

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. No. 14-15978

CENTER FOR COMPETITIVE POLITICS,

Plaintiff-Appellant,

v.

KAMALA D. HARRIS,
in her official capacity as the Attorney General of California

Defendant-Appellee.

**PLAINTIFF-APPELLANT CENTER FOR COMPETITIVE POLITICS'S
EXCERPTS OF RECORD**

Appeal from the Judgment of the United States District Court
for the Eastern District of California
D.C. No. 14-cv-00636-MCE-DAD
(Honorable Morrison C. England)

ALAN GURA
CA Bar No. 178,221
Gura & Possessky, PLLC
105 Oronoco Street
Suite 305
Telephone: (703) 835-9085
Facsimile: (703) 997-7665
Email: alan@gurapossessky.com

ALLEN J. DICKERSON
124 S. West St.
Suite 201
Alexandria, VA 22314
Telephone: (703) 894-6800
Facsimile: (703) 894-6811
Email: adickerson@campaignfreedom.org

Attorneys for Appellant
CENTER FOR COMPETITIVE POLITICS

TABLE OF CONTENTS

	<u>Page</u>
05/15/14 [DOC #18] NOTICE OF APPEAL.....	1
05/14/14 [DOC #17] MEMORANDUM AND ORDER.....	4
04/17/14 EXCERPT OF REPORTER’S TRANSCRIPT ARGUMENT ON PRELIMINARY INJUNCTION....	17
04/14/14 [DOC #13] REQUEST FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY.....	28
04/03/14 [DOC #10-2] DEFENDANT’S EXHIBIT A, BLANK PUBLIC FORM 990.....	29
04/03/14 [DOC #10-3] DEFENDANT’S EXHIBIT B, BLANK FORM 990 SCHEDULE B.....	43
04/03/14 [DOC #10-8] DECLARATION OF KEVIS FOLEY...	49
03/07/14 [DOC #1] PLAINTIFF’S COMPLAINT.....	52
03/07/14 [DOC #1-1] PLAINTIFF’S EXHIBIT 1, LETTER FROM DEFENDANT TO PLAINTIFF.....	61
06/10/14 DOCKET SHEET.....	62

1 Alan Gura, Calif. Bar No. 178,221
2 Gura & Possessky, PLLC
3 105 Oronoco Street, Suite 305
4 Alexandria, VA 22314
5 703.835.9085/Fax 703.997.7665
6 alan@gurapossessky.com

7 Allen Dickerson*
8 Center for Competitive Politics
9 124 S. West Street, Suite 201
10 Alexandria, VA 22314
11 703.894.6800/Fax 703.894.6811
12 adickerson@campaignfreedom.org
13 *Admitted *pro hac vice*

14 UNITED STATES DISTRICT COURT

15 EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO

16 CENTER FOR COMPETITIVE
17 POLITICS,

18 Plaintiff,

19 v.

20 KAMALA D. HARRIS, IN HER
21 OFFICIAL CAPACITY AS ATTORNEY
22 GENERAL OF THE STATE OF
23 CALIFORNIA,

24 Defendant.

2:14-CV-00636-MCE-DAD

PRELIMINARY INJUNCTION APPEAL

25 Notice is hereby given that the Center for Competitive Politics, plaintiff in the above
26 named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from an
27 order denying Plaintiff's Motion for a Preliminary Injunction entered in this action on the 14th
28 day of May, 2014.

Preliminary Injunction Appeal

1

Cntr. for Competitive Politics v. Harris

1 Dated: May 15, 2014

Respectfully submitted,

2 /s/ Alan Gura

/s/ Allen Dickerson

3 Alan Gura, Calif. Bar No. 178,221

Allen Dickerson*

Gura & Possesky, PLLC

Center for Competitive Politics

4 105 Oronoco Street, Suite 305

124 S. West St., Suite 201

Alexandria, VA 22314

Alexandria, VA 22314

5 703.835.9085/Fax 703.997.7665

703.894.6800/Fax 703.894.6811

6 alan@gurapossesky.com

adickerson@campaignfreedom.org

*Admitted *pro hac vice*

7
8 *Attorneys for Plaintiff*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 Preliminary Injunction Appeal

2

Cntr. for Competitive Politics v. Harris

2

CERTIFICATE OF SERVICE

Case Name: **Center for Competitive Politics** No. **2:14-cv-00636-MCE-DAD**
v. Kamala Harris

I hereby certify that on May 15, 2014, I electronically filed the following document with the Clerk of the Court using the CM/ECF system:

NOTICE OF APPEAL – PRELIMINARY INJUNCTION APPEAL

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 15, 2014, at Alexandria, Virginia.

Allen Dickerson
Declarant

/s/ Allen Dickerson
Signature

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CENTER FOR COMPETITIVE
POLITICS,

Plaintiff,

v.

KAMALA HARRIS,

Defendant.

No. 2:14-cv-00636-MCE-DAD

MEMORANDUM AND ORDER

On March 7, 2014, Plaintiff Center for Competitive Politics ("Plaintiff") filed a Complaint for Declaratory and Injunctive Relief against Defendant Kamala Harris in her official capacity as Attorney General of the State of California ("Defendant"). Compl., ECF No. 1. Plaintiff then filed a motion for a preliminary injunction seeking to enjoin Defendant from requiring an unredacted copy of Plaintiff's IRS Form 990 Schedule B as a condition of soliciting funds in California. ECF No. 9. Defendant opposed the Motion, ECF No. 10, and the Court held a hearing on the Motion on April 17, 2014. At the hearing, the Court took the Motion under submission; this written order follows. For the following reasons, Plaintiff's Motion for a Preliminary Injunction, ECF No. 9, is DENIED.

///

///

///

1 BACKGROUND¹

2
3 Plaintiff is a Virginia nonprofit corporation recognized by the Internal Revenue
4 Service as a § 501(c)(3) educational organization. To support its activities, Plaintiff
5 solicits charitable contributions nationwide. In order to legally solicit tax-deductible
6 contributions in California, an entity must be registered with the state's Registry of
7 Charitable Trusts ("Registry"), which is administered by California's Department of
8 Justice. To maintain membership in the Registry, nonprofit corporations must file annual
9 periodic written reports with the state Attorney General, which include the Annual
10 Registration Renewal Fee Report as well as the Internal Revenue Service Form 990.
11 Form 990 has a supplement, Schedule B, which lists the names and addresses of an
12 organization's contributors.²

13 Plaintiff has been a member of the Registry since 2008. On January 9, 2014,
14 Plaintiff filed its Annual Registration Renewal Fee Report with Defendant, including a
15 copy of its Form 990 and a redacted version of its Schedule B omitting the names and
16 addresses of its contributors. Plaintiff subsequently received a letter from Defendant
17 dated February 6, 2014 ("Letter"). See ECF No. 1-1. In the Letter, Defendant
18 acknowledged receipt of Plaintiff's periodic written report, but stated that "[t]he filing is
19 incomplete because the copy of [its] Schedule B, Schedule of Contributors, does not
20 include the names and addresses of contributors." Id. (emphasis omitted). The Letter
21 states that "[t]he Registry retains Schedule B as a confidential record for IRS Form 990
22 and 990-EZ filers" and requires that Plaintiff must "[w]ithin 30 days of the date of this
23 letter . . . submit a complete copy of Schedule B, Schedule of Contributors, for the fiscal
24 year noted above, as filed with the Internal Revenue Service." Id. (emphasis omitted).

25 _____
26 ¹ The facts are taken, often verbatim, from Plaintiff's Complaint, ECF No. 1, and Motion, ECF
No. 9, unless stated otherwise.

27 ² To reduce the reporting burden on filers, Defendant adopted IRS Form 990 as the primary
28 reporting document for charitable entities required to file annual reports with the Registry. Opp'n, ECF
No. 10 at 11 (citing Cal. Code Regs. tit. 11, § 301). The Schedule B filed by public charities is treated as a
confidential document and is not made available for public viewing. See id.; ECF No. 10-8 at 2-3.

1 Plaintiff seeks to enjoin Defendant from requiring an unredacted copy of its IRS
2 Form 990 Schedule B as a condition of soliciting funds in California. Plaintiff argues that
3 Defendant's demand is preempted by federal law and that it unconstitutionally infringes
4 upon the freedom of association. Mot., ECF No. 9.

5
6 **STANDARD**
7

8 A preliminary injunction is an extraordinary remedy, and the moving party has the
9 burden of proving the propriety of such a remedy by clear and convincing evidence. See
10 Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 442 (1974). The party
11 requesting preliminary injunctive relief must show that "he is likely to succeed on the
12 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
13 the balance of equities tips in his favor, and that an injunction is in the public interest."
14 Winter v. Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v.
15 Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter). To grant preliminary
16 injunctive relief, a court must find that "a certain threshold showing is made on each
17 factor." Leiva-Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011).

18 Alternatively, under the so-called sliding scale approach, as long as the Plaintiffs
19 demonstrate the requisite likelihood of irreparable harm and show that an injunction is in
20 the public interest, a preliminary injunction can still issue so long as serious questions
21 going to the merits are raised and the balance of hardships tips sharply in Plaintiffs'
22 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011)
23 (concluding that the "serious questions" version of the sliding scale test for preliminary
24 injunctions remains viable after Winter).

25 These two alternatives represent two points on a sliding scale, pursuant to which
26 the required degree of irreparable harm increases or decreases in inverse correlation to
27 the probability of success on the merits. Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir.
28 1998); United States v. Nutri-cology, Inc., 982 F.2d 1374, 1376 (9th Cir. 1985). Under

1 either formulation of the test for granting a preliminary injunction, however, the moving
2 party must demonstrate a significant threat of irreparable injury. Oakland Tribune, Inc. v.
3 Chronicle Publ'g. Co., 762 F.2d 1374 (9th Cir. 1985).

4 5 ANALYSIS

6 7 A. Likelihood of Success on the Merits

8 Through this action, Plaintiff seeks to block Defendant from requiring that it
9 provide an unredacted copy of Plaintiff's IRS Form 990 Schedule B to Defendant as a
10 condition of soliciting funds in California. Plaintiff asserts that it will prevail on the merits
11 on two separate grounds. First, Plaintiff argues that the Internal Revenue Code shields
12 the information that Defendant seeks and that Defendant's demand is therefore
13 preempted by federal law. Second, Plaintiff contends that Defendant's demand
14 unconstitutionally infringes upon its freedom of association. The Court will address each
15 argument in turn.

16 1. Federal Law

17 As discussed above, Plaintiff files tax information on Form 990 with the IRS.
18 While some of Plaintiff's tax return information is available to the public, the IRS does not
19 publicly disclose the names or addresses of any of Plaintiff's contributors. See
20 26 U.S.C. § 6104(b), (d)(3) (providing that the public inspection copy of 501(c)(3)
21 organization's tax information "shall not require the disclosure of the name or address of
22 any contributor to the organization"). Federal law also prevents the Secretary of the
23 Treasury from releasing the names and addresses of contributors to section 501(c)(3)
24 organizations to state agencies. See 26 U.S.C. § 6104(c)(3) ("Upon written request by
25 an appropriate State officer, the Secretary may make available for inspection or
26 disclosure returns and return information of any organization described in section 501(c)
27 (other than organizations described in paragraph (1) or (3) thereof) for the purpose of,
28 and only to the extent necessary in, the administration of State laws regulating the

1 solicitation or administration of the charitable funds or charitable assets of such
2 organizations.”) (emphasis added). Through this statutory language, Plaintiff argues that
3 federal law preempts Defendant’s request for a copy of its unredacted Schedule B form.

4 The Supreme Court has articulated two cornerstones of its preemption
5 jurisprudence. “First, the purpose of Congress is the ultimate touchstone in every pre-
6 emption case. Second, in all pre-emption cases, and particularly in those in which
7 Congress has legislated in a field which the States have traditionally occupied, we start
8 with the assumption that the historic police powers of the States were not to be
9 superseded by the Federal Act unless that was the clear and manifest purpose of
10 Congress.” Wyeth v. Levine, 555 U.S. 555, 565 (2009) (internal citations and quotations
11 omitted). “Courts are reluctant to infer preemption, and it is the burden of the party
12 claiming that Congress intended to preempt state law to prove it.” Viva! Int’l Voice For
13 Animals v. Adidas Promotional Retail Operations, Inc., 162 P.3d 569, 572 (Cal. 2007)
14 (internal citations omitted). Here, Plaintiff contends that because Defendant’s actions
15 contravene the clear intent of Congress, Defendant’s actions are invalid through express
16 preemption, field preemption, and conflict preemption.

