14-15978

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CENTER FOR COMPETITIVE POLITICS,

Plaintiff-Appellant,

v.

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

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of California

No. 14-cv-00636-MCE-DAD
The Honorable Morrison C. England, Jr., Chief Judge

ANSWERING BRIEF OF APPELLEE

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INTRODUCTION

The California Attorney General has primary responsibility for supervising and regulating charitable organizations in California. The Attorney General has broad common law and statutory authority to carry out these enforcement responsibilities, including the power to require charitable organizations to furnish information and reports. Plaintiff Center for Competitive Politics, a non-profit 501(c)(3) corporation registered with the State's Registry of Charitable Trusts, takes issue with one such requirement: that it annually submit to the Attorney General a complete copy of its Internal Revenue Service (IRS) Form 990, Schedule B, which lists the names and addresses of its major contributors. The Attorney General keeps this information in the Registry of Charitable Trusts, where it is used exclusively for law enforcement purposes, and is protected from public disclosure.

Although this reporting requirement is both an ordinary exercise of the State's police power and a critical enforcement tool, plaintiff insists that it violates its constitutional rights. Specifically, plaintiff alleged that the Attorney General's demand for a copy of the Schedule B on file with the IRS violates its First Amendment right to freedom of association and the

Supremacy Clause. Here, plaintiff appeals the denial of its motion to preliminarily enjoin enforcement of that reporting requirement.

The district court's decision should be affirmed because plaintiff did not meet its burden to justify preliminary relief. It offered no evidence that the disclosure of donor information to a confidential state registry would have any effect on, let alone infringe, its associational rights. Moreover, even if plaintiff could establish a prima facie case of infringement, the disclosure requirement would survive scrutiny because it is narrowly tailored to achieve a compelling state interest. Plaintiff's preemption argument is similarly unsupported. There is no evidence that Congress intended to preempt state reporting requirements, nor is there any conflict between the relevant federal and state laws. Finally, plaintiff also failed to offer any evidence that it would suffer injury in the absence of injunctive relief. By contrast, had the district court enjoined enforcement of state law, the harm to the State and to the public interest would have been considerable. Accordingly, the district court properly denied plaintiff's motion for a preliminary injunction.

JURISDICTIONAL STATEMENT

The Attorney General agrees with plaintiff's Jurisdictional Statement.

STATEMENT OF ISSUES

1. Did the district court properly determine that plaintiff has no likelihood of success on the merits of its claim that the challenged disclosure requirement violates the First Amendment right to freedom of association?

2. Did the district court properly determine that plaintiff has no likelihood of success on the merits of its claim that the challenged disclosure requirement violates the Supremacy Clause?

3. Did the district court properly determine that because plaintiff had not established any likelihood of success on the merits of its claims or any of the remaining preliminary injunction factors, its motion for preliminary injunction must be denied?

STATEMENT OF THE CASE

State law, including the Supervision of Trustees and Fundraisers for Charitable Purposes Act, California Government Code sections 12580 et seq., vests the Attorney General with broad authority to monitor and regulate charitable organizations, including the power to require charitable organizations to furnish information and reports. *See* Cal. Gov't Code §§ 12598(a), 12581, 12584, 12586; *see also* Appellant's Excerpts of Record

(ER) 53, 54-55. Pursuant to state regulations, charitable organizations must file, among other things, a complete copy of the IRS Form 990 as filed with the IRS, including an unredacted Schedule B that includes information about major donors. *See, e.g.*, Cal. Code Regs. tit. 11, § 301 (2014).

Plaintiff never filed with the Registry a copy of its IRS Form 990 Schedule B with its major donor information, as required by law, but this compliance failure was not caught until this year. *See* ER 54. Plaintiff then received a letter from the Attorney General's Office dated February 6, 2014, instructing it to submit a complete copy of its Schedule B as filed with the IRS. ER 54, 61. In response, plaintiff sued the Attorney General to enjoin enforcement of that demand. The Complaint alleges that the requirement to file a Schedule B with complete donor information violates the Supremacy Clause, the First Amendment, and 42 U.S.C. section 1983. ER 58-60.[1]

Plaintiff then unsuccessfully moved the district court to preliminarily enjoin the Attorney General from enforcing compliance with state law.

[1] Although the Complaint challenges only the Attorney General's letter demanding the complete copy of its Schedule B, this demand cannot be properly understood or evaluated except in the context of the statutory scheme pursuant to which it is made. Accordingly, the relevant state law is set forth and analyzed herein.

ER 4-16. The district court held that plaintiff had not met its burden to show a likelihood of success on the merits of its claims. ER 11, 14-15.

The district court first rejected plaintiff's Supremacy Clause arguments. ER 7-11. It noted that plaintiff had failed to meet its burden to rebut the presumption against preemption. ER 8-11. In finding no express preemption, the court found no evidence that Congress intended to "prevent state agencies from making requests for tax information such as Defendant's directly from 501(c)(3) organizations in the language of Section 6104, or any other section of the [Internal Revenue Code]." ER 8. With respect to field and conflict preemption, the district court relied on this Court's analysis of the legislative history of Internal Revenue Code section 6103 in *Stokwitz v. United States*, 831 F.2d 893, 895-896 (9th Cir. 1987), and concluded that the Internal Revenue Code (IRC) applies only to the disclosure of tax information filed *with* the IRS *by* the IRS. ER 9. The court noted that Congress was careful to avoid limiting the right of state agencies and state Attorneys General to obtain information from taxpayers and/or tax exempt organizations directly. ER 10-11. Because "there is little doubt that Congress's intent was to regulate the IRS, not state agencies," and in the complete absence of any evidence to the contrary, the court determined that

plaintiff could not meet its burden of showing it was likely to succeed on the merits of its preemption argument. ER 11.

