (supposedly independent) website.

Practically speaking, in substance, the reality differs starkly from the reciprocal statements on the About Us sections on the closely coordinated Daily Caller and DCN Foundation websites. Other publishers actually run content from the DCN Foundation only "sporadically".<sup>8</sup> Patel, President of the DCN Foundation, claims that neither he nor the two affiliates of which he is an executive officer, the DCN Foundation and Daily Caller, have control over whether any licensees use the DCN Foundation's content, but the reality appears to differ from the desired form of the closely coordinated, technical arrangement.<sup>9</sup>

The DCN Foundation and Daily Caller have much more in common than merely names so similar that a reader of either the Daily Caller website or donor to the DCN Foundation could easily confuse one entity for the other. According to some reports and filings, their Washington, DC offices are immediately adjacent, sitting on the same floor of the same building.<sup>10</sup> In its foreign corporation registration with the District of Columbia Department of Consumer and Regulatory Affairs ("**DCRA**"), the DCN Foundation operates out of 1920 L Street NW, Suite 205,

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<sup>4</sup> Callum Borchers, Charity doubles as a profit stream at the Daily Caller News Foundation, *Washington Post*, June 2, 2017, available at <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>.

<sup>5</sup> Historical snapshots of the Daily Caller website where the percentage of content from the DCN Foundation is calculated are discussed below.

<sup>6</sup> <https://dailycaller.com/about-us>.

<sup>7</sup> <http://dailycallernewsfoundation.org/about-us/>.

<sup>8</sup> Callum Borchers, Charity doubles as a profit stream at the Daily Caller News Foundation, *Washington Post*, June 2, 2017, available at <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>.

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

<sup>10</sup> Callum Borchers, Charity doubles as a profit stream at the Daily Caller News Foundation, *Washington Post*, June 2, 2017, available at <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>.

Washington, DC, 20036. This address would make the DCN Foundation a suitemate of the Daily Caller, which operates 1920 L Street NW, *Suite 200*, Washington, DC 20036. However, the DCN Foundation's tax filings indicate that the Daily Caller actually operates out of Suite 205, even though the DCN Foundation purportedly pays the Daily Caller rent to use that suite.<sup>11</sup>

Additionally, the websites of the Daily Caller and the DCN Foundation are difficult to distinguish without a close inspection and perhaps even legal research into the organizational forms of the entities. Both websites prominently feature the same red, white, and blue Daily Caller logo:<sup>12</sup>



Logo of the DCN Foundation on its website



Logo of the Daily caller on its website

It might initially appear that the DCN Foundation logo is black text on a white background, while the Daily Caller logo is white text on a black background, which would be a superficial difference, but actually the DCN Foundation routinely uses the Daily Caller's inverted, dark color scheme as well.<sup>13</sup> Certain very astute and observant readers might notice that the version of the logo used on the DCN Foundation website does state "News Foundation" and realize that this is perhaps intended to indicate some daylight between the two entities. However, most readers and donors are likely to be confused about why the two entities use substantially the same logo if they are supposed to be separate. Use of the logo and co-branding could also help explain why other publisher-licensees of the DCN Foundation's content do not use it nearly as much as the Daily Caller does. The DCN Foundation's videos and other content are emblazoned with the same logo as the Daily Caller, which is something the DCN Foundation could remove if it wanted to make it more palatable for other licensees to distribute the media.<sup>14</sup>

The same two individuals, Carlson and Patel, have historically dominated and controlled both the DCN Foundation and the Daily Caller. The DCRA business registration page for the DCN Foundation lists the governors of the DCN Foundation as Carlson and Patel, with Patel as the

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<sup>11</sup> DCN Foundation 2017 Form 990, Schedule R, Part IV.

<sup>12</sup> <http://dailycallernewsfoundation.org/>; <https://dailycaller.com/>.

<sup>13</sup> <https://www.youtube.com/watch?v=evYxY3uhjzY>; [https://www.youtube.com/watch?v=Mt\\_Ni2FML-c](https://www.youtube.com/watch?v=Mt_Ni2FML-c).

<sup>14</sup> *Id.*

executing officer. The DCRA business registration page for the Daily Caller lists Patel as the governor and the executing officer.<sup>15</sup> On the DCN Foundation's first Form 990-series return, its 2011 Form 990-EZ at Part IV, two officers and directors were listed: Patel as President/Director and Carlson as Secretary/Director. Those individuals remained the only two officers and directors listed on the Forms 990 filed from 2012 through 2016 (any other individuals listed in 2014, 2015, and 2016 were merely employees). In 2017, one additional DCN Foundation director was listed, Marcus Sterne. Effectively, from their inception through their latest filings, the two individuals have managed and controlled each of the Daily Caller and the DCN Foundation. This control manifests itself in various ways, including close coordination of the staff and content output of both entities. Notably, each of the Daily Caller and the DCN Foundation have their own staff of reporters, but they apparently coordinate so that they "seldom, if ever, duplicate one another" on news stories.<sup>16</sup>

