

The Anchor Foundation: A Tax Case Study In The Use Of Foundations By Adversarial Groups

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ABSTRACT

This case study reviews the Anchor Foundation, a private 501(c)(3) foundation associated with the Socialist Workers Party (SWP), a small radical organization. Anchor Foundation made a major sale of real estate that was donated to the Foundation. The case raises issues under the tax rules covering private foundations of "disqualified persons," fiduciary duty of care, excessive compensation, disclosure of contributors, political expenditures, and disclosures in the Form 990s.

Keywords: 501(c)(3) Organization; Private Foundation; Disqualified Persons; Contributor Disclosure

Courses: Tax Treatment of Exempt Organizations; Corporate and Partnership Taxation

INTRODUCTION

This case study reviews a specific instance of possible abuse of tax exemptions by a private foundation¹ that is affiliated with a group adversarial to the U.S. government. Of particular concern in this case is possible loopholes in rules on private inurement for private foundations. The case study examines the Anchor Foundation, relying on tax filings, corporate and real estate documents and personal knowledge.

GENERAL BACKGROUND

The Anchor Foundation is a private 501(c)(3) foundation associated with the Socialist Workers Party (SWP), a small radical organization. The SWP has its origins in a split in the American Communist party (CPUSA) in 1928 when former leaders of CPUSA identified with Leon Trotsky in the conflict with Joseph Stalin in the Russian Communist Party. The SWP has published its newspaper, *The Militant*, since 1928.

The SWP played some role in labor conflicts in the 1930s, in propagating the views of Malcolm X and a in the anti-Vietnam war marches in the 1960s and 1970s.² Nevertheless, the SWP has never exceeded a few thousand members. It is now estimated that the SWP and its supporters number around 300-400 people.³ In the early 1980s 42 percent of the leadership of the SWP was expelled, based on moving the SWP more towards Cuba and away from "orthodox Trotskyism." The SWP left the world Trotskyist movement (the Fourth International) in the late 1980s.

¹ Every 501(c)(3) exempt organization is a private foundation unless it is specifically excluded from the definition of a private foundation. IRC 509(a). There are more than 1.6 million exempt organizations (including about 400,000 religious organizations) with approximately \$2.4 trillion in assets. The IRS established the Tax Exempt and Government Entities Division in 1999 to handle the volume of work.

² Some notable former members include Apple Computers founding engineer Rod Holt; pragmatist philosopher Sidney Hook; Green Party vice-presidential candidate Peter Camejo; political theorist James Burnham; Caribbean author CLR James; and family historian Stephanie Coontz.

³ About 320 people attended the 2013 Active Workers Conference, a gathering of SWP members and supporters in July 2014. Studer, J. (2014).

ANCHOR FOUNDATION

The Anchor Foundation was founded September 19, 1968. There are several other entities associated with the SWP and Anchor Foundation that are also important in this case:

1. 408 Printing and Publishing
2. Pathfinder Press, a division of 408 Printing and Publishing and the main publishing house associated with the SWP
3. 406 West Street Realty, owner of the SWP headquarters
4. *The Militant*

With regard to the exempt purpose of the Anchor Foundation the Summary of Direct Charitable Activities" in the Anchor Foundation generally puts "furthering principally scientific, literary and education activities" in Form 990, Part IX-A, until 2004 at which point "N/A" was used instead. The Anchor Foundation Form 990s also state that on the "Relationship of Activities to the Accomplishment of Exempt Purposes,"

Revenue from the sale of books published by the Organization that was in furtherance of its ongoing charitable purpose. Activities to promote scholarly research and publishing in social history and theory. (Anchor Foundation 2011 Form 990, Part XVI-B.)

However, there was no printing or publishing in the Form 990s during the study period, 1998-2012. While the Anchor Foundation did not publish any books, the Anchor Foundation held stock in Pathfinder Press which did publish books. Also, the Anchor Foundation Form 990s indicate that the Anchor Foundation itself made no contributions, gifts or grants during the study period. (Anchor Foundation various Form 990s, line 25.) The board of directors of Anchor Foundation during the study period, 1998-2012, was composed of

- Jack Barnes, manager
- Mary Alice Waters, manager
- Norton Sandler
- Steve Clark
- David Prince (added on 2004 Form 990)

Jack Barnes and Mary Alice Waters, central leaders of the SWP since the early 1970s, are the key figures in this case. Jack Barnes joined the Young Socialist Alliance (YSA), the SWP-affiliated youth group, in the early 1960s out of Carleton College and became National Secretary of SWP in 1972.

Mary Alice Waters joined the YSA in early 1960s out of Carleton College. She was editor of the *Young Socialist* and National Secretary of Young Socialist Alliance in the 1960s. She later became President of Pathfinder Press and editor of *New International* magazine, the intellectual journal associated with the SWP.

