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'S OPENING BRIEF

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)

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CORPORATE DISCLOSURE STATEMENT

Center for Competitive Politics, a nonprofit corporation organized under the laws of Virginia, hereby states that it has no parent companies, subsidiaries, or affiliates and that it does not issue shares to the public.

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INTRODUCTION

The First Amendment protects individuals' rights to anonymously associate with one another. Because this right of free association "need[s] breathing space to survive," it must be "protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *NAACP v. Button*, 371 U.S. 415, 433 (1963) (citation omitted); *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960) (citation omitted). This general constitutional protection is furthered by laws specifically protecting the privacy of donors to most tax-exempt organizations. One such statute bars state attorneys general—when they administer a state's charitable solicitation regime—from obtaining federal tax forms listing the names and addresses of donors to § 501(c)(3) organizations. Free association is consequently protected by both the Constitution and federal statutes. This appeal concerns the scope of both.

Plaintiff-Appellant Center for Competitive Politics ("CCP") is a nonprofit corporation organized under § 501(c)(3) of the Internal Revenue Code ("IRC"). [ER 53]. CCP's mission is to promote and defend the First Amendment rights of free political speech, assembly, association, and petition through research, education, and strategic litigation. CCP is financially supported by contributors from across the United States, including California. [ER 5].

In order to solicit funds from California residents, the state requires CCP to become a member of its Registry of Charitable Trusts ("Registry"). CAL. GOV'T. CODE § 12585. Pursuant to state law, the Defendant-Appellee, Attorney General Kamala D. Harris, administers the Registry. *See, e.g.* CAL. GOV'T. CODE § 12584. CCP has been a member of the Registry since 2008, and as part of the registration process, annually provides the Attorney General with a public copy of its IRS Form 990, including its Schedule B. [ER 5] This public copy and the version filed with the IRS are identical, except that the names and addresses of CCP's donors are redacted from the copy provided to the Attorney General. *Id.*

In 2014, for the first time, the Attorney General demanded an unredacted copy of CCP's Schedule B. [ER 54]. Because the Attorney General has not adequately substantiated her need to know the identities of CCP's donors, her demand violates the First Amendment. Furthermore, as a state action that contravenes a federal statute, her demand violates the Supremacy Clause.

STATEMENT OF JURISDICTION

The district court's subject matter jurisdiction comes from 28 U.S.C. §§ 1331, 1343, and 2201, and 42 U.S.C. § 1983. This Court has jurisdiction to hear this appeal from the district court's denial of CCP's motion for preliminary injunction under 28 U.S.C. § 1292(a)(1). The district court entered an order

denying CCP's motion on May 14, 2014. The next day, CCP timely appealed under FED. R. APP. P. 4(a)(1).

STATEMENT OF ISSUES

1. Did the district court err in holding that, because "[p]laintiff failed to establish a *prima facie* showing of arguable first amendment infringement," the Attorney General need not show that her demand for CCP's donor information is tailored to a substantial governmental interest?
2. Did the district court err in holding that a statute passed by Congress, which prohibits the Attorney General from obtaining an unredacted Schedule B from the Treasury Secretary for the purpose of regulating charitable solicitations, does not preempt the Attorney General from obtaining an unredacted Schedule B from CCP for that same purpose?

STATUTES AND REGULATIONS

Per 9TH CIR. R. 28-2.7, the relevant statutory provisions and regulations are set forth in Appellant's Addendum.

STATEMENT OF THE CASE

On March 7, 2014, CCP filed suit in the United States District Court for the Eastern District of California. [ER 52]. CCP argued that both the constitutional right to free association and the doctrine of federal preemption prohibit the Attorney General from demanding its unredacted Schedule B. [ER 58-60]. On

March 20, 2014, CCP moved for a preliminary injunction. [ER 63 (doc. 9)]. The Attorney General replied to CCP's motion on April 3, 2014. [ER 63 (doc. 10)]. The district court heard oral argument on April 17, 2014, and entered an order denying CCP's motion on May 14, 2014. [ER 64 (docs. 16, 17)]. CCP timely appealed on May 15, 2014. [ER 64 (doc. 18)]. On May 29, 2014, the district court stayed its proceedings pending resolution of this appeal. [ER 64 (doc. 24)].

CCP filed for registration with California's Registry of Charitable Trusts in 2008, and has since been registered to solicit charitable contributions in California. [ER 54]. On February 6, 2014, Registry employee "A.B." sent a letter to CCP stating that its continued registration was dependent upon submission of an unredacted copy of its Schedule B. [ER 61]; *see* CAL. GOV'T. CODE § 12591.1(b)(3) (granting the Attorney General power to block registration with the Registry if she "finds that any entity…has committed an act that would constitute violation of…an order issued by the Attorney General, including, but not limited to…fail[ure] to file a financial report, or [filing]…an incomplete financial report").

Although not asserted in A.B.'s original letter, the Attorney General subsequently justified this demand by asserting that the unredacted Schedule B information "allows her to determine 'whether an organization has violated the law, including laws against self-dealing, improper loans, interested persons, or illegal or unfair business practices.'" [ER 14] (citations omitted). She has failed,

however, to explain the mechanism by which knowing the names and addresses of CCP's donors will further this end.

STANDARD OF REVIEW

In this Circuit, the party "seeking a preliminary injunction must demonstrate 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Nat'l Meat Ass'n v. Brown*, 599 F.3d 1093, 1097 (9th Cir. 2010) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). "In general," this Court "review[s] the denial of a preliminary injunction for abuse of discretion." *Harris v. Bd. of Supervisors*, 366 F. 3d 754, 760 (9th Cir. 2004) (citations omitted). But "[w]hen the district court is alleged to have relied on an erroneous legal premise," as happened below in the First Amendment context, this Court "review[s] the underlying issues of law *de novo*." *Id.* Further, "[p]reemption is a legal issue [the Court] review[s] *de novo*." *Nat'l Meat Ass'n*, 599 F.3d at 1097 (citation omitted).

SUMMARY OF THE ARGUMENT

The district court erred in denying CCP's motion to preliminarily enjoin the Attorney General from obtaining CCP's unredacted Schedule B information as a condition of soliciting charitable solicitations in California.

The district court's First Amendment analysis improperly placed the burden on CCP to demonstrate a *prima facie* harm. [ER 12]. But decisions of both the U.S. Supreme Court and this Court have held that because compelled disclosure of an organization's donors is itself a First Amendment injury, it is the government that must bear the burden of defending such demands. In doing so, states must show that their actions are substantially related to, or demonstrate a relevant correlation with, a sufficiently important government interest. By relying on inapposite case law from this Court, the district court ruled in favor of the Attorney General without requiring this showing. [ER 14]. Importantly, the Attorney General has yet to demonstrate any mechanism by which CCP's donor information is related to her interest in enforcing the law. Accordingly, having failed to articulate any fit between her demand and a governmental interest, the Attorney General has not met the tailoring prong of the relevant Constitutional test, and CCP is likely to prevail on the merits.

The district court's ruling regarding CCP's federal preemption claim relied almost entirely on the application of a 1987 case from this Court, *Stokwitz v. United States*, 831 F.2d 893 (9th Cir. 1987). [ER 11]. But *Stokwitz* analyzed a different section of the tax code—26 U.S.C. § 6103—that does not regulate the use of Schedule B information by state attorneys general for the purpose of administering charitable solicitation. In 2006, Congress enacted just such a

statute—26 U.S.C. § 6104(c)(3)—which prohibits the Treasury Secretary from delivering the Schedule B information of § 501(c)(3) nonprofits to state attorneys general for the very purpose that the Attorney General seeks CCP's Schedule B. The federal preemption doctrine prohibits the Attorney General from attempting to obtain indirectly a copy of a federal tax form she could not obtain directly.

Lastly, because of the lower court's errors listed *supra*, the court determined that CCP would not face irreparable injury, the balance of the equities did not tip in CCP's favor, and issuing the injunction would not be in the public interest. [ER 15]. However, given that the district court's rulings on CCP's First Amendment and federal preemption claims were in error, CCP has in fact met the non-merits requirements for the issuance of a preliminary injunction.

ARGUMENT

I. CCP has demonstrated a likelihood of success on the merits.

A. The Attorney General's demand for CCP's donor information violates the First Amendment's protection of associational liberties.