Overall, the DCN Foundation and Daily Caller exhibit such close coordination and common control that they are substantially alter egos or instrumentalities of one another. Accordingly, the DCN Foundation should be attributed the political campaign activities of the Daily Caller. In addition to its website, the Daily Caller operates an email newsletter, which frequently includes DCN Foundation articles, and represents another significant profit stream. In 2016, the Daily Caller rented its email list to Donald Trump's presidential campaign, which paid an estimated \$150,000, and then used the list to solicit political contributions.<sup>17</sup> Other political groups and campaigns that have rented the Daily Caller's newsletter list include the Republican National Committee, Newt Gingrich's 2012 presidential campaign, Bold Conservatives PAC, Fight for Tomorrow, Conservative Campaign Committee, and Conservative Trust of America.<sup>18</sup>

As outlined above and further detailed below, the DCN Foundation has committed multiple violations of its tax-exempt status, any one of which would be sufficient independently to result in revocation of its tax-exempt status.

## **Alleged Violations**

### *Part I – Private Benefit and Private Inurement Improprieties*

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<sup>15</sup> Business Filings Search, Department of Consumer and Regulatory Affairs, accessed Mar. 25, 2020, *available at* <https://corponline.dcr.dc.gov/Home.aspx>.

<sup>16</sup> Callum Borchers, *Charity doubles as a profit stream at the Daily Caller News Foundation*, *Washington Post*, June 2, 2017, *available at* <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>.

<sup>17</sup> *Id.*; <https://www.exposedbycmd.org/tucker-carlson>.

<sup>18</sup> Callum Borchers, *Charity doubles as a profit stream at the Daily Caller News Foundation*, *Washington Post*, June 2, 2017, *available at* <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>; Erik Wemple, *Daily Caller Gives Gun Promotion a Shot*, *Washington Post*, May 24, 2012, *available at* [https://web.archive.org/web/20120527004921/http://www.washingtonpost.com/blogs/erik-wemple/post/daily-caller-gives-gun-promotion-a-shot/2012/05/24/gJQAduRvnU\\_blog.html](https://web.archive.org/web/20120527004921/http://www.washingtonpost.com/blogs/erik-wemple/post/daily-caller-gives-gun-promotion-a-shot/2012/05/24/gJQAduRvnU_blog.html); [https://www.fec.gov/data/disbursements/?data\\_type=processed&recipient\\_name=daily+caller&min\\_date=01%2F01%2F2010&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=daily+caller&min_date=01%2F01%2F2010&max_date=12%2F31%2F2020).

**Alleged Violation 1:** The DCN Foundation operates for private benefit akin to the school in *American Campaign Academy v. Comm'r*, 92 T.C. 1053 (1989).

Code Section 501(c)(3) describes organizations organized and operated exclusively for “religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals[.]” However, an organization is only described in Code Section 501(c)(3) if “no part of the net earnings of which inures to the benefit of any private shareholder or individual[.]” Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Code Section 501(c)(3). Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) further defines private benefit, as separate from private inurement, clarifying that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement to be organized and operated exclusively for one or more exempt purposes, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Illustratively, the following organization is organized for private benefit, despite superficially appearing to be an exempt educational organization:

“O is an educational organization the purpose of which is to study history and immigration. O's educational activities include sponsoring lectures and publishing a journal. The focus of O's historical studies is the genealogy of one family, tracing the descent of its present members. O actively solicits for membership only individuals who are members of that one family. O's research is directed toward publishing a history of that family that will document the pedigrees of family members. A major objective of O's research is to identify and locate living descendants of that family to enable those descendants to become acquainted with each other.”<sup>19</sup>

As the Treasury Regulations explain and conclude, O's educational activities primarily serve the private interests of members of a single family rather than a public interest. Therefore, O is operated for the benefit of private interests in violation of the restriction.

The DCN Foundation is not organized and operated exclusively for Code Section 503(c)(3) purposes. Instead, it is operated primarily for the private benefit of a single non-exempt entity (the Daily Caller), akin to the purportedly educational organization in *American Campaign Academy v. Comm'r*, 92 T.C. 1053 (1989). *American Campaign Academy* concerned an academy that conducted a 10-week educational and training program for professional political campaign workers. The academy furnished classrooms, materials, and qualified instructions and admissions through a competitive process. Generally, teaching a particular subject in a structured, formal way

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<sup>19</sup> Treas. Reg. § 1.501(c)(3)-1(d)(1)(iii), Ex. 1.

qualifies an organization as a tax-exempt Section 501(c)(3) educational entity. Here, however, the Tax Court revoked the academy's tax-exempt status despite the superficial appearance that it was an educational organization, finding the true purpose of the educational activity was to benefit private interests – Republican party entities and candidates – by providing them with trained campaign workers. Substantially all academy attendees went on to work for Republican committees, candidates, and other entities. The relationship between the academy and the Republican entities and candidates was not one of control, although the academy was an outgrowth of a training program operated by National Republican Congressional Committee.<sup>20</sup>