17 2. Express Preemption

18 Relying on 26 U.S.C. § 6104, Plaintiff contends that the Internal Revenue Code
19 (“IRC”) “expressly preempts a state attorney general from compelling Plaintiff to hand
20 over its Schedule B as filed.” Mot., ECF No. 9-1 at 13-14. “[E]xpress preemption arises
21 when Congress defines explicitly the extent to which its enactments pre-empt state law.
22 . . . and when Congress has made its intent known through explicit statutory language,
23 the courts’ task is an easy one.” Viva! Int’l Voice For Animals, 162 P.3d at 571-72.

24 Plaintiff’s argument is unsupported by the text of the IRC. The IRC only bars the
25 IRS from providing the requested Schedule B to state agencies, it does not address
26 whether a state official, such as Defendant, may request such information directly from
27 an organization such as Plaintiff. Cf. Stokwitz v. United States, 831 F.2d 893, 896 (9th
28 Cir. 1987) (noting that “there is no indication in either the language of section 6103 or its

1 legislative history that Congress intended to enact a general prohibition against public
2 disclosure of tax information"). Therefore, because Congress did not express any intent
3 to prevent state agencies from making requests for tax information such as Defendant's
4 directly from 501(c)(3) organizations in the language of Section 6104, or any other
5 section of the IRC, Plaintiff may not rely on express preemption.

6 3. Field and Conflict Preemption

7 Plaintiff also argues that Defendant's action is preempted because "Congress has
8 well occupied the field regarding the disclosure of federal tax returns" and that "the
9 [Defendant's] actions stand[] as an obstacle to the accomplishment and execution of the
10 full purposes and objectives of Congress." Mot., ECF No. 9-1 at 15-16 (internal citation
11 omitted). "Even without an express provision for preemption, . . . [w]hen Congress
12 intends federal law to 'occupy the field,' state law in that area is preempted. And even if
13 Congress has not occupied the field, state law is naturally preempted to the extent of
14 any conflict with a federal statute." Crosby, 530 U.S. 363, 372-73 (2000).

15 Plaintiff asserts that because the "IRC comprehensively regulates how
16 confidential tax return information must be treated—and assesses significant sanctions
17 for violations[.]" Defendant's action, "if fully implemented, would interfere with Congress's
18 occupation of the field." ECF No. 9-1 at 15-16. Plaintiff points only to the statutory
19 language of the IRC, specifically sections 6103 and 6104, to support its contention. See
20 ECF No. 9-1 at 15. An examination of the IRC's legislative history reveals that
21 Congress's intent in enacting "the elaborate disclosure procedures of section 6103" was
22 not directed toward preventing actions such as Defendant's, but instead to "[control] the
23 distribution of information the IRS receives directly from the taxpayer-information the
24 taxpayer files under compulsion and the threat of criminal penalties." Stokwitz, 831 F.2d
25 at 895 (citing the Congressional Record). The Ninth Circuit explained that

26 [t]he legislative history of section 6103 indicates Congress's
27 overriding purpose was to curtail loose disclosure practices
28 by the IRS. Congress was concerned that IRS had become a
"lending library" to other government agencies of tax
information filed with the IRS, and feared the public's

1 confidence in the privacy of returns filed with IRS would
2 suffer. The Senate Report explained: “[T]he IRS probably
3 has more information about more people than any other
4 agency in this country. Consequently, almost every other
5 agency that has a need for information . . . logically seeks it
6 from the IRS.” Congress also sought to end “the highly
7 publicized attempts to use the Internal Revenue Service for
8 political purposes” involving delivery of tax returns to the
9 White House by the IRS; and to regulate “the flow of tax data
10 from the IRS to State Governments.” In short, section 6103
11 was aimed at curtailing abuse by government agencies of
12 information filed with the IRS. At the same time, Congress
13 realized tax information on file with the IRS was often
14 important to other government agencies. Revised section
15 6103 represents a legislative balancing of the right of
16 taxpayers to the privacy of tax information in the hands of the
17 IRS and the legitimate needs of others for access to that
18 information.

19 Stokwitz, 831 F.2d at 894-95 (9th Cir. 1987) (internal citations and quotations omitted)
20 (emphasis added). The Ninth Circuit also noted that “the statutory definitions of ‘return’
21 and ‘return information’ to which the entire statute relates, confine the statute’s coverage
22 to information that is passed through the IRS,” not information provided by a taxpayer to
23 another entity. Id. at 895-96 (emphasis added). Thus, it is clear that Congress’s intent
24 in regulating how confidential tax return information must be treated was to restrict how
25 tax information is obtained from the IRS, not from taxpayers directly.

26 Nonetheless, Plaintiff argues that “[Defendant’s] interpretation [of section § 6104]
27 would render [it] devoid of any practical effect [and that] Congress’s purpose would be
28 plainly frustrated if state officials regulating charitable solicitations could unilaterally
29 compel Schedule B information from tax-exempt organizations.” Reply, ECF No. 11 at
30 6-7. However, in Stokwitz, the Ninth Circuit rejected a similar argument. In that case,
31 the appellant argued that the “purpose of the protection afforded tax data by sections
32 6103 and 7213 ‘would be meaningless if such protection were not extended to copies of
33 tax returns and to the pertinent data and information in the hands of the taxpayer.’”

34 Stokwitz, 831 F.2d at 896. The Ninth Circuit rejected that contention noting that “[i]t is
35 quite clear . . . that this was not Congress’s view when it revised section 6103.” Id.
36 Citing the Senate report, the Court concluded that Congress “disclaimed any intention ‘to

1 limit the right of an agency (or other party) to obtain returns or return information directly
2 from the taxpayer.” Id. Therefore, there is little doubt that Congress’s intent was to
3 regulate the IRS, not state agencies.

4 Plaintiff’s attempts to distinguish Stokwitz are unavailing. Although the provision
5 in question, namely section § 6104, was added in 2006, there is no legislative record to
6 suggest that Congress intended to deviate from its intent as expressed in Stokwitz.
7 Absent any evidence that Congress intended to prevent state Attorneys General from
8 obtaining the requested information directly from organizations, Plaintiff cannot meet its
9 burden in showing that it is likely to succeed on the merits of its preemption argument.
10 Therefore, a preliminary injunction on the basis of preemption is not warranted.

11 4. Freedom of Association

12 Plaintiff also argues that it will prevail on the merits because Defendant’s demand
13 unconstitutionally infringes upon its First Amendment freedom of association.
14 Specifically, Plaintiff objects to Defendant’s demand because “[f]inancial support is the
15 lifeblood of organizations engaged in public debate” and because Defendant’s action
16 “threatens to curtail that necessary supply of resources.” Mot., ECF No. 9-1 at 18.
17 Plaintiff argues that while “a government may compel certain disclosures in certain
18 circumstances[,] . . . associational freedom may [only] be limited, so long as the state
19 does so narrowly and specifically, in pursuit of an obvious and compelling government
20 interest.” Id. at 17. Thus, Plaintiff argues that because “the Attorney General has
21 provided no particularized rationale for obtaining CCP’s donor information[,]”
22 Defendant’s request violates the First Amendment. Reply, ECF No. 11 at 11.

23 However, in the Ninth Circuit, courts first address whether a plaintiff has
24 presented a prima facie showing of arguable first amendment infringement. See Perry v.
25 Schwarzenegger, 591 F.3d 1126, 1140 (9th Cir. 2009). Such a showing requires
26 Plaintiff to demonstrate that Defendant’s action “will result in (1) harassment,
27 membership withdrawal, or discouragement of new members, or (2) other consequences
28 which objectively suggest an impact on, or ‘chilling’ of, the members’ associational

1 rights.” Brock v. Local 375, Plumbers Int’l Union of Am., AFL-CIO, 860 F.2d 346, 350
2 (9th Cir. 1988) (citations omitted); see also Dole v. Serv. Employees Union, AFL-CIO,
3 Local 280, 950 F.2d 1456, 1459–61 (9th Cir.1991). “This must be shown by
4 presentation of objective and articulable facts, which go beyond broad allegations or
5 subjective fears.” Van Fossen v. United States, CV-F-93-137-DLB, 1993 WL 655008 at
6 *2 (E.D. Cal. Dec. 27, 1993) (citing Brock, 860 F.2d at 350). “A merely subjective fear of
7 future reprisals is an insufficient showing of infringement of associational rights.” Id.
8 (citing Buckley v. Valeo, 424 U.S. 1, 71-72 (1976)). If Plaintiffs “can make the necessary
9 prima facie showing, the evidentiary burden will then shift to” Defendant. Brock, 860
10 F.2d at 350.

11 Rather than argue that Plaintiff has satisfied the prima facie requirement, Plaintiff
12 disputes its applicability arguing that Brock and Dole were factually distinguishable labor
13 cases.³ Instead, Plaintiff argues that the Court should follow a line of cases where
14 plaintiffs were not required to first make a prima facie showing of first amendment
15 infringement. Plaintiff points to Talley v. California, 362 U.S. 60, 65 (1960) and Acorn
16 Investments v. City of Seattle, 887 F.2d 219, 225 (9th Cir. 1989) as examples of such
17 cases. However, these cases are distinguishable from the facts at hand as they pertain
18 to instances where members of groups would be publicly identified and, as a result, face
19 retaliation. See Talley, 362 U.S. at 65 (relying on earlier holdings where the
20 “identification [of group members] and fear of reprisal might deter perfectly peaceful
21 discussions of public matters of importance”); Acorn Investments, 887 F.2d at 225
22 (striking down a city ordinance requiring the public disclosure of the names and
23 addresses of shareholders of corporations because it may have a chilling effect on
24 expression). In contrast, here, Plaintiff is challenging Defendant’s request to view
25 Plaintiff’s Schedule B in confidence and has not alleged that its members would face any
26 retaliation or reprisals.

27
28 ³ The Ninth Circuit has also applied this first amendment framework, however, in non-labor cases.
See, e.g., Perry v. Schwarzenegger, 591 F.3d 1126, 1140 (9th Cir. 2009).

1 Brock provides a more analogous set of facts. In that case, the Secretary of
2 Labor, pursuant to his statutory powers, "initiated a compliance audit" of Local 375 after
3 the Department of Labor discovered a discrepancy. Brock, 860 F.2d at 348. The
4 Secretary of Labor subpoenaed "all records pertaining to the fund" and the union refused
5 to comply, arguing that doing so would violate its First Amendment rights. Id. The Ninth
6 Circuit held that in order to prevail on a freedom of association claim in the face of a
7 "lawful governmental investigation[,] the union must demonstrate a "prima facie showing
8 of arguable first amendment infringement." Id. at 349-51.

9 Based on the evidence provided to the Court, Defendant's request appears to be
10 justified by a legitimate law enforcement purpose pursuant to Defendant's role as the
11 chief regulator of charitable organizations in the state. See Cal. Gov't Code §§
12 12598(a), 12581. Under California's Supervision of Trustees and Fundraisers for
13 Charitable Purposes Act, Defendant is charged with supervising charitable trusts and
14 public benefit corporations incorporated in, or conducting business in California and to
15 protect charitable assets for their intended use. See Opp'n, ECF No. 10 at 10 (citing
16 Cal. Gov't Code §§ 12598(a), 12581). In addition, Defendant has "broad powers under
17 common law and California statutory law to carry out these charitable trust enforcement
18 responsibilities." Cal. Gov't Code § 12598(a). Defendant may investigate transactions
19 and relationships to ascertain whether the purposes of the corporation or trust are being
20 carried out. Opp'n, ECF No. 10 at 10. In order to do so, Defendant may require any
21 agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other
22 person to appear and to produce records. Id. (citing Cal. Gov't Code § 12588). Such an
23 order "shall have the same force and effect as a subpoena." Cal. Gov't Code § 12589.
24 Defendant may also require periodic written reports from charitable organizations. See
25 Cal. Gov't Code § 12586. Further, pursuant to the Supervision of Trustees and
26 Fundraisers for Charitable Purposes Act, Defendant maintains the Registry, and in so
27 doing, has the power to obtain "whatever information, copies of instruments, reports, and
28 records are needed for the establishment and maintenance of the register." Id. (citing

1 Cal. Gov't Code § 12584). In light of Defendant's role as the state's chief regulator of
2 charitable organizations, Defendant's request is more analogous to the facts in Brock
3 and Dole than the challenges to ordinances in Talley and Acorn Investments. Therefore,
4 the Court concludes that the prima facie showing requirement as articulated by the Ninth
5 Circuit in Brock is applicable in this case.