The district court next ruled that plaintiff had failed to establish any likelihood of success as to its First Amendment freedom of association claims. ER 11-14. The court determined that pursuant to Ninth Circuit law, including *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2009), *Brock v. Local 373, Plumbers Int'l Union of America*, 860 F.2d 346 (9th Cir. 1988), and *Dole v. Local Union 375, Plumbers Int'l Union of America* (*Dole II*), 950 F.2d 1456 (9th Cir. 1991), plaintiff was required to establish a prima facie case of infringement of its associational rights. ER 11-14. The court held that plaintiff had not articulated any objective, specific harm that its members would suffer from providing its major donor information in an unredacted copy of its Schedule B, and thus had failed to establish a prima facie showing of infringement. ER 14. The court further held that even if plaintiff had made a prima facie showing of infringement, the First Amendment challenge to disclosure would likely fail because the requirement appears to be narrowly tailored to achieve a compelling state interest. ER 14-15.

Finally, turning to the other preliminary injunction factors, the court ruled that because plaintiff had failed to establish any likelihood of success

on its constitutional claims, it could not establish that it was likely to suffer irreparable harm in the absence of preliminary relief or that the balance of equities tipped in its favor. ER 15. The court also determined that "it was in the public interest that [the Attorney General] continues to serve [as] chief regulator of charitable organizations in the state in the manner sought." ER 15.

Plaintiff timely appealed. ER 1-2.

STATEMENT OF FACTS

I. THE RELEVANT STATUTORY SCHEMES

A. The California Supervision of Trustees and Fundraisers for Charitable Purposes Act

Although plaintiff suggests that the Attorney General does not have authority to demand its donor information," this is incorrect.[2] *See* Plaintiff-Appellant's Opening Brief (AOB) 18. The Attorney General's demand for plaintiff's Schedule B was made pursuant to her well-established statutory and common-law powers. Specifically, the Attorney General is the chief law officer of the State of California, CAL. CONST. art. 5, §13, and has broad

[2] Plaintiff's assertion that the Attorney General has "failed to provide applicable statutory references for her asserted authority to demand [its] donor information" is puzzling. AOB 18. The relevant law was fully briefed before the district court and discussed in the court's order denying plaintiff's motion for preliminary injunction. *See* ER 10-11; Appellee's Supplemental Excerpts of Record (SER) 13-15.

authority under the California Constitution, statute, and common law to bring actions to enforce the laws of the state and to protect public rights and interests, *see D'Amico v. Bd. of Medical Examiners*, 11 Cal. 3d 1, 14 (1974).

Of particular relevance here, under the Supervision of Trustees and Fundraisers for Charitable Purposes Act (the Act), the Attorney General has primary responsibility to supervise charitable trusts and public benefit corporations incorporated in, or conducting business in California (of which plaintiff is one) and to protect charitable assets for their intended use. *See* Cal. Gov't Code §§ 12598(a), 12581. She also has "broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities." *Id.* § 12598(a); *see also* Cal. Bus. & Prof. Code §§ 17510-17510.95; Cal. Corp. Code §§ 5110, et seq.; *Hardman v. Feinstein*, 195 Cal. App. 3d 157, 161 (1987). The Attorney General may investigate transactions and relationships to ascertain whether the purposes of the corporation or trust are being carried out. In order to do so, she may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear and to produce records. Cal. Gov't Code § 12588. Any such order has the same force as a subpoena. *Id.* §12589. The Attorney General has specific authority to require periodic

written reports deemed necessary to her supervisory and enforcement duties. *Id.* § 12586.

Pursuant to the Act, the Attorney General is required to maintain a register of charitable corporations and their trustees and trusts (the Registry), and "to that end," to obtain "whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register." Cal. Gov't Code § 12584. Within 30 days after receiving property, every charitable corporation and trustee subject to the Act must file an initial registration form, *id.* § 12585, and thereafter must also file periodic written reports with the Attorney General, *id.* § 12586(b); *see also Younger v. Wisdom Society*, 121 Cal. App. 3d 683, 691 (1981).

The Attorney General is also required to promulgate rules and regulations specifying the deadlines for filing reports, the contents thereof, and the manner of executing and filing them. Cal. Gov't Code § 12586(b). These "periodic written reports" include: "the Annual Registration Renewal Fee Report, ("RRF-1") . . . which must be filed with the Registry of Charitable Trusts annually, as well as the Internal Revenue Service Form 990, which must be filed on an annual basis with the Registry of Charitable Trusts, as well as with the Internal Revenue Service . . . ." Cal. Code Regs. tit. 11, § 301 (2014). Moreover, "[w]hen requested by the Attorney General

any periodic report shall be supplemented to include such additional information as the Attorney General deems necessary to enable the Attorney General to ascertain whether the corporation, trust or other relationship is being properly administered." *Id.* § 306. If a charitable organization fails to register or file its periodic report with the Registry, its state tax exemption may be disallowed. *See* Cal. Rev. & Tax. Code § 23703(b)(1).

To reduce the reporting burden on filers, the California Attorney General's Office adopted IRS Form 990, including Schedule B, as the primary reporting document for entities required to file annual reports with the Registry. *See* Cal. Code Regs. tit. 11, § 301 (2014). Although other Registry filings are open to public inspection, *see* Cal. Gov't Code § 12590, the Schedule B is not. Schedule B is and always has been treated as a confidential document. *See* ER 50-51. Schedules B and all other confidential documents are kept in separate files that are used exclusively for law enforcement purposes and are not available to the public. ER 50-51. Those confidential "files" are now electronic records. ER 50. The documents are scanned separately and labeled confidential. ER 50-51. The Registry makes the non-confidential documents available to the public on its

searchable website, but the Schedule B records are accessible only to in-house staff. ER 50-51.[3]

B. The Confidentiality and Disclosure Requirements of the Internal Revenue Code

Most tax-exempt organizations, such as those organized under Internal Revenue Code section 501(c)(3), are required to file with the IRS an annual information return — the Form 990 or some variation thereof. *See* I.R.C. § 6033. The Form 990 is an eleven-part core form with schedules to be completed by those organizations that satisfy the applicable requirements for each schedule. *See* SER 28, 30-42. Exempt organizations, including 501(c)(3) corporations, must make their annual returns available to the public, and must provide copies upon request. *See* I.R.C. § 6104(d). They need not, however, provide the names and addresses of contributors in response to such requests. *Id.* § 6104(d)(3)(A). Thus, many exempt organizations maintain a "public disclosure" copy of their Schedule B that omits identifying information about their contributors.