In *American Campaign Academy*, the Tax Court provided a useful definition of private benefit that amplifies the definition in Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii): “nonincidental benefits conferred on disinterested persons that serve private interests.” This definition was intended, in part, to explicitly reject the Academy's argument that the prohibition against private benefit is limited to situations in which an organization's insiders are individually benefited. The Tax Court, disagreeing with the Academy's view, stated that an organization's conferral of benefits on disinterested persons may cause it to serve a private interest within the meaning of Code Section 1.501(c)(3)-1(d)(1)(ii).<sup>21</sup>

The DCN Foundation operates for private benefit even more flagrantly than the American Campaign Academy did. Just as virtually all American Campaign Academy graduates went on to work for one political party, virtually all media content the DCN Foundation produces is published by one for-profit media outlet, the Daily Caller.<sup>22</sup> Moreover, it is not uncommon for nearly half of the content on the Daily Caller website to come from the DCN Foundation on any given day, often including the most costly, labor-intensive investigative reporting and the most-read articles that contribute to the highest advertising revenue.<sup>23</sup> For example:

- On April 16, 2015, 20 out of 69 homepage stories were produced by the DCN Foundation.<sup>24</sup> This represents 42% of the 47 news stories listed (the 22 others were sports, entertainment, opinion, and blog posts.)
- On March 15, 2016, 42 out of 105 homepage stories were produced by the DCN Foundation, including three out of the first five listed.<sup>25</sup> This represents 47% of the 89 news stories listed (the 16 others were sports, entertainment, slideshow, opinion, blog, and Guns and Gear posts.)

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<sup>20</sup> IRS 2001 EO CPE Text, PRIVATE BENEFIT UNDER IRC 501(c)(3), at p. 139, available at <https://www.irs.gov/pub/irs-tege/eotopich01.pdf>.

<sup>21</sup> IRS 2001 EO CPE Text, PRIVATE BENEFIT UNDER IRC 501(c)(3), available at <https://www.irs.gov/pub/irs-tege/eotopich01.pdf>.

<sup>22</sup> Callum Borchers, *Charity doubles as a profit stream at the Daily Caller News Foundation*, *Washington Post*, June 2, 2017, available at <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>.

<sup>23</sup> <https://dailycaller.com/2017/12/29/the-daily-caller-year-in-review-our-top-10-most-read-stories-of-2017/>.

<sup>24</sup> <https://archive.is/IXsCd>.

<sup>25</sup> <https://web.archive.org/web/20160315073926/http://dailycaller.com/?refresh=true>.



- On July 14, 2016, 20 out of 56 homepage stories were produced by the DCN Foundation, including three out of the first five listed and six of the first 10.<sup>26</sup> This represented more than half of the 39 news stories listed (the 17 others were sports, entertainment, slideshow, and Daily Dealer posts.)
- On January 26, 2017, 25 out of 61 homepage stories were produced by the DCN Foundation, including three of top five listed.<sup>27</sup> This represented more than half of the 49 news stories listed (the 12 others were sports, entertainment, opinion, blog, and Daily Dealer posts.)

In form, the DCN Foundation's content is provided free-of-charge to any reputable publisher that can provide a large audience.<sup>28</sup> In substance, the DCN Foundation's other publisher-licensees run content from the DCN Foundation only "sporadically" while the Daily Caller runs almost all of the DCN Foundation's content.<sup>29</sup> Moreover, even if it were the case that other publisher-licensees ran a significant amount of the DCN Foundation's content, it would not necessarily follow that the DCN Foundation does not primarily operate for the benefit of the Daily Caller, rather it would indicate that the DCN Foundation also incidentally operates for the benefit of a few other for-profit media companies that sporadically run the DCN Foundation's content under various licensing arrangements.

Patel, co-founder and President of the DCN Foundation, and co-founder, officer, and Publisher of the Daily Caller, has stated that the DCN Foundation has no control over whether licensees other than the Daily Caller use the DCN Foundation's content.<sup>30</sup> This is likely factually incorrect and also arguably irrelevant. First, it is factually inaccurate because the DCN Foundation and the Daily Caller are commonly controlled and co-dependent and they closely coordinate to ensure that the DCN Foundation's content meets the Daily Caller's needs and audience, which is not a difficult task given that their offices are in adjacent suites (or possibly the same suite as indicated on the DCN Foundation's 2017 Form 990, Schedule R, Part IV) and share staff members. Second, it is irrelevant. Just as graduates of American Campaign Academy were not actually legally bound to work only for Republican candidates and entities, so too is DCN Foundation content technically available to others. Nevertheless, as in American Campaign Academy, this funneling constitutes a private benefit.

Additionally, the deliberate and calculated branding and labeling of DCN Foundation media makes it inherently unlikely that publisher-licensees other than the Daily Caller would want to run the content. For instance, DCN Foundation videos prominently feature the exact same logo

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<sup>26</sup> <https://web.archive.org/web/20160714192629/http://dailycaller.com/>.

<sup>27</sup> <https://archive.is/GcTl6>.