6 Here, Plaintiff has not articulated any, objective specific harm that will result to its
7 members if Defendant is permitted to require that Plaintiff produce an unredacted copy
8 of its Schedule B. Plaintiff only suggests that if it is forced to comply with Defendant's
9 demand, such an action "threatens to curtail" its financial support. ECF No. 9-1 at 18.
10 As Defendant notes, "[m]ere speculation about or opinion of the possible consequences
11 of such disclosure is entirely inadequate" to support a prima facie showing of arguable
12 first amendment infringement. ECF No. 10 at 18; see Dole, 921 F.2d at 974. For
13 example, in Dole, the Ninth Circuit held that "two letters from members who stated that
14 they would no longer attend meetings" satisfied the prima facie showing requirement and
15 "clearly suggest[ed] 'an impact on . . . the members' associational rights.'" Dole, 950
16 F.2d at 1460 (citing Brock, 860 F.2d at 350). Plaintiff did not make such a showing here.
17 Therefore, because Plaintiff failed to establish a prima facie showing of arguable first
18 amendment infringement, it has not demonstrated that it is likely to prevail on the merits
19 at this point in the proceeding.

20 Moreover, even if Plaintiff had presented a prima facie showing, based on the
21 evidence before the Court at this time, Defendant's request appears to be justified by
22 compelling state interests and is narrowly tailored to achieve those interests.
23 Defendant's interest in performing her regulatory and oversight function as delineated by
24 state law is compelling and substantially related to the disclosure requirement.
25 Defendant points out that the requested information allows her to determine "whether an
26 organization has violated the law, including laws against self-dealing, Cal. Corp. Code
27 § 5233; improper loans, id. § 5236; interested persons, id. § 5227; or illegal or unfair
28 business practices, Cal. Bus. & Prof. Code § 17200." Opp'n, ECF No. 10 at 19-20.

1 Further, the required disclosure appears to be narrowly tailored with respect to Plaintiff's
2 right of association because the Registry is kept confidential and Plaintiff's Schedule B
3 would not be disclosed publically. On this ground too, then, Plaintiff failed to show it is
4 likely to succeed on the merits.

5 **B. Irreparable Harm, Balancing the Hardships, and Public Interest**

6 Plaintiff asserts that it will suffer irreparable injury through the loss of its First
7 Amendment freedoms. While "[a]n alleged constitutional infringement will often alone
8 constitute irreparable harm. . . In this case, however, the constitutional claim is too
9 tenuous to support" the issuance of a preliminary injunction. Goldie's Bookstore, Inc. v.
10 Superior Court of State of Cal., 739 F.2d 466, 472 (9th Cir. 1984). Because "the Court
11 finds [that] no serious First Amendment questions are raised. . . . there is no risk of
12 irreparable injury to Plaintiffs' contributors." ProtectMarriage.com v. Bowen,
13 599 F. Supp. 2d at 1226; see Dex Media W., Inc. v. City of Seattle, 790 F. Supp. 2d
14 1276, 1280-81 (W.D. Wash. 2011) (stating that "[b]ecause the court ultimately concludes
15 that Plaintiffs fail to establish either a likelihood of irreparable injury or that a preliminary
16 injunction would be in the public interest"). Based on the evidence before it, the Court
17 does not find that Plaintiff will suffer irreparable harm if a preliminary injunction is not
18 issued. Moreover, in light of the facts as presented to the Court at this stage in the
19 proceeding, it is in the public interest that Defendant continues to serve chief regulator of
20 charitable organizations in the state in the manner sought.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Because Plaintiff failed to demonstrate that it is likely to succeed on the merits or that Defendant's action will cause a significant threat of irreparable injury, Plaintiff's Motion for Preliminary Injunction, ECF No. 9, is DENIED.

IT IS SO ORDERED.

Dated: May 13, 2014



MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

---oOo---

BEFORE THE HONORABLE CHIEF JUDGE MORRISON C. ENGLAND, JR.

---oOo---

CENTER FOR COMPETITIVE
POLITICS,

Plaintiff,

vs.

No. Cr. S-14-CV-0636
MCE-DAD

KAMALA HARRIS, in her Official
Capacity as Attorney General
of the State of California,

Defendant.

---oOo---

REPORTER'S TRANSCRIPT

ARGUMENT ON PRELIMINARY INJUNCTION

APRIL 17, 2014

---oOo---

Reported by: MICHELLE L. BABBITT, CSR #6357

1 APPEARANCES

2
3 For the Plaintiff:

4 KAMALA D. HARRIS
5 Attorney General of California
6 455 Golden Gate Avenue
7 Suite 11000
8 San Francisco, California 94102
9 BY: ALEXANDRA GORDON
10 Deputy Attorney General

11 For the Defendant:

12 CENTER FOR COMPETITIVE POLITICS
13 124 S. West Street
14 Suite 201
15 Alexandria, Virginia 22314
16 BY: ALLEN DICKERSON
17 Admitted pro hac vice
18
19
20
21
22
23
24
25

1 have seen with respect to the preemption, I don't find that
2 there has been sufficient evidence presented to the court at
3 this time that would support a motion for preliminary
4 injunction on that basis.

5 I'm just giving you -- these are tentative rulings
6 from the bench so that you understand where the court is
7 headed. I want to make it clear that there will be a written
8 order that will follow and that will be the order that will
9 supercede any other comments that are made here.

10 The next issue that has been raised is one of freedom
11 of association. In order -- there are certain standards that
12 have to be met to show that this request for this information
13 would implicate the freedom of association standards, and
14 there's got to be showings that this information, if received
15 or divulged would cause, (Reading:)

16 Harassment, membership withdrawal,
17 discouragement of new members or other
18 consequences that may have some type of chilling
19 impact on the member's associated rights.

20 What standard from the plaintiff's standpoint should
21 the court look to utilize in determining whether or not
22 there's been some chilling effect placed upon the plaintiff
23 and its membership?

24 MR. DICKERSON: I'm afraid I would want to take it a
25 little earlier in the analysis, with the court's indulgence.

1 We disagree that the prima facia showing in Brock applies
2 here. I can explain why that is to the court.

3 THE COURT: Go ahead.

4 MR. DICKERSON: Brock comes out of an audit. It's not
5 a dragnet. If you read the case carefully, one of the things
6 it says is, one, we're not applying the standard First
7 Amendment analysis. We're not applying either exacting or
8 strict scrutiny. We're applying the Ninth Circuit's standard
9 on judicial scrutiny in agent enforcement proceedings.
10 That's at page 348, 349 of the opinion, Your Honor.

11 I mean, if you look at Brock and look at Doyle that
12 followed it, this is a situation where the Secretary of Labor
13 had a suspicion about an organization, audited that
14 organization, that audit created a record that showed reason
15 to believe that this organization was operating in an
16 unacceptable manner, and only then did the Secretary of Labor
17 request the donors of the organization.

18 I'm not sure Brock and Doyle are terribly helpful in
19 the sense that they come out of this very different situation
20 where the government has, in fact, made a showing to begin
21 with in an enforcement context.

22 If you look at Doyle, specifically, the second case,
23 it really only makes sense in the context of an enforcement
24 action. One of the things Doyle says is that the evidence
25 that has been put in by the plaintiff in favor of the dangers

1 of harassment, threats or reprisals, you haven't proved
2 causation because you haven't separated out the bad press of
3 the original investigation or the original government action
4 from the additional harm of disclosing your donors.

5 So I think that case has to be read in the context of
6 an enforcement proceeding and not as a generalized statement
7 about associational liberties. I think that makes sense when
8 you look at other cases, such as Talley or Acorn Investments,
9 both of which we cited to Your Honor, or Gibson, which the
10 state conceded in footnote seven did not involve a prior
11 showing of harassment, threats or reprisals.

12 In Talley, you have a fairly strongly-worded dissent
13 by three judges, Justices of the Supreme Court, saying: You
14 shouldn't have ruled this way precisely because there's no
15 record of harassment, threats or reprisals.

16 So I think the idea that there is this prima facia
17 showing is not actually borne out by the case law, and, more
18 importantly, that makes sense when you think about it,
19 because exacting scrutiny or strict scrutiny, both require
20 least restricted measures on behalf of the state. To force
21 litigants to come in and make a showing before the state has
22 to show restricted measures would be to turn the substantive
23 law of the First Amendment of exacting scrutiny on its head.

24 I can't imagine a situation where absent, again, the
25 situations where the government has shown a need to

1 investigate or some sort of law enforcement role, that it's
2 acceptable for the organization to have to prove that it's
3 already been harmed before it can come in and challenge a
4 patently unconstitutional state action. That wouldn't -- I
5 don't think that's the law in the Ninth Circuit or the law
6 nationally.

7 Again, we're in a situation of a dragnet request by
8 the Attorney General, which at least in the experience of my
9 organization and on information of other organizations, has
10 never happened before, and not in the sort of context where
11 the Secretary of Labor has an unchallenged ability to audit,
12 has used that ability to audit, had uncovered information
13 that was troubling and then asked for the administrative
14 information.

15 THE COURT: Response?

16 MS. GORDON: Your Honor, just to sort of back up, this
17 is not a dragnet request. This is a request that is, in
18 fact, justified by a legitimate law enforcement purpose.

19 It's justified by being the chief regulator of
20 charitable organizations in California, and pursuant to that,
21 the Attorney General has broad powers to request information
22 and documents from charities who want to solicit within the
23 state.

24 We have requested, as a courtesy, the exact same
25 Schedule B form that the plaintiff has filed with the IRS.

1 We keep that form confidential. If there's been no showing
2 that anything has happened to its associational rights from
3 filing this Schedule B with the IRS, it's hard to imagine how
4 filing an identical copy of your Schedule B with California
5 somehow is dragnet or causes any harm to your associational
6 rights.

7 There's no evidence here that it does. In fact, the
8 case law is not limited to the fact that it was an
9 enforcement action or that it was a labor case or any of the
10 other ways that plaintiff has tried to limit Brock and Doyle.
11 Brock says very clearly at page 350, (Reading:)

12 If appellants can make the necessary prima facia
13 showing, the evidentiary burden will then shift
14 to the government.

15 Doyle at 971 says, (Reading:)

16 Once the fund made such a showing, the burden
17 would shift to the department.

18 So in all of the cases that have been cited, including
19 the ones by plaintiff such as NAACP versus Alabama, there's a
20 very clear showing of harm. Harm is part of the analysis,
21 whether the court talks about a prima facia case or not.
22 Here, there is not a scrap of evidence of harm, nor is it in
23 any way obvious why there would be to the associational
24 rights of this organization.

25 As we've said in our brief, whatever standard the

1 court applies, whether it's a balancing test, such as the one
2 used in the election context in Buckley versus Valeo or
3 Protect Marriage Dot.Com, that would be plaintiff's burden,
4 the burden on their associational rights, which we have no
5 evidence of, versus the government's strong interest in being
6 able to do its job.

7 Even if we go forward and we apply any kind of
8 exacting scrutiny, there's a compelling interest. This is
9 narrowly tailored, and the request is substantially related
10 to the AG's ability to do her job.

