

Texas Defender Service

Financial Statements
and Independent Auditors' Report
for the years ended December 31, 2023 and 2022

Texas Defender Service

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Independent Auditors' Report

To the Board of Directors of
Texas Defender Service:

Report on the Audit of the Financial Statements

Opinion

We have audited the financial statements of Texas Defender Service, which comprise the statements of financial position as of December 31, 2023 and 2022, and the related statements of activities, of functional expenses, and of cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of Texas Defender Service as of December 31, 2023 and 2022, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the *Auditors' Responsibilities for the Audit of the Financial Statements* section of our report. We are required to be independent of Texas Defender Service and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Texas Defender Service's ability to continue as a going concern for one year after the date that the financial statements are available to be issued.

Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and

therefore, is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Texas Defender Service's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Texas Defender Service's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Blazek & Vetterling

June 7, 2024

Texas Defender Service

Statements of Financial Position as of December 31, 2023 and 2022

	<u>2023</u>	<u>2022</u>
ASSETS		
Cash	\$ 1,518,982	\$ 1,661,060
Accounts receivable and other assets	703,255	587,655
Operating right-of-use assets <i>(Note 3)</i>	256,494	33,637
Property and equipment, net <i>(Note 4)</i>	<u>6,607</u>	<u>4,392</u>
TOTAL ASSETS	<u>\$ 2,485,338</u>	<u>\$ 2,286,744</u>
LIABILITIES AND NET ASSETS		
Liabilities:		
Accounts payable and accrued expenses	\$ 19,614	\$ 34,638
Operating lease liability <i>(Note 3)</i>	268,614	35,680
Agency funds <i>(Note 5)</i>	<u>37,845</u>	<u>8,920</u>
Total liabilities	<u>326,073</u>	<u>79,238</u>
Net assets:		
Without donor restrictions	2,030,515	2,080,782
With donor restrictions <i>(Note 6)</i>	<u>128,750</u>	<u>126,724</u>
Total net assets	<u>2,159,265</u>	<u>2,207,506</u>
TOTAL LIABILITIES AND NET ASSETS	<u>\$ 2,485,338</u>	<u>\$ 2,286,744</u>

See accompanying notes to financial statements.

Texas Defender Service

Statement of Activities for the year ended December 31, 2023

	WITHOUT DONOR RESTRICTIONS	WITH DONOR RESTRICTIONS	TOTAL
REVENUE:			
Contributions	\$ 340,360	\$ 249,650	\$ 590,010
Litigation income	328,195		328,195
Mitigation income	968,177		968,177
Special event	215,654		215,654
Cost of direct donor benefits	(42,063)		(42,063)
Other income	<u>24,409</u>		<u>24,409</u>
Total revenue	1,834,732	249,650	2,084,382
Net assets released from restrictions:			
Expenditure for program purposes	<u>247,624</u>	<u>(247,624)</u>	
Total	<u>2,082,356</u>	<u>2,026</u>	<u>2,084,382</u>
EXPENSES:			
Programs	1,792,464		1,792,464
Management and general	231,467		231,467
Fundraising	<u>108,692</u>		<u>108,692</u>
Total expenses	<u>2,132,623</u>		<u>2,132,623</u>
CHANGES IN NET ASSETS	(50,267)	2,026	(48,241)
Net assets, beginning of year	<u>2,080,782</u>	<u>126,724</u>	<u>2,207,506</u>
Net assets, end of year	<u>\$ 2,030,515</u>	<u>\$ 128,750</u>	<u>\$ 2,159,265</u>

See accompanying notes to financial statements.

Texas Defender Service

Statement of Activities for the year ended December 31, 2022

	WITHOUT DONOR RESTRICTIONS	WITH DONOR RESTRICTIONS	TOTAL
REVENUE:			
Contributions	\$ 391,255	\$ 138,500	\$ 529,755
Government grants		195,465	195,465
Litigation income	358,684		358,684
Mitigation income	915,170		915,170
Special event	152,689		152,689
Cost of direct donor benefits	(36,744)		(36,744)
Gain on sale of property	171,325		171,325
Other income	<u>11,731</u>	<u> </u>	<u>11,731</u>
Total revenue	1,964,110	333,965	2,298,075
Net assets released from restrictions:			
Expenditure for program purposes	<u>256,633</u>	<u>(256,633)</u>	<u> </u>
Total	<u>2,220,743</u>	<u>77,332</u>	<u>2,298,075</u>
EXPENSES:			
Programs	1,565,654		1,565,654
Management and general	252,523		252,523
Fundraising	<u>95,029</u>		<u>95,029</u>
Total expenses	<u>1,913,206</u>		<u>1,913,206</u>
CHANGES IN NET ASSETS	307,537	77,332	384,869
Net assets, beginning of year	<u>1,773,245</u>	<u>49,392</u>	<u>1,822,637</u>
Net assets, end of year	<u>\$ 2,080,782</u>	<u>\$ 126,724</u>	<u>\$ 2,207,506</u>