<sup>28</sup> <https://dailycaller.com/about-us>; <http://dailycallernewsfoundation.org/about-us/>.

<sup>29</sup> Callum Borchers, *Charity doubles as a profit stream at the Daily Caller News Foundation*, *Washington Post*, June 2, 2017, available at <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>.

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



used by Daily Caller with the Daily Caller's name.<sup>31</sup> Some DCN Foundation videos even directly exhort the viewer to subscribe to the Daily Caller.<sup>32</sup> The DCN Foundation is undoubtedly well-aware that other news organizations are extremely unlikely to run content branded with the Daily Caller's logo or content and directing viewers to subscribe to the Daily Caller.

**Alleged Violation 2:** The DCN Foundation engages in transactions with the Daily Caller that result in private inurement and does not properly report such transactions or other transactions on Form 990, Schedule R, Part V.

Under the prohibition against private inurement, an organization is only described in Code Section 501(c)(3) if “no part of the net earnings. . . inures to the benefit of any private shareholder or individual[.]” Treas. Reg. § 1.501(c)(3)-1(c)(2) further explains that “[a]n organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.” The words “private shareholder or individual” mean persons having a personal and private interest in the activities of the organization.<sup>33</sup> Under appropriate fact patterns, the Tax Court has treated founders or controlling members with a personal stake in an organization's receipts, as well as certain officers and directors, as “private shareholders or individuals” for private inurement purposes.<sup>34</sup>

The DCN Foundation, a Code Section 501(c)(3) tax-exempt organization, provides substantially all of its media content free-of-charge to the Daily Caller, a for-profit corporation.<sup>35</sup> This provides a direct financial benefit to the owners and shareholders of the Daily Caller, who happen to also be the co-founders, directors, and officers of the DCN Foundation. The two entities were founded by the same two individuals, Carlson and Patel,<sup>36</sup> who are the only two officers of the DCN Foundation<sup>37</sup> and the shareholders of the Daily Caller. Although Carlson resigned his staff position as the Editor-in-Chief of the Daily Caller in 2016, he retained his ownership stake and remains the Secretary and Chairman of the DCN Foundation.<sup>38</sup> The Daily Caller, and its individual shareholders, Carlson and Patel, personally profit when the DCN Foundation provides free content to the Daily Caller, because the Daily Caller sells advertisements on the DCN Foundation's content.<sup>39</sup> Other DCN Foundation insiders and managers also personally benefit,

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<sup>31</sup> [https://www.youtube.com/watch?v=Mt\\_Ni2FML-c](https://www.youtube.com/watch?v=Mt_Ni2FML-c); <https://www.youtube.com/watch?v=evYxY3uhjzY>.

<sup>32</sup> <https://www.youtube.com/watch?v=C3v1lscFkzc>.

<sup>33</sup> Treas. Reg. § 1.501(a)-1(c).

<sup>34</sup> *People of God Community v. Comm'r*, 75 TC 127 (1980); *Variety Club Tent No. 6 Charities Inc*, TC Memo 1997-575 (1997).

<sup>35</sup> Callum Borchers, *Charity doubles as a profit stream at the Daily Caller News Foundation*, *Washington Post*, June 2, 2017, available at <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>.

<sup>36</sup> <http://dailycallernewsfoundation.org/about-us/>; <https://dailycaller.com/about-us>.

<sup>37</sup> DCN Foundation 2017 Form 990, Part VII, Section A.

<sup>38</sup> Joe Concha, *Tucker Carlson stepping down as The Daily Caller's editor-in-chief*, *The Hill*, Nov. 28, 2016, available at <https://thehill.com/media/307684-tucker-carlson-stepping-down-as-the-daily-callers-editor-in-chief>; <http://dailycallernewsfoundation.org/about-us/>; DCN Foundation 2017 Form 990, Part VII, Section A.

<sup>39</sup> Callum Borchers, *Charity doubles as a profit stream at the Daily Caller News Foundation*, *Washington Post*, June 2, 2017, available at <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>.

such as DCN Foundation Executive Director Margaret Crilley, who is paid as the Director of Operations and Public Affairs for the Daily Caller.

In addition to providing all of its media content to the Daily Caller free of charge, the DCN Foundation produces videos that advertise and promote the Daily Caller, specifically exhorting viewers to subscribe to the Daily Caller. For instance, on August 23, 2019, the DCN Foundation produced a video listed as from “Daily Caller News Foundation Productions,” which was posted to the Daily Caller website.<sup>40</sup> At the end of the video, the DCN Foundation contributor states: “If you liked this video, don’t forget to hit the thumbs up below and subscribe to the Daily Caller.”<sup>41</sup> Although producing newsworthy videos may be appropriate activity for a Code Section 501(c)(3) educational organization, running free advertisements for a for-profit affiliate owned by the organization’s co-founders/directors/officers appears to constitute the use of charitable resources to inure to the private benefit of insiders.

