

Supplement to Form 13909 Filed on June 27, 2017 Regarding Desert Discovery Center Scottsdale

I am filing this as a Supplement to a Form 13909 filed on June 27, 2017 regarding Desert Discovery Center Scottsdale. The original Form 13909 is attached to this Supplement. Since the filing of the original Form 13909, I have obtained additional documentation through a FOIA request confirming that Desert Discovery Center Scottsdale has been and continues to be engaged in substantial lobbying activities regarding the construction of the Desert Discovery Center, even though its filings with the IRS deny any lobbying activity.

FORMATION OF THE DESERT DISCOVERY CENTER SCOTTSDALE

The Desert Discovery Center Scottsdale Inc. (hereinafter referred to as “DDC”) was incorporated on January 6, 2015.¹ It has received a tax exemption as a section 501(c)(3) organization. Its stated purpose is to “own and/or operate a facility to educate the public and foster use of the City of Scottsdale’s desert preserve.” DDC’s goal is to build and operate a \$61 million educational, entertainment, and tourism center (the “Center”) within the McDowell Sonoran Preserve.

BACKGROUND INFORMATION REGARDING THE MCDOWELL SONORAN PRESERVE

The McDowell Sonoran Preserve (the “Preserve”) is, according to the City of Scottsdale’s web site, “a large, permanently protected, sustainable desert habitat.” The Preserve was designated as a “‘preserve,’ not a park, so that the flora, fauna, and historical treasures contained within it would be protected for generations to come.” *The People’s Preserve: How Scottsdale Created the McDowell Sonoran Preserve*. At the present time, the only structures within the preserve are trailhead shelters, which provide water, restrooms, some informational resources (such as maps), and access to the trailheads. Thus, the construction of the Center would represent a major change in the activities carried on in the Preserve. DDC’s goal of building the Center within the Preserve has been extremely controversial, with the Mayor of Scottsdale recently commenting that “I have never seen the city more torn apart in any other way.”

<http://www.azcentral.com/story/news/local/scottsdale/2017/09/29/scottsdale-public-vote-desert-edge/700876001/>.

The creation of the Preserve was the result of a lengthy process in which the citizens of Scottsdale banded together to preserve and protect the unique mountain desert habitat surrounding the City. The City of Scottsdale established the Preserve on January 18, 1994 when it enacted Ordinance 2630. On May 23, 1995, the voters of Scottsdale approved Proposition 400, which created a .2% increase to the sales tax to raise funds to fund land acquisition for the Preserve. The measure passed with a 64 percent majority vote. One year later, voters approved the sale of revenue bonds to acquire additional land for the Preserve. In 2004, the voters approved a .15% addition to the sales tax to purchase more land, and

¹ DDC was the successor to the Desert Discovery Center Advocates, an unincorporated association. In its Form 1023, DDC incorrectly stated it was not the successor to any organization, even though it was formed to take over the activities of the Desert Discovery Center Advocates.

the issuance of more bonds for land purchases. The Preserve has continued to grow through additional land acquisitions and now consists of over 30,000 acres.

Due to the unique nature and goals of the Preserve, it is protected by a network of legal restrictions regarding development in the Preserve. These protection include the Preserve Charter, approved by voters in 1998, which limits the City Council's ability to sell or lease Preserve property. A Preserve Ordinance limits Preserve activities. For example, the sale of food and merchandise within the Preserve is prohibited unless a special permit is issued.

FORMATION OF THE DDC AND ITS LOBBYING CAMPAIGN

The DDC had its origins in an unincorporated group called the Desert Discovery Center Advocates . As its name reflects, Desert Discovery Advocates, and DDC as its successor, were formed to serve as vocal "advocates" for the building and operation of the Center. DDC's goal was to convince the City Council to issue a Request for Qualifications ("RFQ") to build the Center. A RFQ is, in effect, a solicitation for bids. As will be shown below, DDC developed and carried out an extensive, and ultimately successful, lobbying campaign, directed at both the City Council and the public, to convince the City to issue the RFQ.