See accompanying notes to financial statements.

Texas Defender Service

Statement of Functional Expenses for the year ended December 31, 2023

	<u>PROGRAMS</u>	<u>MANAGEMENT AND GENERAL</u>	<u>FUNDRAISING</u>	<u>TOTAL</u>
Salaries	\$ 1,058,335	\$ 100,678	\$ 59,846	\$ 1,218,859
Employee benefits and taxes	297,445	28,297	16,821	342,563
Travel and training	153,975	14,646	8,707	177,328
Occupancy	119,315	11,351	6,747	137,413
Professional fees	9,892	62,037	560	72,489
Contract labor	46,888	4,460	2,651	53,999
Postage, computer, and office supplies	35,909	3,416	2,030	41,355
Dues and subscriptions	31,707	2,087	1,241	35,035
Telephone and internet	20,374	1,938	1,152	23,464
Insurance	11,563	1,100	654	13,317
Printing and reproduction	4,092	390	232	4,714
Depreciation	2,966	283	167	3,416
Other	<u>3</u>	<u>784</u>	<u>7,884</u>	<u>8,671</u>
Total expenses	<u>\$ 1,792,464</u>	<u>\$ 231,467</u>	<u>\$ 108,692</u>	2,132,623
Percent of total expenses	84.05%	10.85%	3.10%	
Cost of direct donor benefits				<u>42,063</u>
Total				<u>\$ 2,174,686</u>

See accompanying notes to financial statements.

Texas Defender Service

Statement of Functional Expenses for the year ended December 31, 2022

	<u>PROGRAMS</u>	<u>MANAGEMENT AND GENERAL</u>	<u>FUNDRAISING</u>	<u>TOTAL</u>
Salaries	\$ 914,094	\$ 104,999	\$ 50,148	\$ 1,069,241
Employee benefits and taxes	229,140	26,319	12,571	268,030
Travel and training	137,526	15,797	7,545	160,868
Occupancy	109,131	12,536	5,986	127,653
Professional fees	17,044	80,120	935	98,099
Contract labor	63,426			63,426
Postage, computer, and office supplies	23,626	2,714	1,296	27,636
Dues and subscriptions	32,042	2,656	1,269	35,967
Telephone and internet	17,431	2,002	956	20,389
Insurance	14,515	1,668	796	16,979
Printing and reproduction	462	53	25	540
Depreciation	6,697	769	368	7,834
Other	<u>520</u>	<u>2,890</u>	<u>13,134</u>	<u>16,544</u>
Total expenses	<u>\$ 1,565,654</u>	<u>\$ 252,523</u>	<u>\$ 95,029</u>	1,913,206
Percent of total expenses	81.83%	13.20%	4.97%	
Cost of direct donor benefits				<u>36,744</u>
Total				<u>\$ 1,949,950</u>

See accompanying notes to financial statements.

Texas Defender Service

Statements of Cash Flows for the years ended December 31, 2023 and 2022

	<u>2023</u>	<u>2022</u>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Changes in net assets	\$ (48,241)	\$ 384,869
Adjustments to reconcile changes in net assets to net cash used by operating activities:		
Depreciation	3,416	7,834
Amortization of operating right-of-use assets	60,022	68,736
Gain on sale of asset		(171,325)
Changes in operating assets and liabilities:		
Accounts receivable and other assets	(115,600)	(166,041)
Accounts payable and accrued expenses	(15,024)	(8,417)
Operating lease liability	(49,945)	(66,693)
Refundable advance for PPP loan		(193,530)
Agency funds	<u>28,925</u>	<u>(27,388)</u>
Net cash used by operating activities	<u>(136,447)</u>	<u>(171,955)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(5,631)	
Disposals of property and equipment	<u> </u>	<u>611,174</u>
Net cash provided (used) by investing activities	<u>(5,631)</u>	<u>611,174</u>
NET CHANGE IN CASH	(142,078)	439,219
Cash, beginning of year	<u>1,661,060</u>	<u>1,221,841</u>
Cash, end of year	<u>\$ 1,518,982</u>	<u>\$ 1,661,060</u>
<i>Supplemental disclosure of cash flow information:</i>		
Noncash investing and financing transactions:		
Operating lease obligation for office space	\$282,879	

See accompanying notes to financial statements.