Further, the DCN Foundation fails to properly report the transactions giving rise to private inurement as well as many other transactions on its Forms 990. In general, tax-exempt organizations are required to report related for-profit organizations on Form 990, Schedule R, Part IV and to detail the types of transactions engaged in with such entities on Part V. The DCN Foundation properly discloses the Daily Caller as a related entity, although incorrectly reports that the Daily Caller is domiciled in DC (the Daily Caller is organized in Delaware). Yet on its 2017 and 2016 Forms 990, Schedule R, Part V, the DCN Foundation only discloses one transaction with the Daily Caller, the lease of the DCN Foundation’s office suite (which is allegedly immediately adjacent to the Daily Caller’s suite) at 1920 L St NW, Washington, D.C. 20036. In fact, however, there were additional transactions.

The Daily Caller is a licensee for all of the DCN Foundation’s articles and other media, receiving and publishing virtually all of the content the DCN Foundation produces. This licensee arrangement and the receipt of valuable media was not reported. The Daily Caller and the DCN Foundation also share employees, such as Margaret Crilley, who serves as both Executive Director of the DCN Foundation and Director of Operations and Public Affairs for the Daily Caller, yet no amount was reported on Schedule R, Part V, Line 1(0), “sharing of paid employees with related organizations or on Part VII, Section A, Column (E) relating to Crilley’s reportable compensation from related organizations. Additionally, as discussed above, the Daily Caller and the DCN Foundation use substantially the same logo on their websites, but no transaction is disclosed in Schedule R, Part V to indicate which entity owns the logo and licenses it to the other entity in what could at least purportedly resemble an arm’s length, unrelated party transaction.

Additionally, the DCN Foundation’s lease of office space from the Daily Caller may constitute private inurement. The DCN Foundation’s payment of \$168,639 in rent under a lease agreement with the Daily Caller might be equal to or even less than the arm’s length, fair market value price for the use of the allegedly rented space.<sup>42</sup> Yet notably, the DCN Foundation’s Forms

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<sup>40</sup> <https://dailycaller.com/2019/08/23/why-socialism-wont-work-for-2020-democrats/>.

<sup>41</sup> *Id.*

<sup>42</sup> DCN Foundation 2017 Form 990, Schedule R, Part V.

990 indicate the Daily Caller occupies the exact office suite purportedly rented to the DCN Foundation.<sup>43</sup> If the DCN Foundation is not actually in possession of the purportedly rented space, any payment of rent would constitute private inurement as payments from a Code Section 501(c)(3) to a for-profit corporation in exchange for nothing in return at all.

### *Part II – Alter Ego and Political Activity Improprieties*

**Alleged Violation 3:** The Daily Caller and DCN Foundation are alter egos of one another.

When an entity is without economic substance, it may be deemed the “alter ego” of another taxpayer for federal income tax purposes. “Alter ego means ‘other self’ — where one person or entity acts like, or, for another to the extent that they may be considered identical.”<sup>44</sup> Generally, federal courts look to state law to determine whether an entity is an alter ego of a taxpayer,<sup>45</sup> although in 2011, the IRS announced that federal common law should apply.<sup>46</sup> District of Columbia Courts apply an alter-ego or corporate veil piercing doctrine when there is “(1) unity of ownership and interest, and (2) use of the corporate form to perpetrate fraud or wrong, or other considerations of justice and equity justify it.”<sup>47</sup> A commonly referenced, though not exhaustive, list of factors for determining when alter ego liability or piercing of the corporate veil is appropriate includes “(1) whether corporate formalities have been disregarded, (2) whether corporate funds and assets have been extensively intermingled. . . , (3) inadequate initial capitalization, and (4) fraudulent use of the corporation to protect from the claims of creditors.”<sup>48</sup> Similarly, where a case implicates a federal interest, “[t]he question whether to disregard the corporate form . . . proceeds in two steps: ‘(1) is there such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist?; and (2) if the acts are treated as those of the corporation alone, will an inequitable result follow?’”<sup>49</sup>

The Daily Caller and the DCN Foundation are alter egos or instrumentalities of one another. They are under common control, both founded by Neil Patel and Tucker Carlson, the only officers and directors named on the DCN Foundation’s Forms 990.<sup>50</sup> The pair also continue to own and control the Daily Caller, with Patel listed on the DCRA business registration page as the governor and the executing officer. Carlson resigned his editor-in-chief staff position with the Daily Caller in 2016, but retained his ownership stake.<sup>51</sup> The two legal entities also are

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<sup>43</sup> DCN Foundation 2017 Form 990, Schedule R, Part IV (indicating that the Daily Caller is located at 1920 L Street NW, Suite 205, Washington, DC 20036, which is the suite that is purportedly rented to the DCN Foundation).

<sup>44</sup> *Baum Hydraulics Corporation v. U.S.*, 280 F. Supp 2d 910 (DC NE Sept. 8, 2003); *U.S. v. Scherping*, 187 F.3d 796 (8th Cir, Aug. 11, 1999).

<sup>45</sup> See *Loving Saviour Church v. U.S.*, 556 F. Supp. 688 (DC SD, Feb. 9, 1983) (at 1086 citing *Aquilino v. U.S.*, 363 U.S. 509, 512-13 (1960)).