[3] In response to a California Public Records Act request for an organization's filings, only the "public file" is made available for review. The Attorney General does not produce confidential information or documents in response to such requests. *See* Cal. Gov't Code § 6254(k); Cal. Evid. Code § 1040.

As a general rule, the IRS cannot disclose tax returns or tax return information. I.R.C. § 6103(a). However, there are exceptions. IRC section 6104 provides rules for public inspection at IRS offices of the information returns, annual reports, applications, contributions, expenditures, and other information pertaining to exempt organizations. Section 6104 also provides rules pursuant to which the IRS can disclose to Congress and "appropriate" state officials, including state Attorneys General, certain information pertaining to tax-exempt organizations. *Id.* § 6104(a)-(c). No such disclosures can be made unless the agency, body, or commission to which disclosure is made establishes procedures satisfactory to the IRS for safeguarding the tax information they receive. *See* I.R.C. § 6103(p)(4); Treas. Reg. § 301.6103(c)-1 (2013); *Procedure for Disclosure of Returns and Return Information*, I.R.B. P 61,034.02. These safeguards must include: a permanent system of standardized records, a secure place to store the information, restrictions on access, protection of confidentiality, reports to the IRS on the procedures to maintain confidentiality, and the return or destruction (or safekeeping, in some cases) of used material. I.R.C. § 6103(p)(4); Treas. Reg. § 301.6103(c)-1. California has established and maintains such procedures. *See generally* ER 50-51; *see also* IRS Pub.

No. 1075 (January 2014), available at http://www.irs.gov/pub/irs-pdf/p1075.pdf.

SUMMARY OF ARGUMENT

The district court properly denied injunctive relief because plaintiff could not show a likelihood of success on any of its claims. With respect to its First Amendment freedom of association claim, plaintiff failed to establish that filing a copy of its Schedule B, including donor information, will "chill" its associational rights. Indeed, it offered not one objective and articulable fact to substantiate its infringement claim, falling well short of demonstrating that the disclosure would have any effect on either its organization or its members that would interfere with their First Amendment rights. Moreover, even if plaintiff could establish a prima facie case of infringement, the First Amendment challenge would still fail because the disclosure requirement is narrowly tailored to achieve a compelling state interest.

Plaintiff's Supremacy Clause claim is also without merit. There is no support for the argument that Congress intended to preclude state attorneys general, who are the primary regulators of charitable organizations, including section 501(c)(3) organizations, from obtaining information about their major donors. To the contrary, Congress explicitly permits the

collection of this information. Restrictions in the Internal Revenue Code governing the ability of the IRS to disseminate tax return information simply do not apply to demands made by state officials (or anyone else outside the IRS) directly to charitable organizations either for copies of the returns themselves or for the information contained in those returns. Accordingly, and because there is no conflict between federal and state law, plaintiff cannot rebut the strong presumption against preemption.

Because plaintiff has no likelihood of success on the merits of any of its claims, and because in the absence of constitutional injury it cannot meet the standard required for a preliminary injunction, the district court properly denied the motion, and its order should be affirmed.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews the grant or denial of a preliminary injunction for abuse of discretion. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). On review it must be determined "whether the court employed the appropriate legal standards governing the issuance of a preliminary injunction and whether the district court correctly apprehended the law with respect to the underlying issues in the case." *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001). "As long as the

district court got the law right, it will not be reversed simply because the appellate court would have arrived at a different result if it had applied the law to the facts of the case." *Id.* (quoting *Gregorio T. v. Wilson*, 59 F.3d 1002, 1004 (9th Cir. 1995)) (internal quotation marks omitted). The district court's findings of fact are reviewed for clear error. *Husain v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir. 2002). A district court's conclusions of law are reviewed de novo. *Freeman v. Allstate Life Ins. Co.*, 253 F.3d 533, 536 (9th Cir. 2001).

II. THE DISTRICT COURT CORRECTLY DETERMINED THAT PLAINTIFF FAILED TO DEMONSTRATE ANY LIKELIHOOD OF SUCCESS ON THE MERITS

A. State Law Reporting Requirements Do Not Violate the First Amendment Right to Freedom of Association.

Plaintiff failed to meet its burden to show any probability of success on its First Amendment freedom of association claim. ER 14. On appeal, it continues to assert that all disclosure requirements are inherently and/or presumptively unconstitutional. However, contrary to the suggestions of plaintiff and amici curiae National Organization for Marriage, Inc. and National Organization for Marriage Educational Trust Fund (collectively, NOM) *see* AOB 8; NOM Brief 4-5, although compelled disclosure of membership lists *can* constitute a substantial infringement on the freedom of association guaranteed by the First and Fourteenth Amendments, *see, e.g.*,

NAACP v. Alabama, 357 U.S. 449, 462 (1958), this does not mean that every disclosure requirement necessarily *does* violate the right to freedom of association. To the contrary, where the government interest in the information is compelling and the burden, if any, on associational rights is modest, this Court and the Supreme Court repeatedly have rejected First Amendment challenges and upheld the validity of disclosure requirements. *See, e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366-371 (2010) (upholding disclosure provisions of Bipartisan Campaign Reform Act of 2002, where there was legitimate interest in information and no evidence of any First Amendment chill); *Buckley v. Valeo*, 424 U.S. 1, 66, 69-72 (1976) (noting that "there are governmental interests sufficiently important to outweigh the possibility of infringement" and upholding disclosure requirement where "any serious infringement on First Amendment rights brought about by the compelled disclosure of contributors is highly speculative"); *Protectmarriage.com-Yes on 8 v. Bowen*, --- F.3d ---, No. 11-17884, 2014 WL 2085305, *3 (9th Cir. May 20, 2014) (citing cases); *Dole v. Local Union 375, Plumbers Int'l Union of America* (*"Dole"*), 921 F.2d 969, 973 (9th Cir. 1990).