CCP raised its First Amendment claim at ER 59, and the district court denied it at ER 15.

i. The First Amendment requires courts to analyze compelled disclosure under a heightened standard of scrutiny.

When the government compels disclosure of an organization's financial supporters, it intrudes upon the First Amendment's protection of free association. *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (compelled disclosure has been "long…recognized" as a "significant encroachment[] on First Amendment rights"); *NAACP v. Alabama ex. rel. Patterson*, 357 U.S. 449, 462 (1958) ("[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association" as taxes levied against expression) (citation omitted); *Cal. Bankers Ass'n v. Shultz*, 416 U.S. 21, 55 (1974) ("an organization may have standing to assert that constitutional rights of its members be protected from governmentally compelled disclosure of their membership in the organization…absent a countervailing governmental interest, such information may not be compelled"); *see also id.* at 98 ("[t]he First Amendment gives organizations such as the ACLU the right to maintain in confidence the names of those who belong or contribute to the organization, absent a compelling governmental interest requiring disclosure") (Marshall, J., dissenting). And because "[f]inancial transactions can reveal much about a person's activities, associations, and beliefs," such intrusions upon First Amendment rights "cannot be justified by a mere showing of some legitimate

governmental interest." *Buckley v. Valeo*, 424 U.S. at 66, 64 (citations and quotation marks omitted); *see also McCutcheon v. FEC*, 134 S. Ct. 1434, 1456 (2014) ("[i]n the First Amendment context, fit matters") (plurality op.). To guard against unwarranted intrusions upon associational liberties, courts review government efforts to compel donor disclosure under a heightened level of scrutiny. *See Buckley*, 424 U.S. at 64 ("[s]ince *NAACP v. Alabama* we have required that the subordinating interests of the State must survive exacting scrutiny").

Under this heightened standard, the state must show "a relevant correlation or substantial relation between the governmental interest and the information required to be disclosed." *Acorn Invs., Inc. v. City of Seattle*, 887 F.2d 219, 225 (9th Cir. 1989) (citations and quotation marks omitted); *Buckley*, 424 U.S. at 64-65 (noting that the Supreme Court has "insisted" upon such heightened review, and that "[t]his type of scrutiny is necessary"); *see also Bates v. City of Little Rock*, 361 U.S. at 523 ("[w]here there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling"); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 392 (2000) (the Supreme Court "ha[s] never accepted mere conjecture as adequate to carry a First Amendment burden").

ii. The government bears the burden of defending policies that encroach upon First Amendment freedoms.

Under exacting scrutiny, "[t]he interest advanced must be paramount, one of vital importance, *and the burden is on the government* to show the existence of such an interest." *Elrod v. Burns*, 427 U.S. 337, 362 (1963) (citations omitted) (emphasis supplied). "Moreover…[t]he gain to the subordinating interest provided by the means" used to further that interest "must outweigh the incurred loss of protected rights." *Elrod v. Burns*, 427 U.S. at 363 (citations omitted). But the district court incorrectly placed the burden of persuasion upon CCP, not the Attorney General. Relying upon *Brock v. Local 375, Plumbers Int'l Union*, 860 F.2d 346 (9th Cir. 1988) and its companion cases, the district court found that CCP was "require[d] to demonstrate that the" Attorney General's action would "result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights."[1] [ER 11-12] (citations and quotation marks

[1] *Brock* is further inapposite here because, under heightened scrutiny, demonstrating harm via threats, harassments, or reprisals is *not* vital to finding that a disclosure law unconstitutionally infringes upon First Amendment rights. *Talley v. California*, 362 U.S. 60, 69 (1960) ("[t]he record is barren of any claim, much less proof, that he will suffer any injury whatever by identifying the handbill with his name. Unlike *NAACP v. Alabama*, which is relied upon, there is neither allegation nor proof that Talley or any group sponsoring him would suffer 'economic reprisal, loss of employment, threat of physical coercion [or] other

omitted). Only if CCP could make this showing would "'the evidentiary burden… shift to'" the Attorney General. [ER 12] (quoting *Brock*, 860 F.2d at 350).

It would be surprising were this the law. Such an approach conflicts with the exacting level of constitutional review this Court applied in deciding *Acorn Investments v. City of Seattle*—a compelled disclosure case—just one year after *Brock*. *Compare Brock*, 860 F.2d at 350 ("[t]his *prima facie* showing requires appellants to demonstrate that enforcement of the subpoenas will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights.") (citation omitted), *with Acorn Invs.*, 887 F.2d at 225 ("[a]s the Supreme Court has recognized, forcing an association engaged in protected expression to disclose the names of its members may have a chilling effect on that expression. This chilling effect exists even when it is not the government's intention to suppress particular expression. For this reason, a compelled content-neutral disclosure rule is unconstitutional unless it furthers a substantial governmental interest. Further, there must be a relevant correlation or substantial relation between the governmental interest and the information required to be disclosed") (citing *Talley v. California*, 362 U.S. at 64; *NAACP v. Alabama*,

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manifestations of public hostility.' *Id* at 462.") (Clark, J., dissenting) (alterations in original).

357 U.S. at 462, 461; *Buckley*, 424 U.S. at 64) (quotation marks and parenthetical explanations omitted). Requiring the Plaintiff to first demonstrate *prima facie* First Amendment harm is, if anything, the *reverse* of exacting scrutiny, as it shifts the burden of justifying constitutionally suspect official action away from the state. *See, e.g. Buckley*, 424 U.S. at 64-65 ("insist[ing]" on exacting scrutiny); *Elrod*, 427 U.S. at 363 ("The gain to the subordinating interest provided by the means must outweigh the incurred loss of protected rights, and the government must employ means closely drawn to avoid unnecessary abridgment.") (citations and quotation marks omitted).

Constitutional rights limit the power of the state. That is why the government must defend any encroachment upon them. Even when disclosure laws "do not prevent anyone from speaking," the government imposing them still must present evidence demonstrating that there is a "substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Citizens United v. FEC*, 558 U.S. 310, 366-367 (2010) (citations and quotation marks omitted). Where the demanded disclosure is only "tenuously related" to the state's interest, that demand is unconstitutional. *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 201; 204 (1999) (considering "compelled disclosure of the name and addresses (residential and business) of each paid [petition] circulator,

and the amount of money paid and owed to each circulator" and finding that this "fail[s] exacting scrutiny").

1. *Brock* and its progeny apply in the context of specific, ongoing agency investigations. They do not address generalized demands for the donor list of every charity operating in the state of California.

In upholding the Attorney General's widespread compelled disclosure regime, the district court relied primarily upon a slim collection of authorities, all of which are inapposite. Chief among these is *Brock*, its companion case *Dole v. Local 375, Plumbers Int'l Union*, 921 F.2d 969 (9th Cir. 1990)[2], and *Dole v. Serv. Emps. Union, Local 280*, 950 F. 2d 1456 (9th Cir. 1991). [ER 11-14]. These cases do not address general compelled disclosure regimes, nor do they reverse the state's burden under exacting scrutiny.[3] *Perry v. Schwarzenegger*, 591 F.3d 1146 (9th Cir. 2009), the additional case the district court relied upon in imposing a *prima facie* burden upon CCP, similarly does not support that result. [ER 11, 12].

Brock involved a First Amendment challenge to a subpoena for donor information issued *after* an initial audit found evidence of possible malfeasance. *Brock*, 860 F.2d at 348. The *Service Employees Union* case similarly involved a

[2] For ease of reference, CCP refers to these two cases as the "*Plumbers* cases."
[3] Indeed, the Ninth Circuit began its analysis in *Brock* by invoking "[t]he Ninth Circuit standard of judicial scrutiny in an agency subpoena proceeding," not heightened First Amendment review. 860 F.2d at 348-349.

targeted investigation that began when "a member of Local 280 contacted…an investigator in the Los Angeles area Office of Labor Management Standards, Department of Labor, to report the misuse of credit cards by union officers." *McLaughlin v. Serv. Emps. Union, Local 280*, 880 F.2d 170, 171 (9th Cir. 1989). That case ultimately turned on whether a protective order was justified by the possibility that "unrestricted administrative review of the minutes of Union meetings would chill the exercise of the [F]irst [A]mendment rights of the Union and its members." *Dole v. Serv. Emps. Union*, 950 F.2d at 1458. Thus, *Service Employees Union* is even more removed from the facts of this appeal than are the *Plumbers* cases. Nor does *Perry v. Schwarzenegger* support a reversal of the heighted scrutiny standard.[4] *Perry* instead concerned those defendants' First Amendment objections to discovery requests which "satisfie[d] the Rule 26 standard…[and were] reasonably calculated to lead to the discovery of admissible evidence on issues" relevant to that case. 591 F.3d at 1144. And, in any event, the *Perry* defendants prevailed on their assertion of First Amendment privilege. *Id.* at 1145.