<sup>46</sup> See Notice CC-2012-002, Dec. 2, 2011 (<https://www.irs.gov/pub/irs-ccdm/cc-2012-002.pdf>).

<sup>47</sup> *Estate of Raleigh v. Mitchell*, 947 A.2d 464, 470 (D.C. 2008) (quoting *Bingham v. Goldberg*. Marchesano. Kohlman. Inc., 637 A.2d 81, 93 (D.C. 1994) (citation omitted) (internal quotation marks omitted)).

<sup>48</sup> *Id.* at 470-471.

<sup>49</sup> *United States ex rel. Hockett v. Columbia/HCA Healthcare Corp.*, 498 F.Supp.2d 25, 60 (D.D.C. 2007) (quoting *Labadie Coal Co. v. Black*, 672 F.2d, 92, 97 (D.C. Cir. 1982)).

<sup>50</sup> <http://dailycallernewsfoundation.org/about-us/>; <https://dailycaller.com/about-us>.

<sup>51</sup> Joe Concha, *Tucker Carlson stepping down as The Daily Caller's editor-in-chief*, *The Hill*, Nov. 28, 2016, available at <https://thehill.com/media/307684-tucker-carlson-stepping-down-as-the-daily-callers-editor-in-chief>.

administered on a day-to-day basis by the same individual employee, Margaret Crilley, the Executive Director of the DCN Foundation,<sup>52</sup> and Director of Operations and Public Affairs for the Daily Caller, the chief non-editorial role at the publication.<sup>53</sup>

Further evidence of the co-dependence and common control of the Daily Caller and the DCN Foundation can be observed from the fact that key employees fluidly flow back-and-forth between the entities, while continuing substantially similar roles in reporting and media creation. From 2015 through 2018, the Daily Caller strategically shrank its staff and shifted both staff members and workload to the DCN Foundation. According to cached versions of the Daily Caller website, from February 2015 to February 2016, the DCN Foundation's editorial staff grew from five to 24 employees.<sup>54</sup> During the same period, the Daily Caller's newsroom staff count decreased from 29 to 22 employees.<sup>55</sup> By January 2018, the DCN Foundation's editorial team had increased to 38 people, while the Daily Caller's remained at 22 people.<sup>56</sup> Over this period of the DCN Foundation's staff expansion, six former Daily Caller editorial staffers migrated to the DCN Foundation: Christopher Bedford, Katie Frates, Emma Colton, Chuck Ross, Rachel Stoltzfoos, and Sarah Hurtubise.<sup>57</sup> Contributor Ginni Thomas also switched over from the *Daily Caller* to the DCN Foundation in November 2015.<sup>58</sup> Moreover, Daily Caller staff have authored published content on behalf of and in the name of the DCN Foundation. The script editor and senior producer for an August 23, 2019 DCNF video titled "Why Socialism Won't Work For 2020 Democrats" were *Daily Caller* staffers Sagnik Basu and Richard McGinniss.<sup>59</sup> An August 24, 2019 DCNF video titled "Would You Date a Transgender Person?" was also senior produced by McGinniss.<sup>60</sup>

Given that the Daily Caller operates out of adjacent suites on the same floor of the same office building, these employee transfers probably had little impact on the new DCN Foundation employees' ability to coordinate with their former colleagues at the Daily Caller. In fact, it is doubtful any employee switched offices at all given that, according to the DCN Foundation's 2017

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<sup>52</sup> <http://dailycallernewsfoundation.org/about-us/>; See also DCN Foundation 2016 and 2017 Form 990, Part VII, Section A.

<sup>53</sup> <http://dailycallernewsfoundation.org/about-us/>.

<sup>54</sup> <https://web.archive.org/web/20150204043405/http://dailycallernewsfoundation.org/about-us/>;  
<https://web.archive.org/web/20160219204742/http://dailycallernewsfoundation.org/about-us/>.

<sup>55</sup> <https://web.archive.org/web/20150205155138/http://dailycaller.com/about-us/>;  
<https://web.archive.org/web/20160216010425/http://dailycaller.com/about-us/>.

<sup>56</sup> <https://web.archive.org/web/20180105170050/http://dailycallernewsfoundation.org/about-us/>;  
<https://web.archive.org/web/20180208040616/http://dailycaller.com/about-us/>.

<sup>57</sup> <https://web.archive.org/web/20150407023158/http://dailycaller.com/about-us/>;  
<https://web.archive.org/web/20160219204742/http://dailycallernewsfoundation.org/about-us/>;  
<https://web.archive.org/web/20170115211459/http://dailycallernewsfoundation.org/about-us/>;  
<https://web.archive.org/web/20180831092855/http://dailycallernewsfoundation.org/about-us/>.

<sup>58</sup> <https://dailycaller.com/2015/11/14/scholars-expose-student-radicalization-across-college-campuses/>;  
<https://dailycaller.com/2015/11/21/scholar-campus-mobs-reject-free-speech-academic-freedom-and-even-facts/>.