Exhibit 1 reflects the DDC's "Communication Strategy." From the beginning, DDC recognized that "***We need the [City Council's] approval***" to build the Center because it will be "a City building; on City land; built, with bed tax approved by the City Council." (emphasis supplied) Thus, DDC's "Number 1 Goal" was to gain the City Council's approval. Exhibit 1. This strategy necessarily required the "support" of the "City Manager, City Attorney, Mayor, and 3 Council" members. Exhibit 2. As shown below, DDC followed this approach by lobbying these officials.

The second part of DDC's strategy was a grassroots lobbying campaign to develop "community support." Exhibit 1. The goal of this campaign was to develop "[m]ore ***Advocates to influence Council***" through "[b]logs, web, FB [Facebook], social media, newspaper, My Turns, etc." Exhibit 1. The DDC's admission that they were seeking "advocates" to influence the Council is a textbook case of grassroots lobbying. This grassroots campaign is discussed in more detail below.

As the DDC recognized, its plan to build the Center necessarily required the approval and action of the City Council. The actions which are required, or may be required, of the City Council include:

- Issuing a RFQ to build the Center. Exhibit 3.
- Approving a contractor to build the Center.
- Amending the Municipal Use Master Site Plan to build the Center at the desired location in the Preserve. Exhibits 4, 5.
- Allocating a portion of the Tourism Tax (commonly called the "bed tax") to support the Center. Exhibit 2.
- Amending the Preserve Ordinance to allow activities anticipated by the DDC, such as sale of merchandise and food. Exhibits 4, 6.

-Allocating a portion of the Preserve sales tax to operations and maintenance of the Center, which is not currently allowed.

-Approval of additional bonds to borrow against the Preserve tax to build the Center.

Some of these items have already been acted on by the Council but others, such as the amendment of the Municipal Use Master Site Plan, are still pending. All of these are “legislative” actions by the City Council required to carry out DDC’s goals.

DDC’s initial actions were directed at lobbying the Council to issue the RFQ and to fashion the RFQ in a manner which would be favorable to a bid by DDC. Exhibits 6, 7, 8, 9, 15 DDC even pressured City employees when the RFQ did not proceed to its liking. Exhibit 10. While DDC has made many public appearances before the City Council to lobby for the Center, its efforts have also included numerous private meetings with City officials to gather support for the Center.² Elements in this campaign included:

-meeting with the City Manager on July 14, 2014, where “retail politics” was discussed. At this meeting, DDC was advised to **“be sure you have 4 votes not including mayor.”** DDC responded “we agreed that we did.” DDC was also advised to get other public groups to advocate for the project, beyond the “usual suspects.” Exhibit 11.

-a July 21, 2014 “agenda” email stated DDC’s “strategy” was to “go to individual Council members.” Exhibit 12.

-on August 22, 2013, DDC met with the City Manager and City Attorney, among others. One of the agenda items for this meeting was a “RFP [Request for Proposals] Strategy.” Exhibit 13.

-a September 3, 2014 DDC email stated that “We’re focusing on the advocacy of the DDC--not so much the center itself. In other words, **the goal is to get through the successful RFQ** that awards a contract to move the DDC forward.” Exhibit 7.

-scheduled meeting with City Manager and City Attorney, on December 1, 2014. Exhibit 14.

-meeting with Councilman-elect David Smith on December 1, 2014. Exhibit 14.

-DDC also met with members of the Tourism Development Commission (TDC), which makes recommendations to the City Council concerning the bed tax. Exhibit 14.

-a November 19, 2014 email discussed talking to “our close council friends” regarding plans for the Center. Exhibit 15.

-on November 25, 2014 DDC also stated it was “waiting for dates from Councilman Dennis Robbins, Guy Phillips and Bob Littlefield and Council-elect Kathy Littlefield. Just had **excellent meetings with Councilwoman Suzanne Klapp.**” Exhibit 14.