[4] The district court's reliance upon *Perry* largely stems from its impression that CCP sought to distinguish *Brock* and *Dole* as "labor cases." [ER 12, n. 3]. This is a misunderstanding of CCP's argument. CCP's counsel referred to these cases as "labor cases" during the hearing on its motion for preliminary injunction merely for identification purposes.

CCP's reading of *Brock* is supported by this Court's analysis in *Brock*'s immediate successor case, *Dole v. Local 375, Int'l Plumbers Union*. In discussing the union's *prima facie* evidence of First Amendment harm, an affidavit asserting a decline in contributions, the Court noted that the "the affidavit suggests that the decline in contributions was caused (at least in part) by publicity surrounding the investigation, rather than the threat of subpoena enforcement *per se*." *Dole v. Local 375*, 921 F.2d at 972, *see also* [ER 20-21]. This distinction makes little sense outside of an investigatory context where the state has already taken concrete and particularized action. *Brock* is a case about investigations and subsequent subpoenas—not universal demands for contributor information in place of conducting such an investigation.

Thus, *Brock*, *Dole*, and *Perry* involved subpoenas in the context of "lawful governmental investigation[s]." *Brock*, 860 F.2d at 349. In those instances, the demand for disclosure was preceded by some form of individualized suspicion of wrongdoing. Here, by contrast, the Attorney General has admitted that she is demanding CCP's Schedule B (and presumably those of all other nonprofits operating in California) *instead* of conducting investigations or audits. Def. Opp'n at 13, n. 8 (noting that "an audit can be particularly burdensome and disruptive" due to the "ten-year statute of limitations [that] applies to any action by the Attorney General against any charitable corporation.") But mere convenience, and

a desire to avoid the burdens imposed by a statute of limitations, does not permit the Attorney General to vacuum up sensitive information rather than do the investigative work inherent in audits and similar, individualized actions.[5] *See United States v. Owens*, 484 U.S. 554, 571 (1988) ("[i]n any event, to the extent such assessments prove inconvenient or troublesome, those burdens flow from our commitment to a Constitution that places a greater value on individual liberty than on efficient judicial administration") (Brennan, J., dissenting).

iii. Although exacting scrutiny requires an appropriate "fit" between demands for private donor information and a sufficiently important governmental interest, the Attorney General has not identified how her demand would further her stated interest.

The court did not meaningfully weigh the fact that "'the Attorney General has provided no particularized rationale for obtaining CCP's donor information.'" [ER 11] (quoting Plaintiff's Reply Br. at 11). S*ee also* Def. Br. at 13 ("[b]ecause plaintiff has not made a *prima facie* showing, the Court *need not* examine whether the contested Schedule B disclosure requirement is justified…") (emphasis supplied). Nevertheless, the court did note that the Attorney General's "interest in

[5] Other courts have modified even otherwise valid subpoena requests in order to vindicate associational liberties. *Int'l Longshoremen's Ass'n v. Waterfront Comm. of NY Harbor*, 667 F.2d 267, 274 (2d Cir. 1981) (limiting subpoena for contributor lists issued after investigation found evidence of suspicious activity to a random sample of 10 percent of a political fund's contributors).

performing her regulatory and oversight function as delineated by state law is compelling and substantially related to the disclosure requirement." [ER 14]. To support this proposition, the court relied upon the Attorney General's assertion that "the requested information allows her to determine 'whether an organization has violated the law, including laws against self-dealing, improper loans, interested persons, or illegal or unfair business practices.'" [ER 14] (quoting Def. Br. at 19-20) (citations to California law omitted).

CCP "asserts no right to absolute immunity from state investigation, and no right to disregard [California]'s laws." *NAACP v. Alabama*, 357 U.S. at 463. And CCP concedes that enforcing those laws is a sufficiently important interest. But "governmental action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion."[6] *Bates*, 361 U.S. at 525. To presume otherwise would functionally eliminate constitutional guarantees in any space where the government is permitted to act.[7] The Attorney General has never—at briefing or argument—explained (or

[6] For instance, even pursuant to her law enforcement powers and role in regulating the Registry, the Attorney General plainly could not demand that organizations file copies of all email correspondence transmitted using the entity's computers, despite the fact that such information could potentially be useful in combatting crime. *See* U.S. CONST. amend. IV; CAL. CONST. art. I, § 13.

[7] Unless it has tailored its response, the government may not deny fundamental rights to citizens who have taken up arms against the United States, even in wartime. *Hamdi v. Rumsfeld*, 542 U.S. 507, 539 (2004).

even suggested) how CCP's donor information furthers the government's law enforcement interest, let alone demonstrated "a relevant correlation or substantial relation" between the state's law enforcement interest and its infringement of CCP's rights.[8] *Acorn Invs.*, 887 F.2d at 225 (citation and quotation marks omitted); [ER 22-26]. Without this information, it is difficult to determine precisely how CCP's donor information would assist the Attorney General in her enforcement of the law, particularly with respect to out-of-state donors over whom she lacks jurisdiction. CAL. CONST. art. V, § 13. Indeed, without an explanation to the contrary, it appears that those laws could best be enforced by observing money *going out* of an organization—information already reported on the public version of Form 990.

Moreover, the Attorney General has failed to provide applicable statutory references for her asserted authority to demand CCP's donor information. The district court cited CAL. GOV'T CODE § 12588 and 12589 for the proposition that state law grants the Attorney General broad authority to "subpoena" any and all records of Registry applicants. [ER 13-14]. That is, however, an inaccurate reading of California law: the subpoena power exist for investigative purposes, and cannot

[8] Even if *Brock* and *Dole* applied to this case, and an official Attorney General investigation of CCP were in fact underway, this Court would still require the state to show "whether the information sought is relevant and material to the investigation." *Brock*, 860 F.2d at 349.

support mandating universal disclosure. *See* CAL. GOV'T CODE § 12588 ("[t]he Attorney General may *investigate* transactions and relationships of corporations and trustees subject to this article") (emphasis supplied). Likewise, CAL. GOV'T CODE § 12589 authorizes the Attorney General to compel "the attendance of any person, as provided in Section 12588." These subpoena powers are not general warrants, a distinction Ninth Circuit precedent preserves. *Brock*, 860 F.2d at 250. In any event, the Code cannot supplant the First Amendment. U.S. CONST. art. VI, cl. 2.

The Attorney General cannot prevail by merely asserting that donor information is relevant, for "[w]e long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest." *Buckley*, 424 U.S. at 64. By failing to explain *how* Schedule B donor information furthers her important interest in enforcing state law, the Attorney General has left the "governmental interest" side of the scale empty. But "the First Amendment cannot be encroached upon for naught." *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (en banc) "[S]omething…outweighs nothing every time." *Id.* (citation omitted).

iv. Whether or not the state intends to publicize CCP's donor information is not constitutionally dispositive.

The district court notes that, according to the Attorney General, "the Registry is kept confidential" and, therefore, CCP's "Schedule B w[ill] not be disclosed publically [*sic*]." [ER 15]. But the constitutionality of the government's generalized demand does not turn on this mere attestation. *NAACP v. Alabama*, 357 U.S. at 466 (finding "*state* scrutiny of membership lists" unconstitutional under heightened review) (emphasis supplied). Indeed, *Acorn Investments* addressed the constitutionality of an ordinance requiring that "shareholder information [of investors in adult entertainment centers] be disclosed to *the licensing agency*." 887 F.2d at 225, n. 9 (emphasis supplied). In reaching that decision, this Court did not rely upon the public disclosure of shareholders, and indeed made no mention of that possibility. *Compare id.*, *with* [ER 12] (describing *Acorn Investments* as a case "where members of groups would be publicly identified"). Rather, this Court simply found "no logical connection between the City's legitimate interest in compliance with the…[adult entertainment] ordinance and the rule requiring disclosure of the names of shareholders." *Acorn Invs.*, 887 F.2d at 226. It was on this basis that it invalidated the disclosure rule under the First Amendment.