Here, the Act requires tax-exempt charitable organizations, like plaintiff, to submit a complete copy of the Schedule B on file with the IRS,

including major donor information, to the Registry where it is used exclusively for law enforcement purposes and is protected from public disclosure. *See* Cal. Gov't Code §§ 12598(a), 12584, 12586(b); Cal. Code Regs. tit. 11, § 301. As the district court concluded, plaintiff failed to make a prima facie showing that compliance with this limited reporting requirement amounts to colorable First Amendment infringement. ER 14. Indeed, plaintiff provided no evidence that filing its complete schedule B with the Registry would have any effect on, let alone "chill" its members' right to free association. Accordingly, its First Amendment associational rights claim fails at the threshold. *See Dole*, 921 F.2d at 974; *see also Buckley*, 424 U.S. at 69-70. Moreover, and as determined by the district court, even if plaintiff had demonstrated some harm to its members' associational rights, the Act's reporting and disclosure requirements would survive even the most exacting scrutiny. ER 11-12.

1. Plaintiff did not make a prima facie showing of infringement of its associational rights.

This Court has held that to prevail on its associational rights claim, plaintiff must establish a "prima facie showing of arguable First Amendment infringement." *Brock*, 860 F.2d at 349-50 (citing *United States v. Trader's State Bank*, 695 F.2d 1132, 1133 (9th Cir. 1983) (internal punctuation

omitted)); *see also Perry v. Schwarzenegger*, 591 F.3d at 1160-61. In order to make this prima facie showing, plaintiff must demonstrate that enforcement of the Act's reporting and disclosure requirements will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences that objectively suggest an impact on, or "chilling" of the members' associational rights. *Brock*, 860 F.2d at 350. The prima facie test has two tiers: first, plaintiff "must demonstrate a causal link between the disclosure and the prospective harm to associational rights;" and second, plaintiff "must demonstrate that [it] is the type of association where exposure could incite threats, harassment, acts of retribution, or other adverse consequences from affiliating with it." *Dole*, 921 F.2d at 972. Only if a plaintiff makes this showing does the burden then shift to the government to demonstrate that the disclosure requirement is substantially related to an important government interest and is sufficiently tailored to achieve that interest. *See id.* at 971; *Brock*, 860 F.2d at 350.

As the district court held, plaintiff failed to make this showing. ER 14. Plaintiff offered only the unelaborated suggestion that by requiring disclosure of the name and address of contributors of more than 5,000 dollars to the Attorney General, the Act "threatens to curtail" its financial support. *See* SER 104. However, plaintiff provided absolutely no evidence

to support this assertion, and it is not obvious that submitting to the Registry in confidence the same Schedule B filed with the IRS would have any effect on financial support, either generally or to plaintiff in particular. As this Court has held, mere speculation about or opinion of the possible consequences of such disclosure is entirely inadequate. *Dole*, 921 F.2d at 974; *see also Buckley*, 424 U.S. at 71-72. Although plaintiff seeks to "equate[] the mere fact of disclosure with a first amendment chill," "more than an argument that disclosure leads to exposure" or any other undesired outcome is required. *Dole*, 921 F.2d at 974. Rather, in order to meet its burden, plaintiff must present objective and articulable facts, which go "beyond broad allegations or subjective fears." *Dole II*, 950 F.2d at 1469 (citation and internal quotation omitted); *see also Dole*, 921 F.2d at 974 (noting that in addition to failing to offer any objective indicia of an "associational chill," plaintiffs did not explain "how its subjective fear of reprisals could be realized," given that government policy protected the information from public disclosure).

Because plaintiff did not offer even a single objective fact to show that there is an infringement of its associational rights or a "reasonable probability" that the Act's reporting and disclosure requirements will subject its members to "threats, harassment, or reprisals from either government

officials or private parties," or any other consequence that objectively suggests a negative impact on its members' associational rights, the district court properly determined that it cannot succeed on the merits of its freedom of association claim. *See* ER 14; *see also Dole*, 921 F.2d at 973 ("factual gaps in [plaintiff's] evidence are fatal to its case"); *ProtectMarriage.com v. Bowen*, 599 F. Supp. 2d 1197, 1251 (E.D. Cal. 2009) (denying motion for preliminary injunction on freedom of association claim where "notably absent from this case is any evidence that those burdens hypothesized by the Supreme Court would befall the current Plaintiffs"); *aff'd in part*, *dismissed in part as moot*, --- F.3d ---, No. 11-17884, 2014 WL 2085305.

a. Plaintiff's attempts to avoid making a prima facie showing of infringement are unavailing.

Plaintiff does not dispute that it failed to provide any evidence of harm and/or impact caused by the challenged reporting requirement.[4] Rather it

[4] Amici NOM attempts to insert harm caused by the challenged disclosure requirement by detailing the negative consequences it has faced when information about its members has been made public. *See* NOM Brief 2-6. NOM's evidence, however, is both procedurally improper and irrelevant. *See Miller-Wohl Co. v. Commissioner of Labor & Industry*, 694 F.2d 203, 204 (9th Cir. 1983) ("[A]micus has been consistently precluded from initiating legal proceedings, filing pleadings, or otherwise participating and assuming control of the controversy in a totally adversarial fashion.") (citation omitted). Not only is the donor information contained in the Schedule B kept confidential and not disclosed to the public, but amici NOM

(continued…)

argues that it is the government that bears the burden of justifying disclosure requirements in the first instance and thus, that the district court erred in requiring plaintiff to demonstrate with evidence the probability of a chill on its First Amendment association rights. *See* AOB 10-16. However, this argument finds no support in the law. Accordingly, plaintiff strains to distinguish this Court's established case law setting forth the burden of proof on associational rights claims and cites a number of cases that are either inapposite or undermine its argument. *See, e.g.*, AOB 11-12.