ANCHOR FOUNDATION 1998 TO 2002

In the 1998-2002 period the assets of the Anchor Foundation are shown in Table 1 below:

Table 1. Anchor Foundation Selected Assets, End of Year Book Value, 1998-2002

Selected Assets	1998	1999	2000	2001	2002
Savings	\$397,988	\$156,232	\$271,530	\$447,060	\$1,146,427
Corporate Stock	\$695,330	\$1,582,680	\$1,736,678	\$1,625,198	\$635,000
Corporate bonds	\$70,479	\$71,913	\$73,347	\$74,781	
Investment, Land, Buildings	\$0	\$0	\$7,900,000	\$7,859,487	\$8,130,770
Mortgage Loan	\$159,900	\$139,900	\$119,900	\$114,900	\$114,900
Copyrights	0	0	0	0	0

Source: Anchor Foundation, Form 990s, 1998-2002.

There are four aspects Table 1 worth noting:

First, 408 Printing and Publishing stock (part of Corporate Stock in Table 1 above) was valued at \$140,000 in 1998, but \$635,000 in 1999.

Second, there was a large growth in the amount and value of corporate stock outside from 1998 to 1999 in 408 Printing and Publishing. This other corporate stock was then sold at a \$203,872 loss in 2002.

Third, there were no generally copyrights, or trademarks listed in most of the Form 990s, but \$70,000 in copyrights and \$230,000 in trademarks do appear in the 2003 Anchor Foundation Form 990. However, according to copyright.org from 1972 to 2003 the Anchor Foundation held 26 copyrights, including the copyrights to SWP publications:

- *The Militant*
- *Perspectiva Mundial* (Spanish language SWP periodical)
- *New International*
- *Nouvelle Internationale* (French language SWP journal)
- Other copyrights held by SWP-related organization were as follows:
 - Pathfinder Press 1967 to 2010: 306 copyrights, including exclusive publishing rights to Malcolm X material with Betty Shabazz, the widow of Malcolm X
 - Monad Press 1977 to 1985: 19 copyrights
 - 408 Printing & Publishing 1991-2002: 18 copyrights

The holding of the copyright to *The Militant* is of particular interest because the paper regularly promoted SWP candidates for political office. However, the Anchor Foundation Form 990 consistently stated that Anchor Foundation did not "participate or intervene in any political campaign." (Anchor Foundation, Form 990, Part VII-A.1a)

Fourth, and most important, in December 2000 406 West Street Realty Corp. donated 79 percent ownership in 410 West Street building to the Anchor Foundation. (Anchor Foundation, 2001 Form 990) The SWP moved into the 410 West Street building in 1971. According to the 410 West Street deed, Victor Ulrich, Inc. had an office in the building and sold the building to 406 West Realty Corp in 1973 for \$10 and "other valuable consideration." (Victor Ulrich Deed, 1973) Mary Alice Waters was president of 406 West Realty Corp in 1976. By the late 1970s SWP had a full time staff of 100, a professional printing press, and an active publishing office for Pathfinder Press at 410 West Street.

THE SALE OF 410 WEST STREET

The key event in this case is the sale of 410 West Street. In June 2003, about three years after part ownership was donated to the Anchor Foundation, 410 West Street was sold by 406 West Street Realty Corp (signed for by Jack Barnes) and Anchor Foundation (signed for by Norton Sandler) for \$20 million to 410 West LLC (City of New York, 2003). The 410 West LLC is a private company with no apparent relationship to the SWP (New York State, 2003). The 2003 Anchor Foundation Form 990 reported that the Anchor Foundation received about \$15.5 million for the sale of property. So presumably the other \$4.5 million went to 406 West Street Realty Corp. However, 406 West Street Realty no longer exists. (the liquidation documents for 408 Printing and Publishing Corp. have not been found).

In May 2003, soon after the sale of 410 West Street, a for-profit version of the Anchor Foundation, Inc. with Steve Clark and Norton Sandler (who was still on the board of the Anchor Foundation) as officers was established in Georgia. According to 2014 Hoover's reports Anchor Foundation Inc. had 3 employees, \$390,000 in annual sales and \$550,000 net income for 2013, and the same New York office address as the Anchor Foundation (Anchor Foundation, 2014).

Also in 2003 408 Printing and Publishing Corp stock and 408 Printing and Publishing Corp bonds were sold for \$0, despite having a market value of \$635,000 in 2002. Nevertheless, Pathfinder Press, formerly a division of 408 Printing and Publishing Corp, still exists and has an Atlanta PO box (www.pathfindepress.com).