Even were a state's promise of privacy dispositive in this constitutional analysis, CCP's only evidence that its donor information would remain confidential is a brief, conclusory affidavit from the Registrar of Charitable Trusts. [ER 50-51] (averring that the Registry "maintains the [S]chedule B records as confidential records, accessible to in-house staff only"). But this policy is commanded by no statutory or regulatory decree, and there is no guarantee that this will always be the Registry's practice. In fact, California law is generally to the contrary. CAL. GOV'T. CODE § 12590 (registry filings are generally available for public inspection).[9]

Moreover, there are reasons to question the reliability of the Registry's current procedures. Mr. Foley, as the Registrar, is "responsible for overseeing" the state's "database of filings and information related to entities which are registered or required to be registered." [ER 50]. According to Mr. Foley, while "many documents filed with the Registry are open to public inspection, the Schedule B…has always been treated as a confidential document." *Id.* Thus, the Schedule B

[9] While the statute also states that "[t]he Attorney General shall withhold from public inspection any instrument so filed whose content is not exclusively for charitable purposes," that language provides little protection. *See* CAL. GOV'T. CODE § 12590. If the names and addresses of CCP's donors were not required "for charitable purposes," why is the Attorney General demanding them? In any event, CCP is aware of no legal authority *requiring* the Attorney General to maintain its donors in confidence. Nor are there sufficient guarantees that the Attorney General would in fact do so, as noted *infra.*

is "kept in separate files that are not available for public viewing." *Id.* At least since 2007, "Registry staff goes through each filing and removes all confidential data which is scanned separately," so that the Schedule B information remains "accessible to in-house staff only." [ER 51]. Yet, for six years, CCP's filing of redacted Schedule B information presumably went unnoticed by Registry staff. *See* Op. Br. at 2 ("[a]lthough it is required by state law to file an unredacted copy of its IRS Form 990 Schedule B with the Registry, plaintiff is not in the habit of doing so and apparently this omission had not been caught before this year." (citing CAL. CODE REGS. tit.11, § 301 (2014); [ER 54]). This fact alone provides CCP with little reason to believe that, even if it complies with the Attorney General's demand, the Registry will exercise sufficient care in ensuring that its information is "scanned separately" and remains "accessible to in-house staff only." [ER 51].

B. Section 6104(c)(3) of the Internal Revenue Code preempts the Attorney General's demand for CCP's unredacted Schedule B.

The Attorney General seeks an unredacted copy of CCP's Schedule B "pursuant to [her] role as the chief regulator of charitable organizations in the state." [ER 13] (citations omitted). Yet a 2006 statute prohibits the Secretary of the Treasury from "mak[ing] available for inspection or disclosure returns or return information of any [§ 501(c)(3)] organization…for the purpose of…the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations." 26 U.S.C. § 6104(c)(3)

(2014). The district court held that this statute does not preempt the Attorney General from obtaining CCP's unredacted Schedule B information. [ER 11].

"Because the Constitution and federal laws are supreme, conflicting state laws are without legal effect." *Am. Trucking Ass'n v. City of Los Angeles*, 133 S. Ct. 2096, 2106 (2013) (Thomas, J., concurring) (citation omitted). In every federal preemption case, "the clear and manifest purpose of Congress…is the ultimate touchstone." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (citations and quotation marks omitted). To ascertain Congress' purpose, "[t]he statute must be read as a whole" by "examin[ing] the explicit statutory language and the structure and purpose of the statute." *Stokwitz v. United States*, 831 F.2d 893, 894 (9th Cir. 1987); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990).

i. The structure and language of the statute demonstrate Congress's purpose: to shield a nonprofit's unredacted Schedule B from state officials administering charitable solicitation laws.

The district court found that CCP's preemption argument, raised at ER 56-57, was "unsupported by the text of the IRC." [ER 8]. Accordingly, the court denied CCP's motion for a preliminary injunction. [ER 16]. But the relevant provisions evidence Congress's intention to keep CCP's donor information from the Attorney General in *precisely* the situation this case presents.

Section 501(c)(3) organizations are nonprofit corporations created by Congress, and are exempt from income taxation. 26 U.S.C. § 501(c)(3).

Educational nonprofits must, like most § 501(c) organizations, file tax information on Form 990 and its accompanying schedules. 26 U.S.C. § 6033(b). Most of this information is public. 26 U.S.C. § 6104(b). The form details minute financial transactions, including the organization's investments (and income therefrom); transactions (including loans to employees and officers); number of employees and volunteers; whether the organization takes minutes; whether the organization has a conflict of interest policy; the compensation and titles of officers and key employees; expenses for services, grants, benefits, advertising, and office maintenance; and whether the organization subjects itself to an independent audit. [ER 29-41].

Congress enacted § 6104 to regulate the "[p]ublicity of information required from certain exempt organizations," including educational nonprofits. 26 U.S.C. § 6104. These organizations are protected by comprehensive privacy provisions. 26 U.S.C. § 6104(b) ("[t]he information required to be furnished…together with the names and addresses of such organizations and trusts, shall be made available to the public…*Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust*") (emphasis supplied). Congress further specified that § 501(c)(3) donors should not be made subject to public disclosure. 26 U.S.C. § 6104(d)(3)(A) (public inspection copies of

a § 501(c)(3) Form 990 "shall not require the disclosure of the name or address of any contributor to the organization").

Section 6103 creates a general rule that no federal or state employee, or any person who lawfully obtains a tax return, may disclose the information contained therein. 26 U.S.C. § 6103(a). That section also gives the Treasury Secretary a measure of discretion in releasing tax information to certain entities, such as a designee of the taxpayer (26 U.S.C. § 6103(c)), the Financial Management Service (26 U.S.C. § 6103(k)(8)), or the Bureau of Prisons (26 U.S.C. § 6103(k)(10)). The same section also provides that income tax forms "shall be open" to state officials "*for…the administration of State tax laws*." § 6103(d)(1) (emphasis supplied).

In contrast to these general provisions, in 2006 Congress passed a law governing the specific situation now before this Court. 26 U.S.C. § 6104(c)(3). That law gives the Secretary discretion, upon written request, to "make available for inspection or disclosure returns and return information of any organization described in 501(c)" for the limited and conditional purpose of administering a charitable solicitation regime. 26 U.S.C. § 6104(c)(3). But the Secretary has *no* discretion if the organization is a § 501(c)(3)—in such cases, the 2006 statute *bans* the Secretary from providing that information to the requesting state officer.

The statutory language is clear:

> "Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return

> information of any organization described in section 501 (c) (*other than organizations described in paragraph (1) or (3) thereof*) for the purpose of, and only to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations."

26 U.S.C. § 6104(c)(3) (2014) (emphasis supplied).

Nor may the Attorney General obtain indirectly information that Congress has prohibited her from obtaining directly. *See Toll v. Moreno*, 458 U.S. 1, 16 (1982) (a state may not evade federal tax exemption provided to G-4 visa holders by denying in-state tuition to the children of such visa holders, because "[t]he State may not recoup indirectly from respondents' parents the taxes that the Federal Government has expressly barred the State from collecting"). This is the very nature of preemption. *Arizona v. United States*, 132 S. Ct. 2492, 2503 (2012) (state may not "frustrate federal policies").

ii. The district court erred by analyzing the Attorney General's disclosure demand under 26 U.S.C. § 6103, rather than 26 U.S.C. § 6104.

Section 6103 is a lengthy provision that generally governs the confidentiality of tax returns and return information. For example, § 6103(d) permits state and local law enforcement agencies to obtain certain federal tax returns and return information for purposes of enforcing tax laws. 26 U.S.C. §§ 6103(d)(1). Section 6103 contains references to incompetency, joint returns, and the death of a taxpayer, indicating that that the primary focus of § 6103 was individual—and not

nonprofit—tax returns. 26 U.S.C. § 6103. While § 6103 bans the *public* disclosure of those tax returns, it does so as a deterrent—the remainder of the statute generally encourages the Treasury Secretary to share return information when requested by legitimate agencies pursuing legitimate purposes. 26 U.S.C. § 6103. The ban on public disclosure backstops the process, preventing return information from being used inappropriately, yet permitting entities like state taxing agencies to function effectively. 26 U.S.C. § 6103(d)(1).