Plaintiff errs in contending that cases such as *Brock*, 860 F.2d 346, *Dole*, 921 F.2d 969, and *Dole II*, 950 F.2d 1456, which set forth the requirement that plaintiff demonstrate a prima facie showing of First Amendment infringement, only apply to cases involving government investigations into wrongdoing and are thus inapposite to this case, which involves a "general compelled disclosure regime." AOB 13-16. Although these three cases happened to arise in the context of subpoenas issued during

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is not a party to this action and thus any evidence of harm to its members has no bearing on whether plaintiff met its burden to establish a prima facie case of infringement of its own First Amendment rights.

government investigations, plaintiff's attempt to limit their holding fails.[5] Notably, this Court has applied the same two-part First Amendment framework outside the context of investigations. For example, in *Perry v. Schwarzenegger*, 591 F.3d 1147, this Court applied the scheme set forth in *Brock* and *Dole* to a claim of associational privilege in the context of a civil discovery dispute. *See id.* at 1160-65 (citing *Brock*, 860 F.2d at 349-50 and *Dole II*, 950 F.2d at 1149-61)[6]; *see also Doe No. 1 v. Reed*, 697 F.3d 1235, 1246-49 (9th Cir. 2012) (N.R. Smith, J., concurring) (citing *Brock*, *Dole*, and

[5] Even if the requirement to establish a prima facie case were only applicable to law enforcement investigations, and it is not, as the district court found, "in light of [the Attorney General's] role as the state's chief regulator of charitable organizations," her demand is "analogous" to and serves similar interests as the disclosures sought in *Brock* and *Dole*. ER 14. Contrary to plaintiff's contention, there is nothing in these cases that suggests that to be valid a disclosure requirement must be "preceded by some form of individualized suspicion of wrongdoing." AOB 15.

[6] Plaintiff's attempt to distinguish *Perry* fails. It states, without any meaningful analysis or elaboration, that *Perry* does not support "imposing a *prima facie* burden upon CCP." AOB 13. Although plaintiff notes that proponents in *Perry* prevailed on their assertion of First Amendment privilege, that is because, unlike here, proponents submitted enough evidence to create "a reasonable inference that disclosure would have the practical effects of discouraging political association and inhibiting internal campaign communications that are essential to effective association and expression" and, also unlike here, the parties seeking disclosure had "not shown a sufficient need for the information." 591 F.3d at 1163, 1165.

Dole II, and applying two-part framework to as-applied challenge to disclosure of supporters of referendum under state Public Records Act).[7]

Further, and perhaps of greater significance, the requirement to establish a prima facie showing of infringement of the right to association is derived from long-standing Supreme Court jurisprudence, including *NAACP v. Alabama*, 357 U.S. 449, *Bates v. Little Rock*, 361 U.S. 516 (1960), and *Buckley v. Valeo*, 424 U.S. 1, on which plaintiff mistakenly relies. In both *NAACP* and *Bates,* the party seeking to withhold information made a prima facie showing that disclosure would infringe its First Amendment rights. In *NAACP*, where the State of Alabama sought to compel the National Association for the Advancement of Colored People (NAACP) to produce a

[7] Other circuits also apply this two-part framework to First Amendment associational rights claims in a variety of contexts. *See, e.g.*, *In re Motor Fuel Temperature Sales Practices Litig.*, 641 F.3d 470, 489-492 (10th Cir. 2011) (rejecting claim of First Amendment privilege in discovery context and stating that "the weight of authority regarding the First Amendment privilege has always required the party asserting the privilege to initially demonstrate a reasonable probability that disclosure will chill its associational rights"); *Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1355 (2d Cir. 1989) ("In each of the [controlling] cases the party withholding information from a court or public agency made a prima facie showing that disclosure would infringe its First Amendment rights. . . . [such as demonstrating] that disclosure of members' identities exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility.") (quotations omitted); *United States v. Comley*, 890 F.2d 539, 543-45 (1st Cir. 1989).

list of all its members, the NAACP made an "uncontroverted showing that on past occasions" disclosure of members' identities "exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." 357 U.S. at 462. Similarly, in *Bates* there was:

> substantial uncontroverted evidence that that public identification of persons in the community as members of the organizations had been followed by harassment and threats of bodily harm. There was also evidence that fear of community hostility and economic reprisals that would follow public disclosure of the membership lists had discouraged new members from joining the organizations and induced former members to withdraw. This repressive effect . . . was brought to bear only after the exercise of governmental power had threatened to force disclosure of the members' names.