One interesting component of the 2003 West Street transaction was the “Finder’s Fee & Supervisory Services” for sale of 410 West St that was paid to Jack Barnes (\$475,000) and Mary Alice Waters (\$263,735), for a total finder's fee of \$738,735, 3.7% of the sale price (Anchor Foundation 2004 Form 990).

The other expenses of the 410 West St. sale were only \$165,548, or 0.8% of the sale price.

Following the sale of 410 West St. there was a 192.7 percent increase in the salaries of Jack Barnes and Mary Alice Waters from 2002 to 2012, as shown in Table 2 below. The other members of the Anchor Foundation board of directors received no compensation. However, Barnes and Waters did apparently contribute over \$230,000 to the Anchor Foundation from 2002 to 2012 (Anchor Foundation Form 990s, Schedule B, Schedule of Contributors, various years).

Table 2. Anchor Foundation Salary Increases, Percent of Expenses, Percent of Assets for Jack Barnes and Mary-Alice Waters, 1998-2012

Year	Barnes/ Waters Combined Salaries	Barnes/Waters Percent of Salaries as % of Anchor Foundations Expenses	Barnes/Waters Salaries as % of Anchor Foundations Assets
1998	\$47,600	37.8%	3.5%
1999	\$ --	0.0%	0.0%
2000	\$60,000	38.8%	0.6%
2001	\$61,200	22.4%	0.6%
2002	\$68,000	23.4%	0.7%
2003	\$122,400	5.6%	0.8%
2004	\$130,900	12.5%	0.9%
2005	\$127,500	10.3%	1.0%
2006	\$148,000	12.9%	1.1%
2007	\$167,400	12.4%	1.4%
2008	\$184,000	15.1%	1.6%
2009	\$167,400	14.4%	1.5%
2010	\$188,800	16.0%	1.9%
2011	\$188,800	17.6%	2.0%
2012	\$199,040	17.0%	2.3%

Source: Anchor Foundation, Form 990s, 1999-2013.

At the same time there was a steady increase in Anchor Foundation expenses and decline in Anchor Foundation assets (by 42.4 percent) from 1998-2012, as shown in Table 3. Average annual expenses for Anchor Foundation before the sale were \$185,723, while average annual expenses after the sale were \$1,175,533, a 533 percent increase.

Table 3. Anchor Foundation Expenses and Assets, 1998-2012

Year	Expenses	Assets
1998	\$125,982	\$1,361,707
1999	\$84,889	\$1,986,804
2000	\$154,523	\$10,180,671
2001	\$272,928	\$10,327,397
2002	\$290,292	\$10,298,069
2003	\$2,193,515	\$15,270,875
2004	\$1,044,208	\$14,220,468
2005	\$1,236,950	\$13,314,812
2006	\$1,149,938	\$12,945,166
2007	\$1,347,485	\$12,237,586
2008	\$1,219,147	\$11,690,130
2009	\$1,161,445	\$10,800,368
2010	\$1,180,436	\$10,056,689
2011	\$1,071,308	\$9,368,100
2012	\$1,168,884	\$8,798,182
Total Expenses	\$13,336,536	
Average Expenses 1998-2002	\$185,723	
Average Expenses 2004-2012	\$1,175,533	
Average Expenses 1998-2012	\$913,462	

Source: Anchor Foundation, Form 990s, 1999-2013.

This spending pattern on the part of the Anchor Foundation is then reflected in a steady patterns of losses after 2004, as shown in Table 4 below. Anchor Foundation losses averaged over \$665,000 a year from 2004 to 2012, while only having one year of a modest loss (\$41,060) from 1998 through 2003.

Table 4. Anchor Foundation Gain/Loss, 1998-2012

Year	Excess Revenue [Gain/(Loss)]
1998	\$155,035
1999	\$412,925
2000	\$8,389,329
2001	\$133,453
2002	\$(41,060)
2003	\$4,898,536
2004	\$(688,964)
2005	\$(790,744)
2006	\$(366,046)
2007	\$(711,714)
2008	\$(477,615)
2009	\$(944,097)
2010	\$(775,879)
2011	\$(683,881)
2012	\$(549,998)
Average Loss 2004-2012	\$(665,438)

Source: Anchor Foundation, Form 990s, 1999-2013.

ANCHOR FOUNDATION CONTRIBUTIONS

Another interesting aspect of the Anchor Foundation is contributor disclosure. The SWP took a case all the way to the U.S. Supreme Court to prevent the disclosure of contributors to the Socialist Workers National Campaign Committee (*Brown v. Socialist Workers Comm*, 1982). This disclosure exemption is now known as the “Socialist Workers Exception” in federal election campaign law. There was still no disclosure of names of contributors to Socialist Workers National Campaign Committee for president as of 2016 (Candidate and Committee Viewer, 2016).