Section 6103 is decidedly not about the confidentiality of a nonprofit's Schedule B in the context of a state official's regulation of charitable solicitation. (To the extent that § 6103 covers nonprofit organizations, it protects their confidentiality).[10] Section 6104, on the other hand, explicitly governs the circumstances at issue in this case. In enacting § 6104, Congress was drilling down into a narrow, and, as discussed *supra*, constitutionally sensitive area of the tax code. An individual has no First Amendment right of association with herself. The division between the individual focused § 6103, and the tax-exempt-organization focused § 6104, underscores that fact.

[10] "In the case of an inspection or disclosure under this subsection relating to the return of a partnership, S corporation, trust, or an estate, the information inspected or disclosed shall not include any supporting schedule, attachment, or list which includes the taxpayer identity information of a person other than the entity making the return or the person conducting the inspection or to whom the disclosure is made." 26 U.S.C. § 6103(d)(10).

1. *Stokwitz v. United States* does not eliminate the distinction between § 6103 and § 6104.

The district court's confusion between the structure and purpose of §§ 6103 and 6104 stems from its reliance upon this Court's 1987 decision in *Stokwitz v. United States*, 831 F.2d 893.[11] *Stokwitz* is the only substantive authority relied upon by the district court.[12] [ER 11-15]. But *Stokwitz* did not address Congress's views on the confidentiality of nonprofit contributor lists sought by state officials regulating charitable solicitations. Congress addressed that specific question nineteen years later, in 2006. 26 U.S.C. § 6104(c)(3).

Instead, the case involved a Naval Investigative Service inquiry into the conduct of Mr. Stokwitz, an employee of the Naval Oceans System Center (NOSC). Mr. "Stokwitz was informed of the investigation, ordered to surrender his access badge, and escorted off NOSC property. Shortly thereafter, Mr. Stokwitz's supervisor, his secretary, his assistant, and another NOSC employee[,] acting without a warrant or prior authorization, searched Stokwitz's office and briefcase." *Stokwitz*, 831 F.2d at 893. The warrantless search resulted in the seizure of Mr. "Stokwitz's personal copies of his federal and state returns" which he had

[11] A case introduced by Appellee in a letter to the district court dated April 15, 2014, three days before oral argument. [ER 28]. Aside from limited discussion on the subject at oral argument, the application of *Stokwitz* to this case was not briefed before the lower court.

[12] Excluding general citations concerning the preemption doctrine itself.

previously filed with the IRS. *Id*. Mr. Stokwitz considered this seizure of his returns illegal, not because it was done without the blessing of a neutral magistrate, but because 26 U.S.C. § 6103 protected his filed returns from disclosure to any other government agency or official. *Id.* at 893-894. Citing the text of the statute and legislative history related to the Tax Reform Act of 1976 (which amended § 6103 into its then-current form), this Court denied Mr. Stokwitz's claim. *Id*. at 894-896.

Thus, *Stokwitz* involves the tax returns of an *individual*, not a tax-exempt organization. *Compare* 26 U.S.C. § 6104(c)(3) (regulating disclosure of tax-exempt entities and trusts), *with* 26 U.S.C. § 6103 (setting general rules for the disclosure of tax returns). The legislative history cited by the *Stokwitz* Court reinforces this obvious difference. *See Stokwitz*, 831 F. 2d at 896 ("[b]ut Congress intended only [in enacting § 6103], in the words of Senator [Lowell] Weicker, that 'each taxpayer should be confident that *the filing of his or her tax returns* in no way compromises the right of privacy'") (citing 122 Cong. Rec. 24013 (1976)) (emphasis supplied in original).

Further, the *Stokwitz* Court argued that "return and return information in the taxpayer's hands are subject to no greater protection than other private papers in [the] taxpayer's protection." *Stokwitz,* 831 F.2d at 894 (citation and quotation marks omitted). Such a sweeping statement could not, as a fundamental

constitutional matter, be asserted regarding donor information maintained by an association. For instance, in *NAACP v. Alabama*, the NAACP "produced substantially all the data" that an Alabama state judge ordered it to produce, "except [for] its membership lists." 357 U.S. at 454. On appeal, the U.S. Supreme Court unanimously adopted the NAACP's position that the state could not compel the disclosure of the organization's membership lists. *Id.* at 467. Information about an association's contributors can, then, be afforded "greater protection than other private papers in [the] taxpayer's protection." *Stokwitz*, 831 F.2d at 894.

Thus, the district court's error in relying upon *Stokwitz* is, in part, quite similar to its error regarding the First Amendment. *Stokwitz* is a case about an investigation of a non-exempt individual—the very species of tax return largely regulated by 26 U.S.C. § 6103. But the Attorney General's disclosure regime is quite different from the case involved in *Stokwitz*—it is a dragnet regime aimed at tax-exempt corporations, not an investigation related to a reasonable suspicion of wrongdoing by a particular individual.

2. Section 6104 was enacted decades after the provisions of § 6103 relied upon by the district court.

To apply *Stokwitz* to this case, the district court relied heavily upon legislative history from 1976 to conclude "that Congress's intent in regulating how confidential tax return information must be treated was to restrict how tax

information is obtained from the IRS, not from taxpayers directly." [ER 10]. The district court did recognize that § 6104(c)(3) "was added in 2006," but dismissed this fact, noting that "there is no legislative record to suggest that Congress intended to deviate from its intent as expressed in *Stokwitz*." [ER 11].

But it is difficult to discern how the floor statements of Senators Lowell Weicker and Bob Dole could possibly be dispositive in determining the meaning of legislation enacted a decade after they left the Senate. Moreover, those statements—both discussing 1970's era IRS abuses—are unhelpful in interpreting provisions dealing with tax-exempt organizations and charitable solicitation regimes. [ER 9-10] (citing *Stokwitz*'s discussion at 831 F.2d at 894-895, of floor statements of Sens. Weicker and Dole, and a Senate Report discussing the Tax Reform Act of 1976).

Congress has no duty to address prior legislative history in enacting new legislation, as any such record is simply inapplicable to legislation passed by a subsequent Congress. *See Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992) ("courts must presume that a legislature says in a statute what it means and means in a statute what it says *there*. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.") (citations and quotation marks omitted) (emphasis supplied). For example, *Stokwitz*

would hardly control 26 U.S.C. § 6105, which regulates the "[c]onfidentiality of tax information arising under treaty obligations."

Moreover, while "unnecessary in light of the statute's unambiguous language," available legislative history supports CCP's understanding of the statute. *Mohamed v. Palestinian Auth.*, 132 S. Ct. 1702, 1709 (2012) (citations and quotations omitted); STAFF OF THE JOINT COMMITTEE ON TAXATION, 109TH CONG., TECHNICAL EXPLANATION OF H.R. 4, THE "PENSION PROTECTION ACT OF 2006" AT 328 (Comm. Print 2006) (available at http://www.dol.gov/ebsa/pdf/x-38-06.pdf) (emphasis supplied) (the "Secretary may make available…returns and return information…for inspection or disclosure only for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such." But, the Secretary may not do so for "an organization described in…section 501(c)(3)").

iii. Section 6104 is not discretionary. It prohibits the Treasury Secretary from disclosing Schedule B information to the Attorney General under precisely the circumstances this case presents.

Section 6103(d)(1) states that return information "shall be open" to state agencies enforcing the tax laws. *Section 6104(c)(3) is worded in almost precisely the opposite way*. Section 6103 is a grant of access to the states, whereas § 6104(c)(3) (and the accompanying regulations about the general privacy of donors

to educational nonprofits), claw back any inference of access to the private return information of entities like CCP.

In 2006, Congress recognized that state attorneys general and other officials would seek confidential tax return information of 501(c)(3)s to regulate their charitable solicitations, and prohibited the Treasury Secretary from giving the states that information. This protection is not discretionary. Section 6104(c)(3) anticipated and foreclosed the regime that the Attorney General claims has been in place since at least 2007.

Thus, this case presents an issue of first impression in this Circuit. Under color of state law, an elected California official seeks information from a nonprofit educational organization. That information is reported to the United States government under federal law. The same law which requires that information to be reported to the federal government explicitly *forecloses* its disclosure to any state. The question, then, is whether § 6104 and its accompanying statutes preempt the Attorney General's demand for CCP's donor information. It clearly prohibits the Attorney General's direct access to the actual form filed with the federal government. May the Attorney General accomplish the same result indirectly, by demanding merely a *copy* of that form directly from a nonprofit organization? And may she make soliciting contributions in the largest and wealthiest state in the nation contingent on such a demand?

iv. Properly understood, the tax code preempts the Attorney General from obtaining CCP's Schedule B information.