Texas Defender Service

Notes to Financial Statements for the years ended December 31, 2023 and 2022

NOTE 1 – ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization – Texas Defender Service (TDS) is a non-profit organization located in Austin. Founded in 1995, TDS provides direct representation to indigent inmates on Texas’ death row, consults with other lawyers litigating such cases, intervenes in cases where expert legal assistance is urgently needed, and engages in issue advocacy aimed at improving the Texas criminal justice system. TDS’ mission is to establish a fair and just criminal justice system in Texas. There are five aspects of TDS’ work, all of which aim to improve the fairness of the proceedings or quality of representation provided to indigent persons in Texas, as follows:

- *Trial Project* provides trial litigation, training, and consulting aimed at reducing new death sentences.
- *Post-Conviction* provides post-conviction litigation and consulting aimed at reducing new death sentences.
- *Mitigation Project* works on trial and post-conviction cases across the state on behalf of those facing death sentences and those sentenced to death.
- *Policy Advocacy* provides systemic research, advocacy, and report publication regarding Texas death penalty and criminal justice issues.
- *Capital Litigation Communication* is a comprehensive campaign designed to increase the chances for capital litigation success and erode public confidence in the death penalty.

Federal income tax status – TDS is exempt from federal income tax under §501(c)(3) of the Internal Revenue Code (the Code) and is classified as a public charity under §509(a)(1) and §170(b)(1)(A)(vi).

Cash – Bank deposits exceed the federally insured limit per depositor per institution.

Accounts receivable represent TDS’ right to consideration that is conditioned only upon the passage of time for performance obligations already satisfied. Management estimates expected credit losses on accounts receivable based on historical collection experience adjusted for management’s expectations about current and future economic conditions, which indicate that there are no expected credit losses at December 31, 2023 or 2022.

Property and equipment is reported at cost if purchased and at estimated fair value at the date of gift if donated. TDS capitalizes items over \$1,000 with a useful life of more than one year. Depreciation is calculated on a straight-line basis over estimated useful lives of 3 to 40 years.

Net asset classification – Net assets, revenue, gains, and losses are classified based on the existence or absence of donor-imposed restrictions, as follows:

- *Net assets without donor restrictions* are not subject to donor-imposed restrictions even though their use may be limited in other respects such as by contract or board designation.
- *Net assets with donor restrictions* are subject to donor-imposed restrictions. Restrictions may be temporary in nature, such as those that will be met by the passage of time or use for a purpose specified by the donor, or may be perpetual in nature, where the donor stipulates that resources be maintained in perpetuity. Net assets are released from restrictions when the stipulated time has elapsed, or purpose has been fulfilled, or both.

Contributions are recognized as revenue when an unconditional commitment is received from the donor. Contributions received with donor stipulations that limit their use are classified as restricted revenue.

Litigation and mitigation income is recognized as revenue at the point in time the service is provided. There are no contract assets or liabilities arising from this revenue at December 31, 2023, 2022 or 2021. Accounts receivable was \$689,815, \$572,698, and \$410,688 at December 31, 2023, 2022 and 2021, respectively.

Special event revenue includes elements of both contributions and exchange transactions and is recognized when an event occurs. The cost of direct donor benefits represent the costs of goods and services provided to event attendees. Amounts received in advance of the event are reported as deferred revenue.

Functional allocation of expenses – Expenses are reported by their functional classification. Program services are the direct conduct or supervision of activities that fulfill the purposes for which the organization exists. Fundraising activities include the solicitation of contributions of money, securities, materials, facilities, other assets, and time. Management and general activities are not directly identifiable with specific program or fundraising activities. Expenses that are attributable to more than one activity are allocated among the activities benefitted. Salaries and related costs are allocated on the basis of estimated time and effort expended. Occupancy and depreciation costs are allocated based on square footage.