<sup>59</sup> <https://dailycaller.com/2019/08/23/why-socialism-wont-work-for-2020-democrats/>; <https://dailycaller.com/about-us>.

<sup>60</sup> <https://dailycaller.com/2019/08/24/would-you-date-a-transgender-person/>; <https://dailycaller.com/about-us>.

Form 990 Schedule R, it appears the Daily Caller continues to occupy the office suite that the DCN Foundation allegedly rents.

The flow of workers from the Daily Caller to the DCN Foundation coincides with the dramatic increase in deductible charitable donations to the DCN Foundation, suggesting that the Daily Caller may be inadequately funded and capitalized and is using the DCN Foundation as an alternative funding source for its costly investigative reporting and reporter salaries. In 2011, 2012, and 2013, the DCN Foundation received donations of only \$0, \$215,064, and \$134,285, respectively. However, in 2014, 2015, 2016, and 2017, the DCN Foundation received donations of \$722,897, \$3,003,680, \$1,136,831, and \$2,556,190, respectively. This order of magnitude increase in the capitalization and funding of the DCN Foundation happens to coincide with the DCN Foundation taking over a substantial percentage of the Daily Caller's staff and the reporting and editorial burden.

As discussed above, the websites of the Daily Caller and the DCN Foundation even feature the same logo and are therefore difficult to distinguish without a close inspection by someone familiar with the entity structure. Both websites prominently display the same red, white, and blue Daily Caller logo.<sup>61</sup>

Although it is relatively commonplace for either (1) a for-profit corporation to form a controlled Code Section 501(c)(3) affiliate, such as a philanthropic corporate foundation, or (2) for a Code Section 501(c)(3) organization to form a controlled for-profit subsidiary, such as a corporate subsidiary intended to block unrelated business taxable income, the relationship between the Daily Caller and the DCN Foundation do not line up well the historically approved scenarios.

First, the entities are so closely functionally intertwined that neither could plausibly exist without the other. This is not a situation similar to when a Code Section 501(c)(3) forms a for-profit affiliate to operate an unrelated businesses. The Daily Caller has effectively outsourced the vast majority of its costly investigative reporting, writing, and research to its controlled tax-exempt affiliate, while in-sourcing all of the profit that can be earned by selling advertisements based on that reporting. At the same time, the DCN Foundation likely would be unable to attract donations if donors were not confident that the reporting would be distributed by the Daily Caller.

Second, there is little daylight between the two entities in terms of founders, directors, officers, management, name, address, mission, logo, and office space. The two entities were created in close succession for the same purpose and the same individuals have complete dominion and control over both entities.

The arrangement between the DCN Foundation and the Daily Caller appears to perpetrate fraud or wrong or an inequitable result in violation of the second prong of the District of Columbia and federal alter ego tests. This misuse of a Code Section 501(c)(3) organization for private benefit and private inurement appears both fraudulent and inequitable.

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<sup>61</sup> <http://dailycallernewsfoundation.org/>; <https://dailycaller.com/>.



**Alleged Violation 4:** The Daily Caller engages in political campaign activity that is attributable to the DCN Foundation, its alter ego.

The Daily Caller is engaged in various forms of political campaign activity attributable to the DCN Foundation because the two are alter egos of one another.

Rev. Rul. 2007-41, 2007-1 C.B. 1421, provides 21 examples illustrating the applicable facts and circumstances to be considered in determining whether a Code Section 501(c)(3) organization has participated or intervened in any political campaign. Rev. Rul. 2007-41 provides that in determining whether an organization has engaged in political campaign intervention in the context of a business activity, such as selling or renting mailing lists, some of the factors to be considered include whether the good, service, or facility is available to candidates in the same election on an equal basis, whether the good, service, or facility is available only to candidates and not to the general public, and whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate. Situation 18 of Rev. Rul. 2007-41 describes a Code Section 501(c)(3) theater organization that maintains a mailing list of all of its subscribers and contributors. The organization has never rented its mailing list to a third party, but after being approached by the campaign committee of a candidate for public office who supports increased funding for the arts, the organization agrees to rent its mailing list to the campaign committee for a fee that is comparable to fees charged by other similar organizations. The organization declines similar requests from campaign committees of other candidates. According to the IRS, the organization has intervened indirectly in a political campaign.

Here, the Daily Caller operates an email newsletter, which frequently includes DCN Foundation articles. In 2016, the Daily Caller rented its email list to Donald Trump's presidential campaign, which paid an estimated \$150,000, and then used the list to solicit political contributions.<sup>62</sup> Other political groups and campaigns that have rented the Daily Caller's newsletter list include the Republican National Committee, Newt Gingrich's 2012 presidential campaign, Bold Conservatives PAC, Fight for Tomorrow, Conservative Campaign Committee, and Conservative Trust of America.<sup>63</sup> It is notable that the Daily Caller appears to have rented its list to only one presidential campaign committee each cycle, despite the fact that numerous candidates ran in both 2012 and 2016. If the Daily Caller was asked, but declined, to rent its list to other candidate campaign committee, it may have acted in violation of the law as described in Rev. Rule 2007-41.