11 MR. DICKERSON: If I may, Your Honor?

12 THE COURT: Yes.

13 MR. DICKERSON: There's, of course, two parts to the
14 constitutional analysis. We admitted in our reply brief, I
15 think as we must, that the law enforcement authority of the
16 Attorney General is an important, indeed perhaps a compelling
17 interest. That's not the end of analysis.

18 The question is tailoring, and I think part of the
19 difficulty for me representing this organization in this
20 lawsuit is that the state has asserted this very strong
21 interest, this high need for this information, but the
22 mechanism by which -- let's be clear on what's already in the
23 record.

24 We have provided every scrap of information, including
25 the amounts given, redacted, but with the amounts given by

1 each individual involving our organization, the compensation
2 of officers and directors, the way the different programmatic
3 expenses are done, every single scrap of information about
4 our books is available to the state, as it is indeed to
5 everyone, except the names and addresses of our donors, and
6 no mechanism has been suggested why the names and addresses
7 of donors is so helpful, let alone release restricted means.

8 So I would say this is not correct reading of the
9 civil rights cases or Talley or of a case like Acorn
10 Investments where First Amendment Associational rights have
11 ben vindicated under heightened scrutiny without such a
12 preliminary showing, and, more importantly, does tie back to
13 the fact there --

14 It's a toothless tiger to have exacting scrutiny or
15 higher in associational cases only if you can show that
16 you've been already injured. It's the duty of the state to
17 demonstrate it's used a tailored approach, and all we have
18 are conclusory statements that this particular information is
19 needed without any mechanism.

20 THE COURT: Anything else?

21 MS. GORDON: Your Honor, if it would be helpful to the
22 court, I'm happy to explain how this information is useful to
23 the AG in doing her job, but two things: One, again, I think
24 we're talking past each other, and I'll just repeat that, in
25 fact, some showing of harm has to exist before the government

1 has to explain it has a compelling interest and how this is
2 narrowly tailored.

3 And, two, the cases such as Acorn Investments and
4 Talley, Talley is an overbreadth free speech case. Acorn
5 Investments is also actually -- it's analyzed as a
6 content-based restriction on expression. The information is
7 extremely useful, and the alternative would be audit, given
8 the 10 years Statute of Limitations is extremely disruptive
9 to a charitable organization where we can get easily get rid
10 of a lot of complaints that come in by just looking at the
11 donor list.

12 THE COURT: All right.

13 Counsel, thank you. Those answer all the questions I
14 have at this time.

15 With respect to the freedom of association standard
16 issue that's been raised, I'll take that under submission and
17 review that, and my written decision will encompass that as
18 well as the congressional intent also of the statute.

19 Anything else?

20 MR. DICKERSON: Not if Your Honor is comfortable on
21 the third question.

22 THE COURT: I am.

23 MS. GORDON: Thank you very much.

24 MR. DICKERSON: Thank you.

25 (Proceedings concluded at 3:29 p.m.).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

---oOo---

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

MICHELLE L. BABBITT, CSR 6357



KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 703-5500
Telephone: (415) 703-5509
Facsimile: (415) 703-5480
E-Mail: Alexandra.RobertGordon@doj.ca.gov

April 14, 2014

The Honorable Morrison C. England, Jr.
United States District Court Judge
Eastern District of California
Courtroom 7, 14th Floor
Robert T. Matsui United States Courthouse
501 I Street
Sacramento, CA 95814

RE: *Center for Competitive Politics v. Kamala Harris*, Case No. 2:14-cv-00636-MCE-DAD,
Request for Leave to File Citation to Supplemental Authority

Dear Judge England:

Defendant Attorney General Kamala D. Harris respectfully requests leave to file citation to supplemental authority. In preparing for the April 17, 2014 hearing on plaintiff's motion for a preliminary injunction, the undersigned discovered the Ninth Circuit case of *Stokwitz v. United States*, 831 F.2d 893 (9th 1987), which prior research had not revealed. *Stokwitz*, which concerns the scope and purpose of the confidentiality provisions of the Internal Revenue Code, I.R.C. section 6103, is relevant to the argument made on pages 6-10 of Defendant's Opposition Brief regarding the lack of express, field, or conflict preemption of State reporting and disclosure requirements. Because *Stokwitz* is controlling authority, we believe that we are obligated to bring it to the Court's attention. We have attached a copy of the Ninth Circuit decision in *Stokwitz* for the Court's convenience and apologize for any difficulty our delay in finding this case may have caused.

Sincerely,

/s/ Alexandra Robert Gordon
ALEXANDRA ROBERT GORDON
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

ARG: Enc.

EXHIBIT A

Return of Organization Exempt From Income Tax

2013

Open to Public Inspection

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter Social Security numbers on this form as it may be made public.

Information about Form 990 and its instructions is at www.irs.gov/form990.

Department of the Treasury Internal Revenue Service

A For the 2013 calendar year, or tax year beginning 2013, and ending 2013

B Check if applicable: C Name of organization D Employer identification number
Doing Business As
Address change
Name change
Initial return
Terminated
Amended return
Application pending
Number and street (or P.O. box if mail is not delivered to street address) Room/suite
City or town, state or province, country, and ZIP or foreign postal code
E Telephone number
F Name and address of principal officer:
H(a) Is this a group return for subordinates?
H(b) Are all subordinates included?

I Tax-exempt status: 501(c)(3) 501(c) () (insert no.) 4947(a)(1) or 527

J Website: H(c) Group exemption number

K Form of organization: Corporation Trust Association Other L Year of formation: M State of legal domicile:

Part I Summary

Table with columns for Activities & Governance, Revenue, Expenses, and Net Assets or Fund Balances. Rows include mission description, member counts, revenue breakdown, and asset/liability totals.

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Sign Here: Signature of officer, Date, Type or print name and title

Paid Preparer Use Only: Print/Type preparer's name, Preparer's signature, Date, Check self-employed, PTIN, Firm's name, Firm's EIN, Firm's address, Phone no.

May the IRS discuss this return with the preparer shown above? (see instructions) Yes No

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III

1 Briefly describe the organization's mission:

.....
.....
.....

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? Yes No
If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? Yes No
If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code: _____) (Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

4b (Code: _____) (Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

4c (Code: _____) (Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

4d Other program services (Describe in Schedule O.)
(Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

4e Total program service expenses ▶

Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If "Yes," complete Schedule A</i>	1	
2 Is the organization required to complete <i>Schedule B, Schedule of Contributors</i> (see instructions)?	2	
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i>	3	
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? <i>If "Yes," complete Schedule C, Part II</i>	4	
5 Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? <i>If "Yes," complete Schedule C, Part III</i>	5	
6 Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? <i>If "Yes," complete Schedule D, Part I</i>	6	
7 Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? <i>If "Yes," complete Schedule D, Part II</i>	7	
8 Did the organization maintain collections of works of art, historical treasures, or other similar assets? <i>If "Yes," complete Schedule D, Part III</i>	8	
9 Did the organization report an amount in Part X, line 21, for escrow or custodial account liability; serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? <i>If "Yes," complete Schedule D, Part IV</i>	9	
10 Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi-endowments? <i>If "Yes," complete Schedule D, Part V</i>	10	
11 If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.		
a Did the organization report an amount for land, buildings, and equipment in Part X, line 10? <i>If "Yes," complete Schedule D, Part VI</i>	11a	
b Did the organization report an amount for investments—other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? <i>If "Yes," complete Schedule D, Part VII</i>	11b	
c Did the organization report an amount for investments—program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? <i>If "Yes," complete Schedule D, Part VIII</i>	11c	
d Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? <i>If "Yes," complete Schedule D, Part IX</i>	11d	
e Did the organization report an amount for other liabilities in Part X, line 25? <i>If "Yes," complete Schedule D, Part X</i>	11e	
f Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? <i>If "Yes," complete Schedule D, Part X</i>	11f	
12 a Did the organization obtain separate, independent audited financial statements for the tax year? <i>If "Yes," complete Schedule D, Parts XI and XII</i>	12a	
b Was the organization included in consolidated, independent audited financial statements for the tax year? <i>If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional</i>	12b	
13 Is the organization a school described in section 170(b)(1)(A)(ii)? <i>If "Yes," complete Schedule E</i>	13	
14 a Did the organization maintain an office, employees, or agents outside of the United States?	14a	
b Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? <i>If "Yes," complete Schedule F, Parts I and IV.</i>	14b	
15 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? <i>If "Yes," complete Schedule F, Parts II and IV</i>	15	
16 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? <i>If "Yes," complete Schedule F, Parts III and IV.</i>	16	
17 Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? <i>If "Yes," complete Schedule G, Part I (see instructions)</i>	17	
18 Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? <i>If "Yes," complete Schedule G, Part II</i>	18	
19 Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? <i>If "Yes," complete Schedule G, Part III</i>	19	
20 a Did the organization operate one or more hospital facilities? <i>If "Yes," complete Schedule H</i>	20a	
b If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?	20b	

Part IV Checklist of Required Schedules (continued)

		Yes	No
21	Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or government on Part IX, column (A), line 1? <i>If "Yes," complete Schedule I, Parts I and II</i>	21	
22	Did the organization report more than \$5,000 of grants or other assistance to individuals in the United States on Part IX, column (A), line 2? <i>If "Yes," complete Schedule I, Parts I and III</i>	22	
23	Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? <i>If "Yes," complete Schedule J</i>	23	
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a</i>	24a	
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?	24b	
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?	24c	
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?	24d	
25a	Section 501(c)(3) and 501(c)(4) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If "Yes," complete Schedule L, Part I</i>	25a	
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? <i>If "Yes," complete Schedule L, Part I</i>	25b	
26	Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payables to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? <i>If so, complete Schedule L, Part II</i>	26	
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? <i>If "Yes," complete Schedule L, Part III</i>	27	
28	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):		
a	A current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i>	28a	
b	A family member of a current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i>	28b	
c	An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? <i>If "Yes," complete Schedule L, Part IV</i>	28c	
29	Did the organization receive more than \$25,000 in non-cash contributions? <i>If "Yes," complete Schedule M</i>	29	
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If "Yes," complete Schedule M</i>	30	
31	Did the organization liquidate, terminate, or dissolve and cease operations? <i>If "Yes," complete Schedule N, Part I</i>	31	
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If "Yes," complete Schedule N, Part II</i>	32	
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If "Yes," complete Schedule R, Part I</i>	33	
34	Was the organization related to any tax-exempt or taxable entity? <i>If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1</i>	34	
35a	Did the organization have a controlled entity within the meaning of section 512(b)(13)?	35a	
b	If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? <i>If "Yes," complete Schedule R, Part V, line 2</i>	35b	
36	Section 501(c)(3) organizations. Did the organization make any transfers to an exempt non-charitable related organization? <i>If "Yes," complete Schedule R, Part V, line 2</i>	36	
37	Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? <i>If "Yes," complete Schedule R, Part VI</i>	37	
38	Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11b and 19? Note. All Form 990 filers are required to complete Schedule O	38	

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V

Table with columns for question numbers (1a-14b), input fields, and Yes/No checkboxes. Contains questions about Form 1096, Form W-2G, Form W-3, Form 990-T, Form 8886-T, Form 8282, Form 8899, Form 1098-C, Form 990, Form 1041, and Form 720.

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions. Check if Schedule O contains a response or note to any line in this Part VI

Section A. Governing Body and Management

		Yes	No
1a	Enter the number of voting members of the governing body at the end of the tax year If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.		
b	Enter the number of voting members included in line 1a, above, who are independent		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?		
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person?		
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?		
5	Did the organization become aware during the year of a significant diversion of the organization's assets?		
6	Did the organization have members or stockholders?		
7a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?		
b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?		
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
a	The governing body?		
b	Each committee with authority to act on behalf of the governing body?		
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O		

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

		Yes	No
10a	Did the organization have local chapters, branches, or affiliates?		
b	If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?		
11a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?		
b	Describe in Schedule O the process, if any, used by the organization to review this Form 990.		
12a	Did the organization have a written conflict of interest policy? If "No," go to line 13		
b	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?		
c	Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done		
13	Did the organization have a written whistleblower policy?		
14	Did the organization have a written document retention and destruction policy?		
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
a	The organization's CEO, Executive Director, or top management official		
b	Other officers or key employees of the organization If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).		
16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?		
b	If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?		