Estimates – Management must make estimates and assumptions to prepare financial statements in accordance with generally accepted accounting principles. These estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, the amounts reported as revenue and expenses, and the allocation of expenses among various functions. Actual results could vary from the estimates that were used.

NOTE 2 – LIQUIDITY AND AVAILABILITY OF RESOURCES

Financial assets available for general expenditure, that is, without donor or other restrictions limiting their use within one year of December 31 comprise the following:

	<u>2023</u>	<u>2022</u>
Financial assets:		
Cash	\$ 1,518,982	\$ 1,661,060
Accounts receivable	<u>689,815</u>	<u>572,698</u>
Total financial assets	2,208,797	2,233,758
Less financial assets not available for general expenditure:		
Board-designated reserve	(732,621)	(732,621)
Agency funds	<u>(37,845)</u>	<u>(8,920)</u>
Total financial assets available for general expenditure	<u>\$ 1,438,331</u>	<u>\$ 1,492,217</u>

For purposes of analyzing resources available to meet general expenditures over a 12-month period, TDS considers all expenditures related to its ongoing program activities, as well as the conduct of services undertaken to support those activities, to be general expenditures.

TDS is substantially supported by litigation, mitigation, and contribution income and regularly monitors the liquidity required to meet its operating needs. TDS has a board-designated reserve which may be drawn upon, if necessary.

NOTE 3 – OPERATING LEASE

TDS leases office space in Austin under a non-cancelable operating lease. Right-of-use assets are recognized at the present value of the lease payments at the inception of the lease adjusted, as appropriate, for certain other payments and allowances related to obtaining the lease and placing the asset in service. Operating lease right-of-use assets are amortized so that lease costs remain constant over the lease term.

During 2023, the lease cost associated with the operating lease was \$74,985. During 2022, the lease cost associated with the operating lease was \$66,786.

During 2023 and 2022, cash paid for amounts included in the measurement of the operating lease liability was \$63,177 and \$70,935, respectively.

As of December 31, 2023 and 2022, the weighted-average remaining lease term for all operating leases was 56 and 6 months, respectively. The weighted-average discount rate associated with operating leases as of December 31, 2023 and 2022 is 8.00% and 3.00%, respectively.

Undiscounted cash flows related to operating leases as of December 31, 2023 are as follows:

2024	\$ 66,387
2025	68,379
2026	70,431
2027	72,544
2028	<u>43,204</u>
Total	320,945
Less discount to present value	<u>(52,331)</u>
Total present value of lease liability	<u>\$ 268,614</u>

NOTE 4 – PROPERTY AND EQUIPMENT

Property and equipment is comprised of the following:

	<u>2023</u>	<u>2022</u>
Leasehold improvements		\$ 9,739
Furniture and equipment	<u>\$ 38,176</u>	<u>82,119</u>
Total property and equipment, at cost	38,176	91,858
Accumulated depreciation	<u>(31,569)</u>	<u>(87,466)</u>
Property and equipment, net	<u>\$ 6,607</u>	<u>\$ 4,392</u>

NOTE 5 – AGENCY FUNDS

TDS holds funds in its cash accounts for the Capital Litigation Communications project. TDS has limited control over these funds and the receipts and disbursements are not reported as revenue and expenses of TDS. Balances and activities of these funds are summarized as follows:

Balance at December 31, 2021	\$ 36,308
Receipts	370,068
Disbursements	<u>(397,456)</u>
Balance at December 31, 2022	8,920
Receipts	428,340
Disbursements	<u>(399,415)</u>
Balance at December 31, 2023	<u>\$ 37,845</u>

NOTE 6 – NET ASSETS WITH DONOR RESTRICTIONS

Net assets with donor restrictions are restricted as follows:

	<u>2023</u>	<u>2022</u>
Subject to expenditure for specified purpose:		
Fellowship salaries	\$ 31,250	\$ 34,166
White paper report	22,500	
Social media and communications		13,500
Victim Outreach Project		4,058
Subject to passage of time for future operating periods	<u>75,000</u>	<u>75,000</u>
Total net assets with donor restrictions	<u>\$ 128,750</u>	<u>\$ 126,724</u>

NOTE 7 – SUBSEQUENT EVENTS

Management has evaluated subsequent events through June 7, 2024, which is the date that the financial statements were available for issuance. As a result of this evaluation, no events were identified that are required to be disclosed or would have a material impact on reported net assets or changes in net assets.