361 U.S. at 524. Once this "uncontroverted showing" of a significant infringement on associational rights was established, the Court then considered the nature of the government's interest and determined that neither the state's interest in regulating business nor the city's power to impose licensing taxes outweighed the possible encroachment on First Amendment rights. *See NAACP*, 357 U.S. at 464; *Bates*, 361 U.S. 524-25.[8]

[8] Similarly, in *Brown v. Socialist Workers '74 Campaign Committee*, the Court held that the compelled disclosure of contributions to and expenditures by the Socialist Workers Party was unconstitutional in light of (continued…)

By contrast, in *Buckley*, appellants did not make the "requisite factual showing." 424 U.S. at 69. As the Court stated, "no appellant in this case has tendered record evidence of the sort proffered in *NAACP v. Alabama*." *Id.* at 71. Instead, appellants "at best [offered] the testimony of several minor-party officials that one or two persons refused to make contributions because of the possibility of disclosure." *Id.* at 71-72. The Court concluded that "on this record, the substantial public interest in disclosure identified by the legislative history of this Act outweighs the harm generally alleged." *Id.* at 72.[9] Thus, although the Supreme Court did not use the specific phrase

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(…continued)
"substantial evidence" of harassment, including "proof of specific incidents" of "threatening phone calls and hate mail, the burning of [party] literature, the destruction of [party] members' property, police harassment of a party candidate, . . . the firing of shots at [a party] office," and the dismissal of 22 party members by their employers. 459 U.S. 87, 98-99 (1982). By contrast, here there is no suggestion that plaintiff is politically or financially vulnerable or has faced government hostility and/or brutal and pervasive private violence. As discussed above, not only has plaintiff not provided the type and quality of evidence produced in *NAACP*, *Bates*, and *Brown*, it has produced no cognizable evidence of First Amendment chill whatsoever.

[9] The Court in *Buckley* articulated a balancing test for evaluating disclosure requirements in the context of minor political parties: the burden on individual rights "must be weighed carefully against the interests which [the government] has sought to promote by th[e] legislation." 424 U.S. at 68. This formulation, while slightly different from the framework described above, also presupposes evidence of some burden on individual rights. Plaintiff has demonstrated no such burden.

"prima facie case," plaintiff's notion that under the "heightened standard" set forth in these cases, it is not required to demonstrate prima facie First Amendment harm, *see* AOB 10-12, is unfounded.

Acorn Investments v. City of Seattle, 887 F.2d 219 (9th Cir. 1989) and *Talley v. California*, 362 U.S. 60 (1960), on which plaintiff relies, are not to the contrary. Both of these cases concern infringement on the right to protected expression arising from extremely broad requirements to disclose information that was then publicly available. In *Acorn*, this Court held that an ordinance that targeted content-specific protected speech and required the disclosure of the names and addresses of shareholders in adult entertainment panoram businesses burdened protected expression and "might have a chilling effect on that expression." 887 F.2d at 225. The Court concluded that there was no logical connection between the city's legitimate interest in compliance with the ordinance and the disclosure requirement because shareholders are not legally responsible for corporate management and would have no impact on compliance. *Id.* at 226. The decision in *Talley* is similarly inapposite. *Talley* also did not address associational rights; it concerned the right to anonymity for people engaged in political speech. In that case, the Supreme Court invalidated as a facial violation of the First Amendment right to free speech an ordinance that prohibited the distribution

of "any hand-bill in any place under any circumstances'" that did not have on its face the name and address of the "person who printed, wrote, compiled or manufactured" it, and of the person who distributed it. 362 U.S. at 60-61. Here, by contrast, there is no evidence that the challenged disclosure requirement has any effect on protected expression, let alone that "identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." *Talley*, 362 U.S. at 65. Moreover, and unlike in *Acorn* and *Talley*, the limited amount of donor information disclosed to the state is kept confidential and protected from public disclosure. *See* ER 12; *Talley*, 362 U.S. at 65 ("there are times and circumstances when States may not compel members of groups engaged in the dissemination of ideas to be publicly identified.") (citing *NAACP*, 357 U.S. 449 and *Bates*, 361 U.S. 516); *Acorn*, 887 F.2d at 225.

Accordingly, and in light of well-settled Supreme Court and Ninth Circuit jurisprudence, plaintiff cannot avoid its burden to establish a showing of some harm to its associational rights arising from the challenged disclosure requirement. As the district court concluded, plaintiff's complete failure to demonstrate that providing the Attorney General with its Schedule B donor information would burden, affect, or harm its membership is fatal to its freedom of association claim and cannot support issuance of a

preliminary injunction. *See* ER 14; *see also Buckley*, 424 U.S. at 69-72; *Dole*, 921 F.2d at 974.

2. The State reporting and disclosure requirements are reasonable and substantially related to the State's compelling law enforcement interest.

Because plaintiff has not made a prima facie showing, the Court need not examine whether the contested Schedule B disclosure requirement survives exacting scrutiny.[10] *See Dole*, 921 F.2d at 974. However, even if the Court were to undertake this analysis, the requirement would be found valid. Plaintiff apparently concedes, as it must, that the Attorney General's request, and by extension the Act's disclosure requirements, are based on a compelling interest. As noted above, the Attorney General has primary responsibility for supervising charitable trusts and public benefit corporations in California to protect charitable assets for their intended use. *See* Cal. Gov't Code §§ 12598(a) & 12581.[11] Her interest, and that of the

[10] The district court appears to have determined that the disclosure requirement satisfied strict scrutiny. ER 14-15. Although the correct standard is exacting scrutiny, *see, e.g.*, *Doe No. 1 v. Reed*, 561 U.S. 186, 198 (2010), the Act's disclosure requirements are valid under any level of scrutiny.

[11] Amici NOM incorrectly states that while the IRS needs Schedule B information to monitor charities and foundations and make sure that they are serving the public interest, the Attorney General "does not serve the same functions and interests as the IRS, and so must show some other interest."

(continued…)

State, in performing this regulatory and oversight function and securing compliance with the law is compelling. *See, e.g.*, *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.,* 487 U.S. 781, 792 (1988); *Buckley*, 466 U.S. at 66-68; *NAACP*, 357 U.S. at 463-64.

Plaintiff and amici instead contend that the Attorney General has not explained adequately the need for an unredacted Schedule B reflecting major donor information and thus has not proven that the disclosure requirement is "reasonably related" to the achievement of this compelling interest. *See* AOB 16-19; NOM Brief 7. This argument ignores that, as previously discussed, in the absence of any showing of harm, the law does not require the Attorney General to explain the necessity of the required disclosure. *See Dole*, 921 F.2d at 974. It also ignores that the Attorney General explained and the district court considered why the information is necessary and how it is used to regulate charities and enforce state law. *See* SER 13-15, 23-24; ER 14-15, 25-26.