² Documents revealing these private contacts were obtained through a FOIA request directed to Arizona State University, which has partnered with DDC in its efforts to build the Center.

-on March 5, 2015, the City Manager met with DDC representatives and told them he expected to have the “RFP out within 30 days.” Following this meeting, one of the DDC representatives stated “**Now we need our friends on the Council to hold firm.**” Exhibit 16.

-in a second email on March 5, 2015, another DDC member stated “**our job is to get Council to move the project forward.**” Exhibit 17.

-prior to a Council meeting on March 24, 2016, Sam Campana, the executive director of DDC, indicated “ **We are meeting with individual Council members**” and asked to be notified “[i]f you have an exceptional relationship with any of them.” Exhibit 18.

-an email on March 26, 2015, concerning a call to the City Manager discussed the necessary amendments to the Municipal Use Master Site Plan and the need for City Council action. Exhibit 4.

-a March 5, 2015 email discussed a plan to “address specific points with Council members.” Exhibit 16.

-DDC employees have attended City Council meetings holding signs advocating for the Center. Exhibit 19 (photograph of Randy Schilling, DDC Director of Development, at City Council on 9-26-17, Source: The Scottsdale Independent)

These are only some of the many instances in which DDC met with City Council members and City employees to lobby for development of the Center.

THE DDC’S GRASSROOTS LOBBYING CAMPAIGN

As noted above, DDC’s “Number 1” goal was City Council approval. But its secondary goal, according to its Communication Strategy, was to develop “community support” “**to influence Council.**” Exhibit 1. Thus, a central point of DDC’s strategy was contacting numerous elements of the Scottsdale community to develop support for its plans. This is classic grassroots lobbying. One element of this strategy was the tourism industry. DDC’s stated “**they must be ardent advocates,**” because DDC needed their “support for the bed tax,” i.e., DDC needed funds from the bed tax to build the Center. Exhibit 2. In addition, DDC sought support from the Chamber of Commerce, the Mayo hospitals, the McDowell Sonoran Conservancy, and other “community leaders”. Exhibits 12, 11, 21. The effort to develop public support was as extensive as DDC’s lobbying of the Council:

-in December of 2014, DDC sent out almost 300 New Year’s cards to “Advocates for the DDC.” Exhibit 20.

-DDC sought out “**major employers in Scottsdale to be ready to call the mayor, testify,** etc.” in support of the Center. Exhibit 21.

-the DDC created a program to “start a **pro-DDC Teachers group** to promote the project” and viewed the teacher’s support as “another community outreach opportunity for DDCS.” Exhibit 22.

-on March 23, 2015, DDC distributed a letter prior to a March 24 City Council meeting. This letter stated “**The moment is here to weigh in with the Scottsdale City Council and urge them to support the advancement of the Desert Discovery Center.**” The DDC urged its supporters

to submit comments to the City Council in advance of this meeting and also encouraged its followers to attend the meeting. Exhibit 23.

-On September 17, 2016, Sam Campana, the Executive Director of the DDC, sent an email to “a few dozen close friends” asking them to contact the City Council to support the Center, and asked these friends to send a similar email to their “close friends.” Exhibit 24. In this email, Ms. Campana admitted that as a “City contractor,” she was not allowed to “‘advocate’ for the project.” Later that year, Ms. Campana denied engaging in lobbying on DDC’s Form 990, although it would be difficult to find a clearer example of grassroots lobbying.

-an April 24, 2015 email stated “Let’s continue to focus for now on the political decision makers, community leaders, and major donors.” Exhibit 25

-DDC sought to “deploy” Arizona State University to “help the right things happen at city council.” Exhibit 26.

The DDC summarized its grass roots lobbying efforts by stating that “***In hundreds of meetings over the past 20 months, we have garnered a list of over 250 community leaders to advocate for this project.***” Exhibit 27.