Section C. Disclosure

- 17 List the states with which a copy of this Form 990 is required to be filed ►
- 18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.
 Own website Another's website Upon request Other (explain in Schedule O)
- 19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.
- 20 State the name, physical address, and telephone number of the person who possesses the books and records of the organization: ►

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."
- List the organization's **five current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former** directors or trustees that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1)										
(2)										
(3)										
(4)										
(5)										
(6)										
(7)										
(8)										
(9)										
(10)										
(11)										
(12)										
(13)										
(14)										

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(15)										
(16)										
(17)										
(18)										
(19)										
(20)										
(21)										
(22)										
(23)										
(24)										
(25)										
1b Sub-total										
c Total from continuation sheets to Part VII, Section A										
d Total (add lines 1b and 1c)										

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization ▶

	Yes	No
3 Did the organization list any former officer, director, or trustee, key employee, or highest compensated employee on line 1a? If "Yes," complete Schedule J for such individual		
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? If "Yes," complete Schedule J for such individual		
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? If "Yes," complete Schedule J for such person		

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization ▶

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

		(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514	
Contributions, Gifts, Grants and Other Similar Amounts	1a Federated campaigns	1a				
	b Membership dues	1b				
	c Fundraising events	1c				
	d Related organizations	1d				
	e Government grants (contributions)	1e				
	f All other contributions, gifts, grants, and similar amounts not included above	1f				
	g Noncash contributions included in lines 1a-1f: \$					
	h Total. Add lines 1a-1f					
Program Service Revenue	Business Code					
	2a _____					
	b _____					
	c _____					
	d _____					
	e _____					
	f All other program service revenue .					
g Total. Add lines 2a-2f						
Other Revenue	3 Investment income (including dividends, interest, and other similar amounts)					
	4 Income from investment of tax-exempt bond proceeds					
	5 Royalties					
	6a Gross rents	(i) Real				
		(ii) Personal				
		b Less: rental expenses				
		c Rental income or (loss)				
	d Net rental income or (loss)					
	7a Gross amount from sales of assets other than inventory	(i) Securities				
		(ii) Other				
		b Less: cost or other basis and sales expenses				
		c Gain or (loss)				
	d Net gain or (loss)					
	8a Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c). See Part IV, line 18	a				
	b Less: direct expenses	b				
c Net income or (loss) from fundraising events						
9a Gross income from gaming activities. See Part IV, line 19	a					
	b Less: direct expenses	b				
	c Net income or (loss) from gaming activities					
10a Gross sales of inventory, less returns and allowances	a					
	b Less: cost of goods sold	b				
	c Net income or (loss) from sales of inventory					
Miscellaneous Revenue		Business Code				
11a _____						
	b _____					
	c _____					
	d All other revenue					
e Total. Add lines 11a-11d						
12 Total revenue. See instructions.						

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.		(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1	Grants and other assistance to governments and organizations in the United States. See Part IV, line 21				
2	Grants and other assistance to individuals in the United States. See Part IV, line 22				
3	Grants and other assistance to governments, organizations, and individuals outside the United States. See Part IV, lines 15 and 16				
4	Benefits paid to or for members				
5	Compensation of current officers, directors, trustees, and key employees				
6	Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)				
7	Other salaries and wages				
8	Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)				
9	Other employee benefits				
10	Payroll taxes				
11	Fees for services (non-employees):				
a	Management				
b	Legal				
c	Accounting				
d	Lobbying				
e	Professional fundraising services. See Part IV, line 17				
f	Investment management fees				
g	Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O.)				
12	Advertising and promotion				
13	Office expenses				
14	Information technology				
15	Royalties				
16	Occupancy				
17	Travel				
18	Payments of travel or entertainment expenses for any federal, state, or local public officials				
19	Conferences, conventions, and meetings				
20	Interest				
21	Payments to affiliates				
22	Depreciation, depletion, and amortization				
23	Insurance				
24	Other expenses. Itemize expenses not covered above (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O.)				
a	-----				
b	-----				
c	-----				
d	-----				
e	All other expenses				
25	Total functional expenses. Add lines 1 through 24e				
26	Joint costs. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input type="checkbox"/> if following SOP 98-2 (ASC 958-720)				

Part X Balance Sheet

Check if Schedule O contains a response or note to any line in this Part X

		(A) Beginning of year	(B) End of year
Assets	1 Cash—non-interest-bearing		1
	2 Savings and temporary cash investments		2
	3 Pledges and grants receivable, net		3
	4 Accounts receivable, net		4
	5 Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees. Complete Part II of Schedule L		5
	6 Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions). Complete Part II of Schedule L		6
	7 Notes and loans receivable, net		7
	8 Inventories for sale or use		8
	9 Prepaid expenses and deferred charges		9
	10a Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10a	
	b Less: accumulated depreciation	10b	10c
	11 Investments—publicly traded securities		11
	12 Investments—other securities. See Part IV, line 11		12
	13 Investments—program-related. See Part IV, line 11		13
	14 Intangible assets		14
	15 Other assets. See Part IV, line 11		15
16 Total assets. Add lines 1 through 15 (must equal line 34)		16	
Liabilities	17 Accounts payable and accrued expenses		17
	18 Grants payable		18
	19 Deferred revenue		19
	20 Tax-exempt bond liabilities		20
	21 Escrow or custodial account liability. Complete Part IV of Schedule D		21
	22 Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L		22
	23 Secured mortgages and notes payable to unrelated third parties		23
	24 Unsecured notes and loans payable to unrelated third parties		24
	25 Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D		25
	26 Total liabilities. Add lines 17 through 25		26
Net Assets or Fund Balances	Organizations that follow SFAS 117 (ASC 958), check here <input type="checkbox"/> and complete lines 27 through 29, and lines 33 and 34.		
	27 Unrestricted net assets		27
	28 Temporarily restricted net assets		28
	29 Permanently restricted net assets		29
	Organizations that do not follow SFAS 117 (ASC 958), check here <input type="checkbox"/> and complete lines 30 through 34.		
	30 Capital stock or trust principal, or current funds		30
	31 Paid-in or capital surplus, or land, building, or equipment fund		31
	32 Retained earnings, endowment, accumulated income, or other funds		32
33 Total net assets or fund balances		33	
34 Total liabilities and net assets/fund balances		34	

Part XI Reconciliation of Net Assets

Check if Schedule O contains a response or note to any line in this Part XI

1	Total revenue (must equal Part VIII, column (A), line 12)	1	
2	Total expenses (must equal Part IX, column (A), line 25)	2	
3	Revenue less expenses. Subtract line 2 from line 1	3	
4	Net assets or fund balances at beginning of year (must equal Part X, line 33, column (A))	4	
5	Net unrealized gains (losses) on investments	5	
6	Donated services and use of facilities	6	
7	Investment expenses	7	
8	Prior period adjustments	8	
9	Other changes in net assets or fund balances (explain in Schedule O)	9	
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 33, column (B))	10	

Part XII Financial Statements and Reporting

Check if Schedule O contains a response or note to any line in this Part XII

- 1 Accounting method used to prepare the Form 990: Cash Accrual Other _____
 If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.
- 2a Were the organization's financial statements compiled or reviewed by an independent accountant? . . .
 If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both:
 Separate basis Consolidated basis Both consolidated and separate basis
- b Were the organization's financial statements audited by an independent accountant?
 If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both:
 Separate basis Consolidated basis Both consolidated and separate basis
- c If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant?
 If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.
- 3a As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?
- b If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits.

	Yes	No
2a		
2b		
2c		
3a		
3b		

EXHIBIT B

Name of the organization	Employer identification number
--------------------------	--------------------------------

Organization type (check one):

- Filers of:** **Section:**
- Form 990 or 990-EZ 501(c)() (enter number) organization
- 4947(a)(1) nonexempt charitable trust not treated as a private foundation
- 527 political organization
- Form 990-PF 501(c)(3) exempt private foundation
- 4947(a)(1) nonexempt charitable trust treated as a private foundation
- 501(c)(3) taxable private foundation

Check if your organization is covered by the **General Rule** or a **Special Rule**.
Note. Only a section 501(c)(7), (8), or (10) organization can check boxes for both the General Rule and a Special Rule. See instructions.

General Rule

- For an organization filing Form 990, 990-EZ, or 990-PF that received, during the year, \$5,000 or more (in money or property) from any one contributor. Complete Parts I and II.

Special Rules

- For a section 501(c)(3) organization filing Form 990 or 990-EZ that met the 33 1/3 % support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi) and received from any one contributor, during the year, a contribution of the greater of (1) \$5,000 or (2) 2% of the amount on (i) Form 990, Part VIII, line 1h, or (ii) Form 990-EZ, line 1. Complete Parts I and II.
- For a section 501(c)(7), (8), or (10) organization filing Form 990 or 990-EZ that received from any one contributor, during the year, total contributions of more than \$1,000 for use *exclusively* for religious, charitable, scientific, literary, or educational purposes, or the prevention of cruelty to children or animals. Complete Parts I, II, and III.
- For a section 501(c)(7), (8), or (10) organization filing Form 990 or 990-EZ that received from any one contributor, during the year, contributions for use *exclusively* for religious, charitable, etc., purposes, but these contributions did not total to more than \$1,000. If this box is checked, enter here the total contributions that were received during the year for an *exclusively* religious, charitable, etc., purpose. Do not complete any of the parts unless the **General Rule** applies to this organization because it received *nonexclusively* religious, charitable, etc., contributions of \$5,000 or more during the year ▶ \$ _____

Caution. An organization that is not covered by the General Rule and/or the Special Rules does not file Schedule B (Form 990, 990-EZ, or 990-PF), but it must answer "No" on Part IV, line 2, of its Form 990; or check the box on line H of its Form 990-EZ or on its Form 990-PF, Part I, line 2, to certify that it does not meet the filing requirements of Schedule B (Form 990, 990-EZ, or 990-PF).

Name of organization	Employer identification number
----------------------	--------------------------------

Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
-----	----- ----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization	Employer identification number
----------------------	--------------------------------

Part II Noncash Property (see instructions). Use duplicate copies of Part II if additional space is needed.

(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
-----	----- ----- ----- -----	\$-----	-----
-----	----- ----- ----- -----	\$-----	-----
-----	----- ----- ----- -----	\$-----	-----
-----	----- ----- ----- -----	\$-----	-----
-----	----- ----- ----- -----	\$-----	-----
-----	----- ----- ----- -----	\$-----	-----
-----	----- ----- ----- -----	\$-----	-----

Name of organization	Employer identification number
----------------------	--------------------------------

Part III Exclusively religious, charitable, etc., individual contributions to section 501(c)(7), (8), or (10) organizations that total more than \$1,000 for the year. Complete columns (a) through (e) and the following line entry. For organizations completing Part III, enter the total of exclusively religious, charitable, etc., contributions of \$1,000 or less for the year. (Enter this information once. See instructions.) ▶ \$ _____
 Use duplicate copies of Part III if additional space is needed.

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	-----	-----	-----

(e) Transfer of gift	
Transferee's name, address, and ZIP + 4	Relationship of transferor to transferee
-----	-----

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	-----	-----	-----

(e) Transfer of gift	
Transferee's name, address, and ZIP + 4	Relationship of transferor to transferee
-----	-----

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	-----	-----	-----

(e) Transfer of gift	
Transferee's name, address, and ZIP + 4	Relationship of transferor to transferee
-----	-----

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	-----	-----	-----

(e) Transfer of gift	
Transferee's name, address, and ZIP + 4	Relationship of transferor to transferee
-----	-----

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Schedule B (Form 990, 990-EZ, or 990-PF), such as legislation enacted after the schedule and its instructions were published, go to www.irs.gov/form990.

Note. Terms in **bold** are defined in the *Glossary* of the Instructions for Form 990.

Purpose of Schedule

Schedule B (Form 990, 990-EZ, or 990-PF) is used to provide information on contributions the organization reported on:

- Form 990-PF, Return of Private Foundation, Part I, line 1;
- Form 990, Return of Organization Exempt from Income Tax, Part VIII, *Statement of Revenue*, line 1; or
- Form 990-EZ, Short Form Return of Organization Exempt from Income Tax, Part I, line 1.