Research uncovered no public fund raising campaigns for the Anchor Foundation, unlike other SWP activities. There is no mention of Anchor Foundation in *The Militant*. Nevertheless, the Anchor Foundation did receive substantial cash contributions over the study period as shown in Table 5.

Table 5. Anchor Foundation Cash Contributions, 1999-2012

Year	Cash Contributions
1999	\$365,815
2000	\$160,020
2001	\$385,924
2002	\$372,735
2003	\$315,474
2004	\$195,265
2005	\$88,845
2006	\$225,908
2007	\$133,904
2008	\$508,110
2009	\$132,500
2010	\$292,075
2011	\$325,500
2012	\$579,500
Average Annual Cash Contribution	\$291,541

Source: Anchor Foundation, Form 990s, 2000-2013.

Private foundations, unlike most exempt organizations, are not exempt from disclosing contributors (Reg. § 301.6104(b)-1). The Anchor Foundation, unlike the SWP National Campaign Committee, did disclose their contributors. There were 58 contributors to Anchor Foundation that are listed by name across the Form 990s, but many, if not most, of the donations formed an idiosyncratic pattern. For example,

- Gates gave \$205,000 in 2008, but nothing before or after 2008.
- Hazboun gave \$7,000 to \$15,000 every year, then \$190,000 in 2011.
- Nixon gave \$8,000 in 2005, then nothing for five years, followed by \$140,000 in 2015 and \$85,000 in 2011.

These patterns raise the question of whether these donations were actual contributions of individuals, or were these individuals "fronts" for other contributors.

CONCLUSION

A longtime leader of the SWP made the following statement:

- "...information about the finances and legal ownership of the party enterprises was kept close to the vest. Only a handful of people, literally a handful, knew the facts in detail ... In the early 70s, for example, I was officially responsible for Pathfinder Press for several years, yet I knew far less about its finances and ownership structure than one would expect." (G. Horwitz, 2012)

This statement raises questions about the patterns exhibited in the facts summarized above. These facts in this case raise a number of tax law issues, enumerated below.

AUTHOR BIOGRAPHY

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- Reg. § 301.6104(b)-1.

CASE STUDY QUESTIONS

1. Are Barnes and Waters "disqualified persons" for the purposes of the tax rules covering private foundations? If so, do the Barnes /Waters finder's fees for the sale of 410 West Street violate any tax rules? Start with
 - ▶ IRC § 4941(c)
 - ▶ IRC § 4946
2. Do the increases in Barnes/Waters compensation violate any tax rules on excessive compensation for staff of private foundations? Start with
 - ▶ IRC § 53.4941(d)-3(c)(1)
 - ▶ Regs § 53.4958-6(a)
 - ▶ Yeckel v. Abbott, Ct. of App. TX, Third District (6/4/09)
 - ▶ Kermit Fischer Foundation v. Commissioner, T.C. Memo 1990-300
3. Does the decline in assets and the spending of the Anchor Foundation violate any fiduciary duty of care under the tax rules for foundations? Start with
 - ▶ IRC § 4944.
 - ▶ Reg. 53.4944-1(a)(2)(i)
 - ▶ Internal Revenue Manual Private Foundation Handbook (IRM 7.8.3) chapter on IRC 4944, at 16.2.3(3)
4. Do you see anything untoward in the disclosure of contributors by the Anchor Foundation? Start with
 - ▶ 5 U.S.C. 552
 - ▶ IRC § 6103
 - ▶ IRC § 6104
 - ▶ Reg. § 301.6104(b)-1
5. Did the Anchor Foundation violate any rules on political expenditures given the relationship between the Anchor Foundation and the SWP? Start with
 - ▶ IRC § 4955
6. Did the Anchor Foundation violate any rules on businesses holdings in its relationships with 408 Printing and Publishing? Start with
 - ▶ IRC § 4943(a)(1)
7. Did the Anchor Foundation violate any rules on disclosures in the Form 990s by not reporting copyrights that are reported at copyright.org? Start with
 - ▶ IRC § 6707

Background Research Sources

General instructions for filing out Form 990 are located at: <http://www.irs.gov/instructions/i990/ch02.html#d0e10411>
Collect Form 990s for Anchor Foundation from Guidestar at Guidestar.org and the Economic Research Institute at <http://www.eri-nonprofit-salaries.com/?FuseAction=NPO.Search>.
Collect information on real estate transactions at: City of New York, Office of the City Registrar, Automated City Registration Information System, a836-acris.nyc.gov.
Collect New York corporate transactions at: New York State, Department of State, Division of Corporate State Records & UCC at http://www.dos.ny.gov/corps/bus_entity_search.html