DDC’s lobbying efforts were successful. On March 23, 2015, the City Council directed its staff to take steps to issue a RFQ for the Center. In a letter to its members, the DDC noted that many members had submitted positive comments and “***championed this effort in countless other ways.***” The DDC thus recognized that grass roots lobbying had played a major role in encouraging the City Council’s favorable vote. Exhibit 28.

LEGAL ANALYSIS OF DDC’S LOBBYING

In its Form 1023, DDC stated that it would not attempt to influence legislation. Exhibit 29, Part VIII, Question 2(a)(relevant excerpts). DDC also stated that it would not make an election under 501(h) of the Internal Revenue Code to have its legislative activities measured by filing Form 5768. *Id.* Also, in its Form 990 Return of Organization Exempt from Income Tax for the fiscal year ended June 30, 2016, DDC, stated that it had not engaged in ***any*** lobbying activities during the fiscal year. Exhibit 30, See Part IV, Question 4 (relevant excerpts). The Form 990 was signed by Sam Campana, the executive director of DDC. As described above, Ms. Campana was personally responsible for much of the DDC’s lobbying activity, and was therefore aware of this activity. She nonetheless filed an inaccurate Form 990 which misled the IRS regarding DDC’s lobbying activity.

Attempts to influence legislation, or lobbying, as it is commonly called, represent a major impediment to the granting of section 501(c)(3) status. The Internal Revenue Code provides that an organization cannot qualify under section 501(c)(3) if a “substantial part” of its activities consists of attempts to “influence legislation.” IRC section 501(c)(3).

As we have demonstrated above, DDC’s plans to build the Center within the Preserve necessarily ***required*** a lobbying campaign. From the beginning, DDC recognized that its plans required City Council approval. Exhibit 1. The network of legal protections surrounding the Preserve required that, in order to build the Center within the Preserve, the DDC seek changes to existing laws and regulations designed to protect the Preserve from development. The DDC could not go forward with its plans to build the Center in the Preserve without changes to these laws and regulations, and the DDC has lobbied

extensively, both directly to the Council and in the form of grassroots lobbying, in support of these changes.

Therefore, in filing its Form 1023 and Form 990, DDC has plainly misrepresented the extent of its lobbying activities. In particular, by the time DDC filed its Form 990 on February 14, 2017, DDC had been extensively lobbying members of the Scottsdale City Council, City employees, and the general public to support the building of the Center. Much of this lobbying activity was carried on by Sam Campana, who signed the Form 990. Obviously, if DDC had, in its Form 1023 and Form 990, indicated its plans to engage in lobbying activities, the IRS would, at a minimum, have carefully scrutinized the DDC's activities.

THE DDC IS AN "ACTION ORGANIZATION" AS DEFINED IN IRS REGULATIONS

Section 501(c)(3) provides that an organization is not entitled to a charitable exemption if the organization engages in "substantial" lobbying activity. According to the IRS, "*Direct* lobbying refers to attempts to influence a legislative body through communication with a member or employee of a legislative body, or with a government official who participates in formulating legislation." <https://www.irs.gov/charities-non-profits/direct-and-grass-roots-lobbying-defined>

The definition of "lobbying," also includes "*Grass roots* lobbying [which] refers to attempts to influence legislation by attempting to affect the opinion of the public with respect to the legislation and encouraging the audience to take action with respect to the legislation. In either case, the communications must refer to and reflect a view on the legislation." *Id.*

The IRS regulations also provide that an "action organization" is not entitled to a tax exemption under section 501(c)(3) (although such an organization may be entitled to an exemption under section 501(c)(4)).³ An organization is an "action organization" "if a substantial part of its activities is attempting to influence legislation." The regulations provide that an organization is an "action organization" "if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public." Treas. Reg. section § 1.501(c)(3)-1(c)(3)(iv).

For this purpose, "legislation" includes action by "any local council." Treas. Reg. section § 1.501(c)(3)-1(c)(3)(ii). Thus, actions by the Scottsdale City Council are included within the definition of "legislation." The definition of "legislation" also includes any vote "by the public in a referendum." In addition, the definition of "lobbying" also includes attempts by an organization to influence legislation by "contact[ing], or urg[ing] the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation."