(…continued)
NOM Brief 3-4. In fact, while the specific functions of the IRS and the Attorney General are distinct, they share a number of significant interests, including the need to ensure that charitable organizations comply with the law.

Specifically, the information contained in the IRS Form 990 and Schedule B allows the Attorney General to determine whether an organization has violated the law, including laws against self dealing, Cal. Corp. Code § 5233; improper loans, *id.* § 5236; interested persons, *id.* § 5227; or illegal or unfair business practices, Cal. Bus. & Prof. Code § 17200. Although plaintiff asserts that it is difficult to determine how its donor information would relate to the Attorney General's enforcement of these laws, *see* AOB 18, the relationship is apparent. For example, by examining the Schedule B in conjunction with other required information under the Act, the Attorney General can ascertain whether a donor is also an officer or director of a charity and whether more than 49 percent of "interested persons" are being compensated by the charity in violation of California Corporations Code section 5227. The Attorney General can also discover donors who are "self dealing" by passing money through to family members or to fund enterprises that are for their own benefit and not for a public charitable purpose in violation of California Corporations Code sections 5233 and 5236.[12] The Attorney General also uses major donor

[12] All of these acts would also violate California Business and Professions Code section 17200. *See State Farm Fire & Casualty Co. v. Sup. Ct.*, 45 Cal. App. 4th 1093, 1103 (1996) (violations of any law — (continued…)

information to test whether complaints filed against an organization alleging self dealing and other violations are frivolous or whether they merit further investigation, often without subjecting that organization to the intrusion and burden of an audit.[13] Even in cases where a charity is outside of the Attorney General's jurisdiction, Schedule B information is used to identify possible wrongdoing and refer matters to other states and federal agencies. Thus, the required disclosure is serves the Attorney General's legitimate interest in ensuring compliance with and enforcing the law. *See* ER 14-15; *Buckley*, 466 U.S. at 64, 66, 68-72; *see also Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 378, 395-96 (2000); *Brock*, 860 F.2d at 350; *Comley*, 890 F.2d at 542.

(…continued)
federal, state, or local — give rise to a cause of action for unfair competition).

[13] Plaintiff's assertion that the Attorney General has "admitted" that her demand is based on the "mere convenience" of avoiding an audit is incorrect. *See* AOB 15-16; *see also* Brief of Amicus Charles M. Watkins 6. Rather, as explained above and before the district court, the Schedule B donor information often reveals whether further investigation, including an audit, is required without wasting resources or unnecessarily burdening a charitable organization in the first instance. *See* SER 23-24. It is one important enforcement tool, not a substitute for other means of enforcing the law.

The disclosure requirement is both necessary to achieve compelling state interests, and narrowly tailored to avoid impinging upon rights of association unnecessarily, if at all.[14] To ensure that the organization is reporting the same information to the state and federal government (and simultaneously reduce the paperwork burden on filers), the Attorney General requires disclosure of Form 990 and related schedules, rather than requesting the same information on its own, state form. Although plaintiff states that there is "no guarantee" that the Registry will always keep Schedule B information confidential and that "there are reasons to question current procedures," the fact remains that the information *is* kept confidential and

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[14] Amicus Watkins posits that because a number of states do not require unredacted copies of the Schedule B, that there are "less restrictive means of exercising their charity oversight responsibilities." Watkins Brief 7. As an initial matter, Watkins understates the number of states that require the Schedule B. *See, e.g.*, HAW. REV. STAT. ANN. § 467B-6.5 (2014); KY REV. STAT. ANN. §§ 367.650-.670 (2014); MISS. CODE ANN. § 79-11-507 (2014). Moreover, different states have very different regulatory schemes and oversight functions, and some do not register charities at all. *Compare* DEL. CODE ANN. tit. 6 §§ 2591-97 (2014) *and* MISS CODE ANN. §§ 79-11-501-529 (2014). States also have different resources available to review information. The fact that states have different disclosure requirements and that some do not require disclosure of Schedule B major donor information does not bear on whether the Act's requirements are narrowly tailored. *Cf. Reno v. American Civil Liberties Union*, 521 U.S. 844, 874 (1997) (alternatives must be "as effective in achieving the legitimate purpose that the statute was intended to serve").

there is no evidence to suggest that any "inadvertent disclosure" has occurred or will occur. AOB 21-22; *see also* Watkins Brief 5. As plaintiff notes, the Registrar of Charitable Trusts testified that the Schedule B always has been treated as a confidential document and since 2007, when it became an electronic file, it is scanned separately and maintained as a confidential record accessible only to in-house staff. ER 50-51. Mere speculation that this system might fail does not undermine the conclusion that the disclosure requirement itself is narrowly tailored to avoid unnecessarily impinging on rights of association. *Cf. Nelsen v. King County*, 895 F.2d 1248, 1254 (9th Cir. 1990).[15]

Accordingly, the district court correctly concluded that, even if plaintiff had presented a prima facie case of infringement, the disclosure requirement and the Attorney General's enforcement of it is substantially related to compelling state interests, is narrowly tailored to achieve those interests, and therefore cannot support issuance of a preliminary injunction. *See* ER 14 ("Defendant's interest in performing her regulatory and oversight function as delineated by state law is compelling and substantially related to the

[15] Plaintiff's suggestion that the state's failure to detect its non-compliance for six years somehow excuses it from future compliance is particularly weak. *See* AOB 22.

disclosure requirement."); *see also Buckley*, 424 U.S. at 71; *Dole II,* 950 F.2d at 1461; *cf. United States v. Mayer*, 503 F.3d 740, 748 (9th Cir. 2007).