Who Must File

Every organization must complete and attach Schedule B to its Form 990, 990-EZ, or 990-PF, unless it certifies that it does not meet the filing requirements of this schedule by taking the following action:

- Answering "No" on Form 990, Part IV, *Checklist of Required Schedules*, line 2, or
- Checking the box on
 - Form 990-EZ, line H, or
 - Form 990-PF, Part I, *Analysis of Revenue and Expenses*, line 2.

See the separate instructions for these lines on those forms.

If an organization is not required to file Form 990, 990-EZ, or 990-PF but chooses to do so, it must file a complete return and provide all of the information requested, including the required schedules.

Accounting Method

When completing Schedule B (Form 990, 990-EZ, or 990-PF), the organization must use the same accounting method it checked on Form 990, Part XII, *Financial Statements and Reporting*, line 1; Form 990-EZ, line G; or Form 990-PF, line J.

Public Inspection

- Schedule B is open to public inspection for an organization that files Form 990-PF.

- Schedule B is open to public inspection for a section 527 political organization that files Form 990 or 990-EZ.

- For all other organizations that file Form 990 or 990-EZ, the names and addresses of contributors are not required to be made available for public inspection. All other information, including the amount of contributions, the description of **noncash contributions**, and any other information, is required to be made available for public inspection unless it clearly identifies the contributor.

If an organization files a copy of Form 990 or 990-EZ, and attachments, with any state, it should not include its Schedule B (Form 990, 990-EZ, or 990-PF) in the attachments for the state, unless a schedule of contributors is specifically required by the state. States that do not require the information might inadvertently make the schedule available for public inspection along with the rest of the Form 990 or 990-EZ.

See the Instructions for Form 990, 990-EZ, or 990-PF for information on telephone assistance and the public inspection rules for these forms and their attachments.

Contributors to be Listed on Part I

A *contributor* (person) includes individuals, fiduciaries, partnerships, corporations, associations, trusts, and exempt organizations. In addition, section 509(a)(2), 170(b)(1)(A)(iv), and 170(b)(1)(A)(vi) organizations must also report **governmental units** as contributors.

Contributions

Contributions reportable on Schedule B (Form 990, 990-EZ, or 990-PF) are contributions, grants, bequests, devises, and gifts of money or property, whether or not for charitable purposes. For example, political contributions to section 527 political organizations are included. Contributions do not include fees for the performance of services. See the Instructions for Form 990, Part VIII, line 1, for more detailed information on contributions.

General Rule

Unless the organization is covered by one of the *Special Rules* below, it must list in Part I every contributor who, during the year, gave the organization, directly or indirectly, money, securities, or any other type of property that total \$5,000 or more for the organization's tax year. In determining the total amount, separate and independent gifts of less than \$1,000 can be disregarded.

Include each contribution included on Form 990, Part VIII, line 1, in calculating a contributor's total contributions and determining whether that contributor must be reported on Schedule B under this General Rule (or one of the following *Special Rules*, if applicable). For example, if an organization that uses the accrual method of accounting reports a pledge of noncash property in Part VIII, line 1, it must include the value of that contribution in calculating whether the contributor meets the General Rule (or one of the *Special Rules*, if applicable), even if the organization did not receive the property during the tax year.

Special Rules

Section 501(c)(3) organizations that file Form 990 or 990-EZ. For an organization described in section 501(c)(3) that meets the 33 $\frac{1}{3}$ % support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi), and not just the 10% support test (whether or not the organization is otherwise described in section 170(b)(1)(A)), list in Part I only those contributors whose contribution of \$5,000 or more during the tax year is greater than 2% of the amount reported on Form 990, Part VIII, line 1h, or Form 990-EZ, line 1.

Example. A section 501(c)(3) organization, of the type described above, reported \$700,000 in total contributions, gifts, grants, and similar amounts received on Form 990, Part VIII, line 1h. The organization is only required to list in Parts I and II of its Schedule B each person who contributed more than the greater of \$5,000 or 2% of \$700,000 (\$14,000) during the tax year. Thus, a contributor who gave a total of \$11,000 would not be reported in Parts I and II for this section 501(c)(3) organization. Even though the \$11,000 contribution to the organization was greater than \$5,000, it did not exceed \$14,000.

Section 501(c)(7), (8), or (10) organizations. For contributions to these social and recreational clubs, fraternal beneficiary and domestic fraternal societies, orders, or associations that were not for an exclusively religious, charitable, etc., purpose, list in Part I each contributor who contributed \$5,000 or more during the tax year, as described under *General Rule*, earlier.

For contributions to a section 501(c)(7), (8), or (10) organization received for use exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals (sections 170(c)(4), 2055(a)(3), or 2522(a)(3)), list in Part I each contributor whose aggregate contributions for an exclusively religious, charitable, etc., purpose were more than \$1,000 during the tax year. To determine the more-than-\$1,000 amount, total all of a contributor's gifts for the tax year (regardless of amount). For a noncash contribution, complete Part II.

All section 501(c)(7), (8), or (10) organizations that listed an exclusively religious, charitable, etc., contribution in Part I or II must also complete Part III to provide further information on such contributions of more than \$1,000 during the tax year and show the total amount received from such contributions that were for \$1,000 or less during the tax year.

However, if a section 501(c)(7), (8), or (10) organization did not receive total contributions of more than \$1,000 from a single contributor during the tax year for exclusively religious, charitable, etc., purposes and consequently was not required to complete Parts I through III with respect to these contributions, it need only check the third *Special Rules* box on the front of Schedule B and enter, in the space provided, the total contributions it received during the tax year for an exclusively religious, charitable, etc., purpose.

Specific Instructions



CAUTION Do not attach substitutes for Schedule B or attachments to Schedule B with information on contributors. Parts I, II, and III of Schedule B may be duplicated as needed to provide adequate space for listing all contributors. Number each page of each part (for example, Page 2 of 5, Part II).

Part I. In column (a), identify the first contributor listed as No. 1 and the second contributor as No. 2, etc. Number consecutively. In column (b), enter the contributor's name, address, and ZIP code. Identify a donor as "anonymous" only if the organization does not know the donor's identity. In column (c), enter the amount of total contributions for the tax year for the contributor listed.

In column (d), check the type of contribution. Check all that apply for the contributor listed. If a cash contribution came directly from a contributor (other than through payroll deduction), check the "Person" box. A cash contribution

includes contributions paid by cash, credit card, check, money order, electronic fund or wire transfer, and other charges against funds on deposit at a financial institution.

If an employee's cash contribution was forwarded by an employer (indirect contribution), check the "Payroll" box. If an employer withholds contributions from employees' pay and periodically gives them to the organization, report only the employer's name and address and the total amount given unless you know that a particular employee gave enough to be listed separately.

Check the "Noncash" box in column (d) for any contribution of property other than cash during the tax year, and complete Part II of this schedule. For example, if an organization that uses the accrual method of accounting reports a pledge of noncash property on Form 990, Part VIII, line 1, it must check the "Noncash" box and complete Part II even if the organization did not receive the property during the tax year.

For a section 527 organization that files a Form 8871, Political Organization Notice of Section 527 Status, the names and addresses of contributors that are not reported on Form 8872, Political Organization Report of Contributions and Expenditures, do not need to be reported in Part I if the organization paid the amount specified by section 527(j)(1). In this case, enter "Pd. 527(j)(1)" in column (b) instead of a name, address, and ZIP code; but you must enter the amount of contributions in column (c).

Part II. In column (a), show the number that corresponds to the contributor's number in Part I. In column (b), describe the noncash contribution received by the organization during the tax year, regardless of the value of that noncash contribution. Note the public inspection rules discussed earlier.

In columns (c) and (d), report property with readily determinable market value (for example, marked quotations for securities) by listing its fair market value (FMV). If the organization immediately sells securities contributed to the organization (including through a broker or agent), the contribution still must be reported as a gift of property (rather than cash) in the amount of the net proceeds plus the broker's fees and expenses. See the instructions for Form 990, Part VIII, line 1g, which provide an example to illustrate this point. If the property is not immediately sold, measure market value of marketable securities registered and listed on a recognized securities exchange by the average of the highest and lowest quoted selling prices (or the average between the *bona fide* bid and

asked prices) on the contribution date. See Regulations section 20.2031-2 to determine the value of contributed stocks and bonds. When FMV cannot be readily determined, use an appraised or estimated value. To determine the amount of a noncash contribution subject to an outstanding debt, subtract the debt from the property's FMV. Enter the date the property was received by the organization, but only if the donor has fully given up use and enjoyment of the property at that time.

The organization must report the value of any qualified conservation contributions and contributions of conservation easements listed in Part II consistently with how it reports revenue from such contributions in its books, records, and financial statements and in Form 990, Part VIII, Statement of Revenue.

For more information on noncash contributions, see the instructions for Schedule M (Form 990), Noncash Contributions.

If the organization received a partially completed Form 8283, Noncash Charitable Contributions, from a donor, complete it and return it so the donor can get a charitable contribution deduction. Keep a copy for your records.

Original (first) and successor donee (recipient) organizations must file Form 8282, Donee Information Return, if they sell, exchange, consume, or otherwise dispose of (with or without consideration) charitable deduction property (property other than money or certain publicly traded securities) within 3 years after the date the original donee received the property.

Part III. Section 501(c)(7), (8), or (10) organizations that received contributions for use exclusively for religious, charitable, etc., purposes during the tax year must complete Parts I through III for each person whose gifts totaled more than \$1,000 during the tax year. Show also, in the heading of Part III, the total of gifts to these organizations that were \$1,000 or less for the tax year and were for exclusively religious, charitable, etc., purposes. Complete this information only on the first Part III page if you use duplicate copies of Part III.

If an amount is set aside for an exclusively religious, charitable, etc., purpose, show in column (d) how the amount is held (for example, whether it is commingled with amounts held for other purposes). If the organization transferred the gift to another organization, show the name and address of the transferee organization in column (e) and explain the relationship between the two organizations.

1 KAMALA D. HARRIS, State Bar No. 146672
 Attorney General of California
 2 TAMAR PACHTER, State Bar No. 146083
 Supervising Deputy Attorney General
 3 ALEXANDRA ROBERT GORDON, State Bar No. 207650
 Deputy Attorney General
 4 455 Golden Gate Avenue, Suite 11000
 San Francisco, CA 94102-7004
 5 Telephone: (415) 703-5509
 Fax: (415) 703-5480
 6 E-mail: Alexandra.RobertGordon@doj.ca.gov
Attorneys for
 7 *Attorney General Kamala D. Harris*

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 **CENTER FOR COMPETITIVE
 POLITICS,**

14 Plaintiff,

15 v.

16
 17 **KAMALA HARRIS, in her Official
 Capacity as Attorney General of the State of
 18 California,**

19 Defendant.
 20

2:14-cv-00636-MCE-DAD

**DECLARATION OF KEVIS FOLEY IN
 SUPPORT OF DEFENDANT
 ATTORNEY GENERAL KAMALA D.
 HARRIS'S OPPOSITION TO
 PLAINTIFF'S MOTION FOR
 PRELIMINARY INJUNCTION**

Date: April 17, 2014
 Time: 2:00 p.m.
 Courtroom: 7, 14th Floor
 Judge: Hon. Morrison C. England, Jr.
 Trial Date: None Set
 Action Filed: March 7, 2014

1 I, KEVIS FOLEY, declare as follows:

2 1. I am employed by the State of California Department of Justice as Registrar of the
3 Attorney General's Registry of Charitable Trusts (the "Registry").

4 2. Except as otherwise stated, I have personal knowledge of the facts set forth in this
5 declaration, and if called upon as a witness I could testify competently as to those facts. I make
6 this declaration in support of the Attorney General's Opposition to Plaintiff's Motion for
7 Preliminary Injunction.

8 3. Pursuant to the Supervision of Trustees and Fundraisers for Charitable Purposes
9 Act, California Government Code sections 12580, et seq., the Registry is responsible for
10 registering charitable organizations as well as people or entities that hold assets for charitable
11 purposes. The Registry maintains records and files related to such organizations.