As discussed at length *supra*, through the language of § 6104(c)(3), Congress placed CCP's contributor list outside the Attorney General's reach. This is the very nature of express preemption. See *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 542 (2001) (explicit federal statutes "unequivocally preclude[]" states from regulating the same activity). It would have been counterproductive for Congress to prohibit state attorneys general from obtaining CCP's donor list via CCP's Schedule B filing, if it were not expressly preempting the Attorney General from obtaining that form generally. Step by step, Congress made its purpose manifestly clear.

First, Congress provided that the tax returns of certain exempt organizations would be public, including an organization's Schedule B form. Second, Congress specifically protected § 501(c)(3) and § 501(c)(4) tax-exempt organizations from mandatory public disclosure of those same Schedule B forms. 26 U.S.C. 6104(d)(3)(A). Then, Congress limited the ability of state attorneys general to obtain the unredacted Schedule B from nonprofit entities, specifying that such an official may only obtain that information from a § 501(c) nonprofit "for the purpose of, and only to the extent necessary in, the administration of State laws

regulating the solicitation or administration of the charitable funds or charitable assets of such organizations." 26 U.S.C. § 6104(c)(3). Finally, Congress banned the Treasury Secretary from giving a state attorney general the Schedule B information of a § 501(c)(3) organization such as CCP.

But even if this Court finds that § 6104(c)(3) does not expressly preempt the Attorney General, "federal law…[is] in irreconcilable conflict" with her disclosure regime, even though "compliance with both the federal and state regulations is [not] a physical impossibility." *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 31 (1996) (citations and quotation marks omitted); *Arizona*, 132 S. Ct. at 2501 (citations and quotation marks omitted).

Congress's objective was to prevent state attorneys general from obtaining CCP's donor list for the very purpose the Attorney General demands it. *See also Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health*, 699 F.3d 962, 978 (7th Cir. 2012) (Indiana's claim of "plenary authority to exclude Medicaid providers for any reason, as long as it furthers a legitimate state interest" is preempted by Medicaid's guarantee of a free choice of provider, because "[i]f states are free to set any qualifications they want—no matter how unrelated to the provider's fitness to treat Medicaid patients—then the free-choice-of-provider requirement could be easily undermined by simply labeling any exclusionary rule as a 'qualification'") (emphasis removed). Here, unable to obtain CCP's original

federal form, the Attorney General requests a copy. That is not what Congress intended in comprehensively regulating this area.

v. Because CCP's construction of the Internal Revenue Code is a "fairly possible" one, and given the grave First Amendment implications of the Attorney General's demand, the doctrine of constitutional avoidance counsels in favor of preemption.

As shown *supra*, the Attorney General's behavior, at a minimum, raises serious First Amendment concerns. This is reason alone to afford the Internal Revenue Code preemptive effect, considering the substantial (CCP asserts conclusive) merits of that construction. "[I]t is 'a well-established principle governing the prudent exercise of this Court's jurisdiction that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.'" *Bond v. United States*, No. 12-158, 2014 U.S. LEXIS 3988, at *19 (June 2, 2014) (quoting *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984) (per curiam) and citing *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring)); see also *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 206 (2009). "[W]hen a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *Harris v. United States*, 536 U.S. 545, 555 (2002) (quotation omitted).

"[T]he fact that one among alternative constructions would involve serious

constitutional difficulties is reason to reject that interpretation in favor of another." 2A Sutherland § 45.11, at 87 (collecting cases). Accordingly, "[t]he question is not whether" an alternative statutory interpretation "is the most natural interpretation of the [law], but only whether it is a 'fairly possible' one. As we have explained, 'every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2594 (2012) (Roberts, C.J.) (quotations omitted); cf. *PDK Labs. Inc. v. United States DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment) ("if it is not necessary to decide more, it is necessary not to decide more").

CCP submits both that it is "fairly possible" that the Internal Revenue Code preempts Defendant's conduct, and that it does in fact do so.

II. The District Court erred in determining that, absent the injunctive relief requested, CCP would not suffer irreparable injury.

The district court concluded that "[b]ecause 'the Court finds [that] no serious First Amendment questions are raised…there is no risk of irreparable injury to the Plaintiff's contributors.'" [ER 15] (citations omitted) (alterations in original). This conclusion is premised entirely on its probability-of-success analysis, as "'[t]he loss of First Amendment freedoms, for even minimal amounts of time,

unquestionably constitutes irreparable injury.'" *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 828 (9th Cir. 2013) (quoting *Elrod*, 427 U.S. at 373).

Absent injunctive relief, CCP will be forced to either (1) disclose its donors, or (2) refrain from soliciting charitable contributions in California. If CCP refuses to turn over its Schedule B, it risks civil fines, and will lose its freedom to engage in fundraising, which Ninth Circuit and U.S. Supreme Court precedent recognize as "fully protected speech." *Gaudiya Vaishnava Soc. v. San Francisco*, 952 F.2d 1059, 1064 (9th Cir. 1991) (citing *Bd. of Trs. v. Fox*, 492 U.S. 469 (1989); s*ee also NAACP v. Button*, 371 U.S. at 433 ("[t]he threat of sanctions may deter the[] exercise" of First Amendment liberties "almost as potently as the actual application of sanctions.") (citations omitted)). This will also operate to chill the associational rights of CCP's donors and potential donors in California.

If CCP does turn over its Schedule B, it will be violating the First Amendment associational rights of its existing donors, by turning over their information—provided with the knowledge that it was private under federal law—to the state. Similarly, CCP's First Amendment right to associate with its contributors, many of whom would rather not be disclosed, and their right to freely associate with each other, will be chilled.

III. The district court erred in determining that the balance of equities does not favor CCP, and that the requested injunction is not in the public interest.

As a general matter, unconstitutional infringements upon basic First Amendment liberties often cause "[t]he balance of equities and the public interest" to "tip sharply in favor of" entering an injunction. *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). This is particularly so in an associational context, as burdens on associational rights "outweigh[] disruption[s] to" regulatory systems that harm those rights. *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1129 (9th Cir. 2011) (citation omitted). This case presents just such a scenario, where, in balancing the equities at stake, the inevitable infringement upon constitutional freedoms absent an injunction trumps any disruption to the state's charitable regulation paradigm that such injunction may cause. Furthermore, "[i]t is clear that it would not be equitable…to allow…the state to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (citations and quotation marks omitted) (second ellipsis in original).

Moreover, "[i]n First Amendment cases, the Ninth Circuit generally examines these two prongs of the *Winter* [555 U.S. at 20] inquiry in tandem, recognizing that when a regulation restricts First Amendment rights, the equities tip in the plaintiffs' favor and advance the public interest in upholding free speech

principles." *Cuiviello v. Cal. Expo*, 2013 U.S. Dist. LEXIS 106058 at *34 (E.D. Cal. 2013) (citing *Thalheimer*, 645 F.3d at 1128-29; *Klein*, 584 F.3d at 1208). Thus, not only does the balance of equities tip in CCP's favor—given that without an injunction, it will certainly suffer loss of constitutional rights—the public interest will also be served by the requested injunction.

But the district court did not balance these equities, or meaningfully consider their interaction with the public interest, and ruled against CCP. [ER 15]. Instead, it merely concluded that "it is in the public interest that Defendant continues to serve [*sic*] chief regulator of charitable organizations in the state in the manner sought." [ER 15]. This conclusion ignores the bedrock principle that "enforcement of an unconstitutional law is always contrary to the public interest." *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). S*ee also, e.g.*, *Thalheimer*, 645 F.3d at 1129 (citing *Sammartano v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir. 2002) ("[c]ourts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles")).

CONCLUSION

For the foregoing reasons, CCP asks that this Court reverse the district court's denial of CCP's motion for a preliminary injunction.

Respectfully Submitted,

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STATEMENT OF RELATED CASES

CCP is unaware of any related cases presently before this Court.

No. 14-15978

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ADDENDUM

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U.S. CONST., amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST., art. VI, cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

26 U.S.C. § 6103(a)

(a) General rule. Returns and return information shall be confidential, and except as authorized by this title--

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c) [26 USCS § 6104(c)], and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (k)(10), paragraph (6), (10), (12), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

26 U.S.C. § 6103(c)

(c) Disclosure of returns and return information to designee of taxpayer. The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

26 U.S.C. § 6103(d)

(d) Disclosure to State tax officials and State and local law enforcement agencies.