³ Organizations opposing the Center have been formed as section 501(c)(4) organizations in recognition of this rule. Unlike DDC, they are thus unable to accept charitable donations.

A review of DDC's activities clearly establishes that it has violated all of these provisions: (i) it has engaged in repeated direct lobbying of Council members, City employees, and government officials responsible for legislation; (ii) by its own admission, DDC has held "hundreds" of meetings and developed hundreds of "advocates" who have lobbied to build the Center; and (iii) DDC is an "action organization" within the meaning of these definitions, and therefore it is not entitled to section 501(c)(3) status.

First, as the DDC itself recognized, its plan to build the Center inside the Preserve requires approval of the City Council; DDC's plan cannot go forward without such actions. On pages 2 and 3, *supra*, we have outlined the actions required of the Council, all of which are legislative actions. Thus, DDC itself has repeatedly recognized that its "main or primary objective...may be attained only by legislation," i.e., the "approval" of the City Council. Exhibit 1.

Second, DDC and its officers and other representatives have repeatedly sought the "approval" of the City Council by lobbying the City Council and its employees to influence the Council regarding the legislation necessary to build the Center, as listed above on pages 3 and 4, *supra*. Some of these lobbying attempts have taken place in public, as DDC has appeared before City Council meetings in support of proposed actions by the City Council. But much of this lobbying has taken place in private, as DDC officers and representatives have repeatedly met with City Council members and staff members, such as the City Manager and the City Attorney.

Third, DDC and its officers and representatives have made numerous presentations to the general public in order to develop support for the development of the Center. As shown on pages 4 and 5, *supra*, DDC has sought to develop strong "advocates" for the Center and has urged these advocates to contact the City Council. As the name implies, DDC's "advocates" are not nonpartisan, but have spoken in favor of the Center in a partisan matter; they have actually prevented opponents of the Center from making presentations at these meetings. In some instances, the DDC has even attempted to eject members of the public who raised objections to the Center. The representatives of the DDC have not discussed the subject in a nonpartisan manner, but have instead, **by their own admission**, acted as outspoken "advocates" for the Center. Thus, the DDC has not engaged in nonpartisan analysis as is required in Treas. Reg. section § 1.501(c)(3)-1(c)(3)(iv).

These attempts to convince the public to support the Center are "grassroots lobbying," since they are intended to lead the public to put pressure on their elected officials to support the Center. DDC has urged its "advocates" to contact the City Council and to appear at meeting in support of the Center. Indeed, Ms. Campana has distributed an email in which she encouraged its recipients to contact their elected representatives to encourage them to support the DDC. Exhibit 22.

Lobbying activity is "substantial" when it is "not incidental, but [is] substantial and continuous." *Christian Echoes National Ministry, Inc., Plaintiff-Appellee, v. United States of America, Defendant-Appellant*, 470 F. 2d 849 (10th Cir.). As discussed above, DDC's lobbying activities are not "incidental," but rather are a necessary and vital part of its plan to build the Center, since it could not build the Center without Council approval. Exhibit 1. These activities were also continuous, extending throughout DDC's tenure. And these plans were substantial since, as DDC itself has admitted, they were and continue to be critical to gaining City Council approval. Exhibit 28. By its own admission, DDC has held "hundreds" of meetings to develop support for the Center. Exhibit 27. This amount of effort is surely "substantial."

Finally, DDC's actions are particularly egregious since DDC has actively misled the IRS by stating that it would not and has not engaged in lobbying, when it has been engaged in a continuous and substantial lobbying campaign.

CONCLUSION

For the reasons set forth above, the DDC has plainly engaged in "substantial" lobbying, within the meaning of section 501(c)(3) and the relevant regulations, and its tax exemption under section 501(c)(3) should therefore be revoked.