**Alleged Violation 5:** Contributors, employees, directors, and officers of the DCN Foundation engage in political activity in their official capacities.

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<sup>62</sup> Callum Borchers, *Charity doubles as a profit stream at the Daily Caller News Foundation*, *Washington Post*, June 2, 2017, available at <https://www.washingtonpost.com/news/the-fix/wp/2017/06/02/charity-doubles-as-a-profit-stream-at-the-daily-caller-news-foundation/>; <https://www.exposedbycmd.org/tucker-carlson>.

<sup>63</sup> *Id.*; Erik Wemple, *Daily Caller Gives Gun Promotion a Shot*, *Washington Post*, May 24, 2012, available at [https://web.archive.org/web/20120527004921/http://www.washingtonpost.com/blogs/erik-wemple/post/daily-caller-gives-gun-promotion-a-shot/2012/05/24/gJQAduRvnU\\_blog.html](https://web.archive.org/web/20120527004921/http://www.washingtonpost.com/blogs/erik-wemple/post/daily-caller-gives-gun-promotion-a-shot/2012/05/24/gJQAduRvnU_blog.html); [https://www.fec.gov/data/disbursements/?data\\_type=processed&recipient\\_name=daily+caller&min\\_date=01%2F01%2F2010&max\\_date=12%2F31%2F2020](https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=daily+caller&min_date=01%2F01%2F2010&max_date=12%2F31%2F2020).

Various individual content creators, employees, directors, officers, and founders of the DCN Foundation are involved in political campaigns. Illustratively, video contributor Christianné Allen concurrently produced presidential campaign-related content for the DCN Foundation and Daily Caller websites, while working in association with Donald Trump's presidential campaign. On August 23, 2019, the Daily Caller's website posted a video in which Allen attacked the "socialist policies" of frontrunner Democratic presidential candidates vying for the opportunity to run against Trump in 2020.<sup>64</sup> The video is identified as created by "Daily Caller News Foundation Productions" with Allen identified as a "Contributor". At the same time, in her LinkedIn profile, Allen described herself as serving on the Trump Victory Finance Committee, a joint fundraising committee between the Trump campaign and the Republican National Committee.<sup>65</sup>

The co-founders and executive officers of both the DCN Foundation and the Daily Caller, Tucker Carlson and Neil Patel, have expressed candidate preferences in op-eds and videos for the Daily Caller. These statements can be attributed to the DCN Foundation, not only because, as described in Alleged Violation 3 above, the DCN Foundation and the Daily Caller are alter egos, but also because the Daily Caller routinely runs DCN Foundation content and there is no clear indication that the opinions expressed were not the official opinions of the DCN Foundation. Illustratively, one op-ed the pair co-authored was titled "When are Republicans going to start explaining how Barack Obama wants to kill your children?"<sup>66</sup> Carlson also directly expressed his voting preferences in a Daily Caller interview, in August 2019, he stated in a video that "I wouldn't vote for Elizabeth Warren."<sup>67</sup>

## Conclusion

In summary, it appears the DCN Foundation may have committed the following violations of its tax-exempt status:

- 1) The DCN Foundation is not organized and operated exclusively for Code Section 501(c)(3) purposes but rather for the private benefit of a nonexempt entity, the Daily Caller;
- 2) In violation of the prohibition against private inurement, the net earnings of the DCN Foundation inure to the benefit of private shareholders and individuals, namely the co-founders/directors/officers who own the for-profit affiliate, the Daily Caller.
- 3) The DCN Foundation and the Daily Caller are alter egos of one another meaning that the activities of one should be attributed to the other, including a for-profit business and political campaign activity.

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<sup>64</sup> <https://dailycaller.com/2019/08/23/why-socialism-wont-work-for-2020-democrats/>.

<sup>65</sup> <https://www.linkedin.com/in/christiannelallen/>.

[https://web.archive.org/web/20191211020313/https://twitter.com/christianne\\_1\\_a?lang=en](https://web.archive.org/web/20191211020313/https://twitter.com/christianne_1_a?lang=en).

<sup>66</sup> <https://web.archive.org/web/20110807134554/https://dailycaller.com/2011/05/27/when-are-republicans-going-to-start-explaining-how-barack-obama-wants-to-kill-your-children/>.

<sup>67</sup> [https://www.youtube.com/watch?time\\_continue=8&v=2NXv5LdeB0s](https://www.youtube.com/watch?time_continue=8&v=2NXv5LdeB0s).



- 4) The Daily Caller is engaged in political campaign activity that should be attributed to the DCN Foundation.
- 5) Individual contributors, employees, directors, and officers of both the Daily Caller and the DCN Foundation are engaged in political campaign activity in their official capacities.

CfA looks forward to your investigation of what appears to be a lengthy pattern of the DCN Foundation violating the Code and its tax-exempt status.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director

Enclosures:  
Form 13909