(1) In general. Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, and 52 and subchapter D of chapter 36 [26 USCS §§ 1 et seq., 1401 et seq., 1501 et seq., 2001 et seq., 2501 et seq., 3101 et seq., 3301 et seq., 3401 et seq., 4001 et seq., 4061 et seq., 4981 et seq., 5001 et seq., 5701 et seq., and 4481 et seq.] shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the

extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(2) Disclosure to State audit agencies.

(A) In general. Any returns or return information obtained under paragraph (1) by any State agency, body, or commission may be open to inspection by, or disclosure to, officers and employees of the State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State agency, body, or commission referred to in paragraph (1).

(B) State audit agency. For purposes of subparagraph (A), the term "State audit agency" means any State agency, body, or commission which is charged under the laws of the State with the responsibility of auditing State revenues and programs.

(3) Exception for reimbursement under section 7624 [26 USCS § 7624]. Nothing in this section shall be construed to prevent the Secretary from disclosing to any State or local law enforcement agency which may receive a payment under section 7624 [26 USCS § 7624] the amount of the recovered taxes with respect to which such a payment may be made.

(4) Availability and use of death information [Caution: For postponement of effective date of this paragraph with respect to certain States, see P.L. 103-66, Sec. 13444(b), which appears as a note to this section.].

(A) In general. No returns or return information may be disclosed under paragraph (1) to any agency, body, or commission of any State (or any legal representative thereof) during any period during which a contract meeting the requirements of subparagraph (B) is not in effect between such State and the Secretary of Health and Human Services.

(B) Contractual requirements. A contract meets the requirements of this subparagraph if--

(i) such contract requires the State to furnish the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it, and

(ii) such contract does not include any restriction on the use of information obtained by such Secretary pursuant to such contract, except that such contract may provide that such information is only to be used by the Secretary (or any other Federal agency) for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals.

Any information obtained by the Secretary of Health and Human Services under such a contract shall be exempt from disclosure under section 552 of title 5, United States Code, and from the requirements of section 552a of such title 5.

(C) Special exception. The provisions of subparagraph (A) shall not apply to any State which on July 1, 1993, was not, pursuant to a contract, furnishing the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it.

(5) Disclosure for combined employment tax reporting.

(A) In general. The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A [26 USCS §§ 7213 and 7213A] shall not apply with respect to disclosures or inspections made pursuant to this paragraph.

(B) Termination. The Secretary may not make any disclosure under this paragraph after December 31, 2007.

(6) Limitation on disclosure regarding regional income tax agencies treated as States. For purposes of paragraph (1), inspection by or disclosure to an entity described in subsection (b)(5)(A)(iii) shall be for the purpose of, and only to the extent necessary in, the administration of the laws of the member municipalities in such entity relating to the imposition of a tax on income or wages. Such entity may

not redisclose any return or return information received pursuant to paragraph (1) to any such member municipality.

26 U.S.C. § 6103(k)(8)

(k) Disclosure of certain returns and return information for tax administration purposes.

…

(8) Levies on certain government payments.

(A) Disclosure of return information in levies on financial management service. In serving a notice of levy, or release of such levy, with respect to any applicable government payment, the Secretary may disclose to officers and employees of the Financial Management Service--

(i) return information, including taxpayer identity information,

(ii) the amount of any unpaid liability under this title (including penalties and interest), and

(iii) the type of tax and tax period to which such unpaid liability relates.

(B) Restriction on use of disclosed information. Return information disclosed under subparagraph (A) may be used by officers and employees of the Financial Management Service only for the purpose of, and to the extent necessary in, transferring levied funds in satisfaction of the levy, maintaining appropriate agency records in regard to such levy or the release thereof, notifying the taxpayer and the agency certifying such payment that the levy has been honored, or in the defense of any litigation ensuing from the honor of such levy.

(C) Applicable government payment. For purposes of this paragraph, the term 'applicable government payment' means--

(i) any Federal payment (other than a payment for which eligibility is based on the income or assets (or both) of a payee) certified to the Financial Management Service for disbursement, and

(ii) any other payment which is certified to the Financial Management Service for disbursement and which the Secretary designates by published notice.

26 U.S.C. § 6103(k)(10)

(10) Disclosure of certain returns and return information to certain prison officials.

(A) In general. Under such procedures as the Secretary may prescribe, the Secretary may disclose to officers and employees of the Federal Bureau of Prisons and of any State agency charged with the responsibility for administration of prisons any returns or return information with respect to individuals incarcerated in Federal or State prison systems whom the Secretary has determined may have filed or facilitated the filing of a false or fraudulent return to the extent that the Secretary determines that such disclosure is necessary to permit effective Federal tax administration.

(B) Disclosure to contractor-run prisons. Under such procedures as the Secretary may prescribe, the disclosures authorized by subparagraph (A) may be made to contractors responsible for the operation of a Federal or State prison on behalf of such Bureau or agency.

(C) Restrictions on use of disclosed information. Any return or return information received under this paragraph shall be used only for the purposes of and to the extent necessary in taking administrative action to prevent the filing of false and fraudulent returns, including administrative actions to address possible violations of administrative rules and regulations of the prison facility and in administrative and judicial proceedings arising from such administrative actions.

(D) Restrictions on redisclosure and disclosure to legal representatives. Notwithstanding subsection (h)--

(i) Restrictions on redisclosure. Except as provided in clause (ii), any officer, employee, or contractor of the Federal Bureau of Prisons or of any State agency charged with the responsibility for administration of prisons shall not disclose any information obtained under this paragraph to any person other than an officer or employee or contractor of such Bureau or agency personally and directly engaged in the administration of prison facilities on behalf of such Bureau or agency.

(ii) Disclosure to legal representatives. The returns and return information disclosed under this paragraph may be disclosed to the duly authorized legal representative of the Federal Bureau of Prisons, State agency, or contractor charged with the responsibility for administration of prisons, or of the incarcerated individual accused of filing the false or fraudulent return who is a party to an action or proceeding described in subparagraph (C), solely in preparation for, or for use in, such action or proceeding.

26 U.S.C. § 6104

§ 6104. Publicity of information required from certain exempt organizations and certain trusts.

(a) Inspection of applications for tax exemption or notice of status.

(1) Public inspection.

(A) Organizations described in section 501 or 527 [26 USCS § 501 or 527]. If an organization described in section 501(c) or (d) [26 USCS § 501(c) or (d)] is exempt from taxation under section 501(a) [26 USCS § 501(a)] for any taxable year or a political organization is exempt from taxation under section 527 [26 USCS § 527] for any taxable year, the application filed by the organization with respect to which the Secretary made his determination that such organization was entitled to exemption under section 501(a) [26 USCS § 501(a)] or notice of status filed by the organization under section 527(i) [26 USCS § 527(i)], together with any papers submitted in support of such application or notice, and any letter or other document issued by the Internal Revenue Service with respect to such application or notice shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application or notice filed after the date of the enactment of this subparagraph, a copy of such application or notice and such letter or document shall be open to public inspection at the appropriate

field office of the Internal Revenue Service (determined under regulations prescribed by the Secretary). Any inspection under this subparagraph may be made at such times, and in such manner, as the Secretary shall by regulations prescribe. After the application of any organization for exemption from taxation under section 501(a) [26 USCS § 501(a)] has been opened to public inspection under this subparagraph, the Secretary shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 [26 USCS § 501] which it has been determined describes such organization.

(B) Pension, etc., plans. The following shall be open to public inspection at such times and in such places as the Secretary may prescribe:

(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a) or 403(a) [26 USCS § 401(a) or 403(a)], an individual retirement account described in section 408(a) [26 USCS § 408(a)], or an individual retirement annuity described in section 408(b) [26 USCS § 408(b)],

(ii) any application filed with respect to the exemption from tax under section 501(a) [26 USCS § 501(a)] of an organization forming part of a plan or account referred to in clause (i),

(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

(C) Certain names and compensation not to be opened to public inspection. In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any individual may be ascertained shall not be open to public inspection under subparagraph (B).

(D) Withholding of certain other information. Upon request of the organization submitting any supporting papers described in subparagraph (A) or (B), the Secretary shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. The Secretary shall withhold from public inspection any information contained in supporting papers described in subparagraph (A) or (B) the public disclosure of which he determines would adversely affect the national defense.