12 4. Pursuant to the Act, unless exempt, persons or entities must register within thirty
13 days of receiving charitable assets. Registrants must also file annual reports with the Registry.
14 The annual reporting is accomplished through Form RRF-1, the Registration/Renewal Fee Report
15 ("RRF-1"), which discloses certain financial and operational information about the registrant.
16 Organizations which have more than \$50,000 in assets or annual revenue must also submit the
17 informational return filed with the IRS, known as the Form 990. Information filed with the
18 Registry is available for public inspection. The information assists members of the public in
19 making informed decisions about charitable giving as well as providing relevant information to
20 assist the Attorney General in fulfilling the office's oversight responsibilities over charitable
21 assets and fundraising practices.

22 5. The Registry maintains a database of filings and information related to entities
23 which are registered or required to be registered. As Registrar, I am responsible for overseeing
24 the database.

25 6. Although many documents filed with the Registry are open to public inspection,
26 the Schedule B filed by public charities that file IRS Form 990 or 990-EZ has always been
27 treated as a confidential document. All confidential documents are kept in separate files that are
28 not available for public viewing. Those "files" are now electronic records. Registry staff scans

1 all filings into the Registry's automated database. Prior to scanning Registry staff goes through
2 each filing and removes all confidential data which is scanned separately as a "confidential"
3 document. The Registry publishes the non-confidential documents on its searchable website, but
4 maintains the schedule B records as confidential records, accessible to in-house staff only. This
5 process has been consistent since 2007 when the Registry became automated.

6
7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9
10 Executed on April 3, 2014, at Sacramento, California.

11
12 */s/ Kevis Foley**

13 _____
14 KEVIS FOLEY

15
16
17
18
19
20
21
22
23
24
25
26
27 _____
28 * Original signature retained by counsel of record, Alexandra Robert Gordon (Local Rule 131).

1 Alan Gura, Calif. Bar No. 178,221
2 Gura & Possessky, PLLC
3 105 Oronoco Street, Suite 305
4 Alexandria, VA 22314
5 703.835.9085/Fax 703.997.7665
6 alan@gurapossessky.com

7 Allen Dickerson*
8 Center for Competitive Politics
9 124 S. West St., Suite 201
10 Alexandria, VA 22314
11 703.894.6800/F: 703.894.6811
12 adickerson@campaignfreedom.org
13 *Application *pro hac vice* pending

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CENTER FOR COMPETITIVE) Case No. _____
POLITICS,)
Plaintiff,) COMPLAINT FOR
v.) DECLARATORY AND
KAMALA HARRIS, in her Official) INJUNCTIVE RELIEF
Capacity as Attorney General of the)
State of California,)
Defendant.)

INTRODUCTION

The First Amendment, and the Internal Revenue Code, protect the privacy of individuals who wish to support charitable educational organizations that seek to advance the public good. In derogation of these protections, California officials are pressuring Plaintiff Center for Competitive Politics (“CCP”), a § 501(c)(3) charitable organization, to reveal its confidences. CCP brings this action to secure its rights and those of its supporters.

JURISDICTION AND VENUE

1
2 1. This Court has subject matter jurisdiction over this action pursuant to
3 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983.

4
5 2. Venue for this action is proper in the United States District Court for
6 the Eastern District of California per 28 U.S.C. § 1391(b).

7 PARTIES

8 3. Plaintiff Center for Competitive Politics (“CCP”) is a Virginia nonprofit
9 corporation, recognized by the Internal Revenue Service as a § 501(c)(3) educational
10 organization.

11 4. Defendant Kamala Harris is Attorney General of California, charged
12 with enforcement of California’s Uniform Supervision of Trustees for Charitable
13 Purposes Act, codified at Cal. Gov. Code § 12581 *et seq.* (2014).

14 STATEMENT OF FACTS

15
16 *California’s Registry of Charitable Trusts*

17 5. In order to legally solicit tax-deductible contributions in California, an
18 entity must be registered with the state’s Registry of Charitable Trusts (“Registry”).

19 6. The Registry is administered by California’s Department of Justice.
20 Cal. Gov. Code § 12587.1 (2014).

21 7. To maintain membership in the Registry, nonprofit corporations must
22 file annual “periodic written reports” with the Attorney General, which “include the
23 Annual Registration Renewal Fee Report . . . as well as the Internal Revenue Service
24 Form 990, which must be filed on an annual basis with the Registry.” 11 Code of
25 Calif. Regs. § 301; § 306(c).
26
27
28

1 8. In previous years, Plaintiff has filed a periodic written report including
2 its Federal Form 990 but, pursuant to 26 U.S.C. § 6104(d)(3)(A), has redacted the
3 names and addresses of its contributors.

4 9. Plaintiff has been a member of the Registry since 2008.

5 10. On January 9, 2014, Plaintiff filed its Annual Registration Renewal Fee
6 Report with the Attorney General.

7 *Defendant Demands an Unredacted List of Plaintiff's Contributors*

8 11. Plaintiff received a letter from Defendant dated February 6, 2014
9 (“Letter”). A true and correct copy of the Letter is attached to this Complaint as
10 Exhibit 1.
11

12 12. The Letter acknowledges Defendant’s receipt of CCP’s periodic written
13 report, but states that “[t]he filing is incomplete because the copy of Schedule B,
14 Schedule of Contributors, does not include the names and addresses of contributors.”
15 (bold in original).
16

17 13. The Letter states that “[t]he Registry retains Schedule B as a
18 confidential record for IRS Form 990 and 990-EZ filers.”
19

20 14. The Letter concludes that Plaintiff must “[w]ithin 30 days of the date of
21 this letter . . . submit a complete copy of Schedule B, Schedule of Contributors, for
22 the fiscal year noted above, as filed with the Internal Revenue Service.” (bold,
23 underlining in original).

24 15. Thirty days from the date of the Letter is March 8, 2014, a Saturday.

25 16. The Letter further instructs Plaintiff to “address all correspondence to
26 the undersigned.”
27
28

1 24. Absent registration, a nonprofit entity may not solicit contributions in
2 California, a state containing a substantial portion of the population and wealth of
3 the United States. Such a prohibition inhibits the ability of Californians to receive
4 solicitations from an entity that they would support, and thus the ability of
5 individuals, within and without the state, to associate.
6

7 25. Further, the “Attorney General may apply to a superior court of the
8 State of California for relief, and the court may issue a temporary injunction or a
9 permanent injunction to restrain violations of this chapter, appoint a receiver, order
10 restitution or an accounting, or grant other relief as may be appropriate to ensure
11 the due application of charitable funds. Those proceedings shall be brought in the
12 name of the state.” Cal. Gov. Code § 12591.1(f) (2014).
13

14 *Federal Law Protects the Names and Addresses of Plaintiff's Contributors*
15 *from Compelled Disclosure to State Officials*

16 26. The Internal Revenue Code regulates the disclosure of confidential
17 federal tax information, and is the sole authority governing such information.

18 27. The Code defines “[t]he term disclosure” as “the making known to any
19 person in any manner whatever a return or return information.” 26 U.S.C. §
20 6103(b)(8) (2014).
21

22 28. IRS Form 990, filed annually by § 501(c)(3) organizations including
23 Plaintiff, provides for the reporting of contributor names and addresses on Schedule
24 B, Schedule of Contributors.

25 29. The Schedule B filings of certain organizations, such as § 527 entities,
26 are made available for public inspection. 26 U.S.C. § 6104(d)(1).
27
28

1 30. Federal law, however, forbids public dissemination of complete
2 Schedule B information for organizations registered under § 501(c). § 6104(d)(3)(A)
3 (prohibiting “the disclosure of the name and address of any contributor to the
4 organization.”).

5
6 31. There is an exception to this blanket ban: upon the written request of a
7 state official, such as the Attorney General, “the [United States Treasury] Secretary
8 may make available for inspection or disclosure returns and return information of
9 any organization described in § 501(c) . . . for the purpose of, and only to the extent
10 necessary in, the administration of State laws regulating the solicitation or
11 administration of the charitable funds or charitable assets of such organizations.” 26
12 U.S.C. § 6104(c)(3).

13
14 32. Even this narrow exception is explicitly cabined: state officials are not
15 permitted to obtain the Schedule B of “organizations described in paragraph (1) or
16 (3)” of § 501(c). 26 U.S.C. § 6104(c)(3).

17 33. Consequently, Federal law specifically prohibits state officials,
18 including Defendant, from seeking or obtaining the unredacted Schedule B of
19 Plaintiff, a § 501(c)(3) organization.

20
21 *Associational Liberties and Compelled State Disclosure*

22 34. An undisturbed line of U.S. Supreme Court precedent expressly
23 prohibits state governments from obtaining the contributor lists of non-partisan,
24 nonprofit corporations. See, e.g., *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449
25 (1958); *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Gibson v. Fla. Legislative*
26 *Investigation Comm.*, 372 U.S. 539 (1963). The Court repeatedly held that disclosure
27 of such lists unconstitutionally burdens the freedom of association.
28

1 35. “It is hardly a novel perception that compelled disclosure of affiliation
2 with groups engaged in advocacy may constitute [an] effective . . . restraint on
3 freedom of association.” *NAACP*, 357 U.S. at 462.

4 36. It is “immaterial whether the beliefs sought to be advanced by
5 association pertain to political, economic, religious or cultural matters, and state
6 action which may have the effect of curtailing the freedom to associate is subject to
7 the closest scrutiny.” *NAACP*, 357 U.S. at 460-461.

8 37. The Supreme Court further blocked the use of state power to obtain the
9 names and addresses of contributors to a nonprofit corporation in order “to
10 determine whether petitioner was conducting intrastate business in violation of the
11 Alabama foreign corporation registration statute” or as “an adjunct of their power to
12 impose occupational license taxes.” *NAACP*, 357 U.S. at 464; *Bates*, 361 U.S. at 523.

13 38. Indeed, for nearly 70 years, it has been settled that “regulatory
14 measures [], no matter how sophisticated, cannot be employed in purpose or in effect
15 to stifle, penalize, or curb the exercise of First Amendment rights.” *Louisiana ex rel.*
16 *Gremillion v. NAACP*, 366 U.S. 293, 297 (1961).

17 39. If the Attorney General’s efforts are carried out, Plaintiff and its
18 supporters will suffer just such an injury.

19
20 COUNT I – FEDERAL PREEMPTION

21 40. Plaintiff repeats, realleges, and incorporates the allegations in
22 paragraphs 1-39.

23 41. Congress has, pursuant to its authority under U.S. Const. art. I, sec. 8,
24 barred state officials from demanding the names and addresses of contributors to
25
26
27
28

1 entities organized under § 501(c)(3) of the Internal Revenue Code. 26 U.S.C. §
2 6104(d)(3)(A).

3 42. The Attorney General's demand for the Schedule B filings of Plaintiff
4 CCP, a § 501(c)(3) organization, violates a duly enacted Federal statute and is thus
5 preempted by the Supremacy Clause, U.S. Const. art. VI, cl. 2, insofar as she seeks
6 to compel Plaintiff to turn over its contributors' names and addresses.
7

8 43. Plaintiff and its supporters have no adequate remedy at law to avert
9 the harm from Defendant's conduct. Plaintiff is entitled to a declaratory judgment
10 and injunctive relief prohibiting the Defendant from demanding its unredacted
11 Schedule B filings.
12

13 **COUNT II – U.S. CONST. AMENDS. I, XIV**

14 44. Plaintiff repeats, realleges, and incorporates the allegations in
15 paragraphs 1-43.

16 45. By compelling the disclosure of the names and addresses of Plaintiff's
17 contributors, Defendant will unlawfully and substantially deprive Plaintiff and its
18 supporters of the free association rights secured by the First Amendment to the
19 United States Constitution, in violation of 42 U.S.C. § 1983.
20

21 46. Plaintiff and its supporters have no adequate remedy at law to avert
22 this harm. Plaintiff is entitled to a declaratory judgment and injunctive relief
23 prohibiting the Defendant from demanding its Schedule B filings.
24

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff requests judgment be entered in its favor and against
27 Defendant as follows:
28



1300 I Street
P. O. Box 903447
Sacramento, CA 94203-4470
Telephone: (916) 443-2021
Fax: (916) 444-3651
E-Mail Address: RCT@doj.ca.gov

February 6, 2014

CENTER FOR COMPETITIVE POLITICS
124 S. WEST STREET, #201
ALEXANDRIA VA 22314

CT FILE NUMBER: CT0149998

RE: IRS Form 990, Schedule B, Schedule of Contributors

We have received the IRS Form 990, 990-EZ or 990-PF submitted by the above-named organization for filing with the Registry of Charitable Trusts (Registry) for the fiscal year ending 12/31/2012. **The filing is incomplete** because the copy of Schedule B, Schedule of Contributors, does not include the names and addresses of contributors.

The copy of the IRS Form 990, 990-EZ or 990-PF, including all attachments, filed with the Registry must be identical to the document filed by the organization with the Internal Revenue Service. The Registry retains Schedule B as a confidential record for IRS Form 990 and 990-EZ filers.

Within 30 days of the date of this letter, please submit a **complete** copy of Schedule B, Schedule of Contributors, for the fiscal year noted above, as filed with the Internal Revenue Service. Please address all correspondence to the undersigned.

Sincerely,

Handwritten signature of AS in black ink.

Office Technician
Registry of Charitable Trusts

For

KAMALA D. HARRIS
Attorney General

**U.S. District Court
 Eastern District of California – Live System (Sacramento)
 CIVIL DOCKET FOR CASE #: 2:14-cv-00636-MCE-DAD**

Center for Competitive Politics v. Harris
 Assigned to: Chief Judge Morrison C. England, Jr
 Referred to: Magistrate Judge Dale A. Drozd
 Case in other court: USCA, 14-15978
 Cause: 28:2201 Injunction

Date Filed: 03/07/2014
 Jury Demand: None
 Nature of Suit: 950 Constitutional – State Statute
 Jurisdiction: Federal Question

Plaintiff

Center for Competitive Politics

represented by **Allen Dickerson , PHV**
 Center for Competitive Politics
 124 S. West Street
 Suite 201
 Alexandria, VA 22314
 (703) 894-6800
 Fax: (703) 894-6811
 Email: adickerson@campaignfreedom.org
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Alan Gura
 Gura & Possessky PLLC
 105 Oronoco Street, Suite 305
 Alexandria, VA 22314
 703-835-9085
 Fax: 703-997-7665
 Email: alan@gurapossessky.com
ATTORNEY TO BE NOTICED

V.

Defendant

Kamala Harris

represented by **Alexandra Robert Gordon**
 CA. Dept. of Justice
 Office of the Attorney General
 455 Golden Gate Ave., Ste. 11000
 San Francisco, CA 94102
 415-703-5509
 Fax: 415-703-1234
 Email: alexandra.robertgordon@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/07/2014	<u>1</u>	COMPLAINT against Kamala Harris by Center for Competitive Politics. Attorney Gura, Alan added. (Filing fee \$ 400, receipt number 0972-5216696) (Attachments: # <u>1</u> Exhibit 1: Letter from Defendant to Plaintiff, # <u>2</u> Civil Cover Sheet)(Gura, Alan) (Entered: 03/07/2014)
03/07/2014	<u>2</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Center for Competitive Politics for attorney Allen Dickerson to appear Pro Hac Vice. (Filing fee \$ 200, receipt number 0972-5216740) (Attachments: # <u>1</u> Certificate of Good Standing)(Gura, Alan) (Entered: 03/07/2014)
03/10/2014	<u>3</u>	SUMMONS ISSUED as to *Kamala Harris* with answer to complaint due within *21* days. Attorney *Alan Gura* *Gura & Possessky PLLC* *105 Oronoco Street,

		Suite 305* *Alexandria, VA 22314*. (Kaminski, H) (Entered: 03/10/2014)
03/10/2014	<u>4</u>	CIVIL NEW CASE DOCUMENTS ISSUED; (Attachments: # <u>1</u> Consent Form, # <u>2</u> VDRP) (Kaminski, H) (Entered: 03/10/2014)
03/12/2014	<u>5</u>	MINUTE ORDER (Text Only) issued by courtroom deputy for District Judge, Morrison C. England, Jr.: The Court received the Pro Hac Vice Application and Proposed Order (ECF No. 2). Pursuant to Local Rule 137(b), regarding the requirements for proper filing of a proposed order, you are required to email the proposed order (in Microsoft Word) to chambers in addition to filing the pdf version via the CM/ECF system. Pursuant to Local Rule 101, the definition for "signature", you may enter /s/ for signatures for all counsel. (Deutsch, S) (Entered: 03/12/2014)
03/17/2014	<u>6</u>	PRO HAC VICE ORDER signed by Chief Judge Morrison C. England, Jr on 3/17/14: Added attorney Allen Dickerson, PHV for the Center for Competitive Politics. (Kaminski, H) (Entered: 03/17/2014)
03/17/2014	<u>7</u>	STIPULATION and PROPOSED ORDER for Extension of Time to Answer or Otherwise Respond to Complaint by Kamala Harris. Attorney Gordon, Alexandra Robert added. (Attachments: # <u>1</u> Certificate of Record)(Gordon, Alexandra) (Entered: 03/17/2014)
03/18/2014	<u>8</u>	STIPULATION and ORDER signed by Chief Judge Morrison C. England, Jr on 3/18/14. Defendant's time to answer or otherwise respond to the Complaint is extended to no later than 21 days after entry of this Court's order regarding the motion for preliminary injunction. (Manzer, C) (Entered: 03/18/2014)
03/20/2014	<u>9</u>	MOTION for PRELIMINARY INJUNCTION by Center for Competitive Politics. Motion Hearing set for 4/17/2014 at 02:00 PM in Courtroom 7 (MCE) before Chief Judge Morrison C. England Jr. (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Declaration of David Keating, # <u>3</u> Proposed Order, # <u>4</u> Certificate of Service)(Dickerson, Allen) Modified on 3/21/2014 (Meuleman, A). (Entered: 03/20/2014)
04/03/2014	<u>10</u>	OPPOSITION to <u>9</u> Motion for Preliminary Injunction by Kamala Harris. (Attachments: # <u>1</u> Declaration of Alexandra Robert Gordon, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Declaration of Kevis Foley, # <u>9</u> Certificate of Service) (Gordon, Alexandra) Modified on 4/4/2014 (Michel, G). (Entered: 04/03/2014)
04/10/2014	<u>11</u>	REPLY by Center for Competitive Politics re <u>10</u> Opposition to Motion,. (Dickerson, Allen) (Entered: 04/10/2014)
04/11/2014	<u>12</u>	MINUTE ORDER (Text Only) issued by courtroom deputy for Chief District Judge, Morrison C. England, Jr.: Oral argument on Plaintiff's Motion for Preliminary Injunction, ECF No. 9, is confirmed for Thursday, April 17, at 2:00 PM in Courtroom 7 at the Robert T. Matsui Federal Courthouse. Personal appearances are required. Each side shall be limited to twenty (20) minutes, and counsel should be prepared to discuss, inter alia: (1) whether permitting the state to require the requested donor information directly from Plaintiff would frustrate the full purposes and objectives of Congress in enacting 26 U.S.C. § 6104; (2) whether Plaintiff is required to make the prima facie showing set forth in Brock v. Local 375, Plumbers Int'l Union of Am., AFL-CIO, 860 F.2d 346, 350 (9th Cir. 1988), to succeed on its Freedom of Association claim; and (3) how Plaintiff would suffer irreparable harm and how the equities would balance if the Court were to find that the Attorney General's request is preempted by federal law rather than unconstitutional under the first amendment. (Deutsch, S) (Entered: 04/11/2014)
04/14/2014	<u>13</u>	RESPONSE by Kamala Harris to <u>9</u> MOTION for PRELIMINARY INJUNCTION . (Attachments: # <u>1</u> Opinion)(Gordon, Alexandra) (Entered: 04/14/2014)
04/14/2014	<u>14</u>	CERTIFICATE of SERVICE by Kamala Harris re <u>13</u> Response. (Gordon, Alexandra) (Entered: 04/14/2014)
04/15/2014	<u>15</u>	MINUTE ORDER (Text Only) issued by courtroom deputy for Chief District Judge, Morrison C. England, Jr.: On the Court's own motion the Plaintiff's Motion for Preliminary Injunction (ECF No. 9) is CONTINUED to 3:00 p.m. on April 17,

		2014 in Courtroom 7. (Deutsch, S) (Entered: 04/15/2014)
04/17/2014	<u>16</u>	MINUTES (Text Only) for proceedings held before Chief Judge Morrison C. England, Jr.: MOTION HEARING held on 4/17/2014. After argument from counsel the Court submitted the Plaintiff's Motion for Preliminary Injunction (ECF No. 9). A written order is forthcoming. Plaintiff's Counsel Allen Dickerson and Alan Gura, present. Defendant's Counsel Alexandra Gordon, present. Court Reporter: Michelle Babbitt. Interpreter none present. (Deutsch, S) (Entered: 04/18/2014)
05/14/2014	<u>17</u>	ORDER signed by Chief Judge Morrison C. England, Jr on 5/13/2014 DENYING <u>9</u> Motion for Preliminary Injunction. (Donati, J) (Entered: 05/14/2014)
05/15/2014	<u>18</u>	NOTICE of INTERLOCUTORY APPEAL by Center for Competitive Politics as to <u>17</u> Order on Motion for Preliminary Injunction. (Filing fee \$ 505, receipt number 0972-5328195) (Dickerson, Allen) Modified on 5/19/2014 (Kastilahn, A). (Entered: 05/15/2014)
05/15/2014	<u>19</u>	STATEMENT of Representation by Plaintiff Center for Competitive Politics re <u>18</u> Notice of Appeal. (Dickerson, Allen) (Entered: 05/15/2014)
05/15/2014	<u>20</u>	TRANSCRIPT REQUEST by Center for Competitive Politics for proceedings held on 17 April 2014 before Judge England, re <u>18</u> Notice of Appeal (Dickerson, Allen) (Entered: 05/15/2014)
05/19/2014	<u>21</u>	APPEAL PROCESSED to Ninth Circuit re <u>18</u> Notice of Interlocutory Appeal filed by Center for Competitive Politics. Notice of Appeal filed *5/15/2014*, Complaint filed *3/7/2014* and Appealed Order / Judgment filed *5/14/2014*. Court Reporter: *Michelle Babbitt*. *Fee Status: Paid on 5/15/2014 in the amount of \$505.00* (Attachments: # <u>1</u> Appeal Information) (Kastilahn, A) (Entered: 05/19/2014)
05/21/2014	<u>22</u>	USCA CASE NUMBER 14-15978 for <u>18</u> Notice of Appeal filed by Center for Competitive Politics. (Zignago, K.) (Entered: 05/21/2014)
05/21/2014	<u>23</u>	STIPULATION and PROPOSED ORDER for Staying District Court Proceedings Pending Preliminary Injunction Appeal by Kamala Harris. (Attachments: # <u>1</u> Certificate of Service)(Gordon, Alexandra) (Entered: 05/21/2014)
05/29/2014	<u>24</u>	STIPULATION and ORDER signed by Chief Judge Morrison C. England, Jr on 5/28/14. Case STAYED pending resolution and issuance of mandate by the Ninth Circuit regarding plaintiff's preliminary injunction appeal. (Manzer, C) (Entered: 05/29/2014)
06/02/2014	<u>25</u>	TRANSCRIPT of Proceedings held on 4-17-14, before Chief Judge Morrison C. England, Jr, filed by Court Reporter Michelle Babbitt, E-mail mbabbitt@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through Reporter Babbitt or PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 6/23/2014. Redacted Transcript Deadline set for 7/3/2014. Release of Transcript Restriction set for 9/2/2014. (Babbitt, M) (Entered: 06/02/2014)

9th Circuit Case Number(s) 14-15978

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date)

June 12, 2014

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

s/Allen Dickerson

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date)

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)