(2) Inspection by committees of Congress. Section 6103(f) [26 USCS § 6103(f)] shall apply with respect to--

(A) the application for exemption of any organization described in section 501(c) or (d) [26 USCS § 501(c) or (d)] which is exempt from taxation under section 501(a) [26 USCS § 501(c)] for any taxable year or notice of status of any political organization which is exempt from taxation under section 527 [26 USCS § 527] for any taxable year, and any application referred to in subparagraph (B) of subsection (a)(1) of this section, and

(B) any other papers which are in the possession of the Secretary and which relate to such application,

as if such papers constituted returns.

(3) Information available on Internet and in person.

(A) In general. The Secretary shall make publicly available, on the Internet and at the offices of the Internal Revenue Service--

(i) a list of all political organizations which file a notice with the Secretary under section 527(i) [26 USCS § 527(i)], and

(ii) the name, address, electronic mailing address, custodian of records, and contact person for such organization.

(B) Time to make information available. The Secretary shall make available the information required under subparagraph (A) not later than 5 business days

after the Secretary receives a notice from a political organization under section 527(i) [26 USCS § 527(i)].

(b) Inspection of annual returns. The information required to be furnished by sections 6033, 6034, and 6058 [26 USCS §§ 6033, 6034, and 6058], together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a) [26 USCS § 509(a)] or a political organization exempt from taxation under section 527 [26 USCS § 527]) which is required to furnish such information. In the case of an organization described in section 501(d) [26 USCS § 501(d)], this subsection shall not apply to copies referred to in section 6031(b) [26 USCS § 6031(b)] with respect to such organization. In the case of a trust which is required to file a return under section 6034(a) [26 USCS § 6034(a)], this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c) [26 USCS § 170(c)]. Any annual return which is filed under section 6011 [26 USCS § 6011] by an organization described in section 501(c)(3) [26 USCS § 501(c)(3)] and which relates to any tax imposed by section 511 [26 USCS § 511] (relating to

imposition of tax on unrelated business income of charitable, etc., organizations) shall be treated for purposes of this subsection in the same manner as if furnished under section 6033 [26 USCS § 6033].

(c) Publication to State officials.

(1) General rule for charitable organizations. In the case of any organization which is described in section 501(c)(3) [26 USCS § 501(c)(3)] and exempt from taxation under section 501(a) [26 USCS § 501(a)], or has applied under section 508(a) [26 USCS § 501(a)] for recognition as an organization described in section 501(c)(3) [26 USCS § 501(c)(3)], the Secretary at such times and in such manner as he may by regulations prescribe shall--

(A) notify the appropriate State officer of a refusal to recognize such organization as an organization described in section 501(c)(3) [26 USCS § 501(c)(3)], or of the operation of such organization in a manner which does not meet, or no longer meets, the requirements of its exemption,

(B) notify the appropriate State officer of the mailing of a notice of deficiency of tax imposed under section 507 [26 USCS § 507] or chapter 41 or 42 [26 USCS §§ 4911 et seq. or 4940 et seq.], and

(C) at the request of such appropriate State officer, make available for inspection and copying such returns, filed statements, records, reports, and other

information, relating to a determination under subparagraph (A) or (B) as are relevant to any determination under State law.

(2) Disclosure of proposed actions related to charitable organizations.

(A) Specific notifications. In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer--

(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) [26 USCS § 501(c)(3)] or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 [26 USCS § 507] or chapter 41 or 42 [26 USCS §§ 4911 et seq. or 4940 et seq.], and

(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 501(c)(3) [26 USCS § 501(c)(3)].

(B) Additional disclosures. Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

(C) Procedures for disclosure. Information may be inspected or disclosed under subparagraph (A) or (B) only--

(i) upon written request by an appropriate State officer, and

(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

(D) Disclosures other than by request. The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such returns or return information may constitute evidence of noncompliance under the laws within the jurisdiction of the appropriate State officer.

(3) Disclosure with respect to certain other exempt organizations. Upon written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of any organization described in section 501(c) [26 USCS § 501(c)] (other than organizations described in paragraph (1) or (3) thereof) for the purpose of, and only to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such information

may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

(4) Use in civil judicial and administrative proceedings. Returns and return information disclosed pursuant to this subsection may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4) [26 USCS § 6103(h)(4)].

(5) No disclosure if impairment. Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (4), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

(6) Definitions. For purposes of this subsection--

(A) Return and return information. The terms "return" and "return information" have the respective meanings given to such terms by section 6103(b) [26 USCS § 6013(b)].

(B) Appropriate State officer. The term "appropriate State officer" means--

(i) the State attorney general,

(ii) the State tax officer,

(iii) in the case of an organization to which paragraph (1) applies, any other State official charged with overseeing organizations of the type described in section 501(c)(3) [26 USCS § 501(c)(3)], and

(iv) in the case of an organization to which paragraph (3) applies, the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes.

(d) Public inspection of certain annual returns, reports, applications for exemption, and notices of status.

(1) In general. In the case of an organization described in subsection (c) or (d) of section 501 [26 USCS § 501] and exempt from taxation under section 501(a) [26 USCS § 501(a)] or an organization exempt from taxation under section 527(a) [26 USCS § 527(a)]--

(A) a copy of--

(i) the annual return filed under section 6033 [26 USCS § 6033] (relating to returns by exempt organizations) by such organization,

(ii) any annual return which is filed under section 6011 [26 USCS § 6011] by an organization described in section 501(c)(3) [USCS § 501(c)(3)] and which

relates to any tax imposed by section 511 [26 USCS § 511] (relating to imposition of tax on unrelated business income of charitable, etc., organizations),

(iii) if the organization filed an application for recognition of exemption under section 501 [26 USCS § 501] or notice of status under section 527(i) [26 USCS § 527(i)], the exempt status application materials or any notice materials of such organization, and

(iv) the reports filed under section 527(j) [26 USCS § 527(j)] (relating to required disclosure of expenditures and contributions) by such organization,

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

(B) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return, reports, and exempt status application materials or such notice materials shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in subparagraph (B) must be made in person or in writing. If such request is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.

(2) 3-year limitation on inspection of returns. Paragraph (1) shall apply to an annual return filed under section 6011 or 6033 [26 USCS § 6011 or 6033] only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

(3) Exceptions from disclosure requirement.

(A) Nondisclosure of contributors, etc. In the case of an organization which is not a private foundation (within the meaning of section 509(a) [26 USCS § 509(a)]) or a political organization exempt from taxation under section 527 [26 USCS § 527], paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization. In the case of an organization described in section 501(d) [26 USCS § 501(d)], paragraph (1) shall not require the disclosure of the copies referred to in section 6031(b) [26 USCS § 6031(b)] with respect to such organization.

(B) Nondisclosure of certain other information. Paragraph (1) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D).

(4) Limitation on providing copies. Paragraph (1)(B) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or the Secretary determines, upon application by an organization, that such request is part of a

harassment campaign and that compliance with such request is not in the public interest.

(5) Exempt status application materials. For purposes of paragraph (1), the term "exempt status application materials" means the application for recognition of exemption under section 501 [26 USCS § 501] and any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application.

(6) Notice materials. For purposes of paragraph (1), the term "notice materials" means the notice of status filed under section 527(i) [26 USCS § 527(i)] and any papers submitted in support of such notice and any letter or other document issued by the Internal Revenue Service with respect to such notice.

[(7)](6) Disclosure of reports by Internal Revenue Service. Any report filed by an organization under section 527(j) [26 USCS § 527(j)] (relating to required disclosure of expenditures and contributions) shall be made available to the public at such times and in such places as the Secretary may prescribe.

[(8)](6) Application to nonexempt charitable trusts and nonexempt private foundations. The organizations referred to in paragraphs (1) and (2) of section 6033(d) [26 USCS § 6033(d)] shall comply with the requirements of this subsection relating to annual returns filed under section 6033 [26 USCS § 6033] in the same manner as the organizations referred to in paragraph (1).

CAL. GOV'T CODE § 12588

§ 12588. Investigations; Witnesses; Production of evidence

The Attorney General may investigate transactions and relationships of corporations and trustees subject to this article for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

CAL. GOV'T CODE § 12589

§ 12589. Order for attendance; Contents; Review

When the Attorney General requires the attendance of any person, as provided in Section 12588, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by the Superior court in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions.

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*).

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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)