B. Federal Law Does Not Preempt State Law Reporting Requirements for Tax Exempt Organizations.

Plaintiff erroneously asserts that federal law preempts state law requiring organizations with tax-exempt status to disclose federal tax return information generally, and a complete copy of the Schedule B form in particular. *See* AOB 23-36. In support of this contention, plaintiff relies on language in Internal Revenue Code section 6104, which governs disclosure by the IRS of tax information that it receives from tax-exempt organizations. However, as the district court found, the plain text of section 6104 as well as the relevant legislative history demonstrate that the statute applies only to the IRS and does not prevent state officials from demanding and receiving the same tax information directly from an exempt organization. ER 8-11; *see also Stokwitz*, 831 F.2d at 895-96. The legislative history also demonstrates that Congress intended to allow state officials to obtain federal tax filings and/or the information contained in federal tax filings. *See Stokwitz*, 831 F.2d at 896; SER 65-66 (STAFF OF THE JOINT COMM. ON TAXATION, 94TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976, 314). Accordingly, plaintiff cannot prevail on the merits of its

Supremacy Clause claim. *See, e.g.*, *Ting v. AT&T*, 319 F.3d 1126, 1136 (9th Cir. 2003).

Federal law may preempt state law in one of three ways, none of which apply here. First, Congress may expressly state its intent to preempt state law in the direct language of a statute. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Second, Congressional intent to preempt state law can be inferred when Congress "occupies the field" by passing a comprehensive legislative scheme that leaves "no room" for supplemental regulation. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Third, federal law may preempt state law to the extent that state law directly conflicts with federal law. *See Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141-43 (1963). Conflict preemption requires a showing that "compliance with both federal and state regulations is a physical impossibility," *id.*, or that state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Pacific Gas & Electric Co. v. State Energy Resources Cons. and Dev. Comm.*, 461 U.S. 190, 204 (1983).

Congressional intent is the "ultimate touchstone" in every preemption case. *Retail Clerks Int'l Ass'n v. Schermerhorn*, 375 U.S. 96, 103 (1963). All preemption analysis "starts with the assumption that the historic police

powers of the States [are] not to be superseded by [a] Federal Act unless that is the clear and manifest purpose if Congress." *Rice*, 331 U.S. at 230; *see also Florida Lime & Avocado Growers*, 373 U.S. 142 ("[F]ederal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons — either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained."). This is particularly true "in those [cases] in which Congress has 'legislated . . . in a field which the States have traditionally occupied.'" *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (citation omitted).[16] A court must presume that a state statute is not preempted, and the moving party has the burden of overcoming that presumption. *Pharmaceutical Research and Mfrs. of America v. Walsh*, 538 U.S. 644, 661-662 (2003); *Chemical Specialties Mfrs. Ass'n, Inc. v. Allenby*, 958 F.2d 941, 943 (9th Cir. 1992). Plaintiff has not met and cannot meet this burden.

[16] The common law authority vesting state attorneys general with oversight of charitable assets and organizations dates back to the Statute of Charitable Uses in 1601, predating the Internal Revenue Code by centuries. *See* STATE ATTORNEYS GENERAL POWERS AND RESPONSIBILITIES (Emily Myers & Lynne Ross, eds., 2007).

Plaintiff contends that the structure and language of Internal Revenue Code section 6104 demonstrate that Congress intended to create absolute protections for the tax information of exempt organizations and a complete ban of the ability of state officials (or anyone else) to obtain that information directly. AOB 23-26, 33-36. However, there is no support for its opinion. Section 6104, like the confidentiality provisions in the Internal Revenue Code generally, governs what *the IRS* can and cannot do with information it receives from filers; it does not govern what states may ask of federal filers, including charitable organizations. At most, section 6104 sets forth the procedure by which the Attorney General could obtain tax return information about an exempt organization *from* the IRS. *See* I.R.C. §§ 6104 (c) & (d). Section 6104 does not limit the authority of the Attorney General or other state officials to obtain this or other information, including a complete Schedule B, directly from plaintiff or any other 501(c)(3) organization registered to do business in California. *See* I.R.C. § 6104.

As this court held in *Stokwitz*, 831 F.2d 893, in which it analyzed the applicability of the confidentiality provisions set forth in section 6103 of the Internal Revenue Code, "the legislative history, structure, and language" of that section reveal "that the statute is concerned solely with the flow of tax

data to, from, or through the IRS." 831 F.2d at 896.[17] The Court noted that, in enacting section 6103, Congress disclaimed any intention "to limit the right of an agency (or other party) to obtain returns or return information directly from the taxpayer through the applicable discovery procedures." *Id.* (citing S. Rep. No. 938, 94th Cong., 2nd Sess. 330, reprinted in 1976 U.S.C.C.A.N. 3759). Thus, "Section 6103 was not designed to provide the only means for obtaining tax information; it simply provides the only means for acquiring such information from the IRS." 831 F.2d at 897; *see also Hrubec v. Nat'l R.R. Passenger Corp.*, No. 91 C 4447, 1994 WL 27882, at *2-3 n.4 (N.D. Ill. Jan. 31, 1994) (section 6103 was intended to ensure that the IRS and other government agencies behave responsibly in disseminating

[17] Section 6103 was added by the Tax Reform Act of 1976, which overhauled the rules governing the privacy of federal tax returns. Prior to 1976, income tax returns were public records. In response to the abuses of power revealed by the Watergate scandal and the resulting loss of public confidence, Congress enacted a general rule that the government is to keep tax returns and tax return information confidential except as specifically provided by the Internal Revenue Code, and increased protections against disclosure by the IRS. *See, e.g.*, *Stokwitz*, 831 F.2d at 894-95 ("Congress's overriding purpose was to curtail loose disclosure practices by the IRS. Congress was concerned that IRS had become a 'lending library' to other government agencies of tax information filed with the IRS, and feared the public's confidence in the privacy of returns filed with IRS would suffer.) (citation omitted).

tax data," and should not be construed as a general prohibition against the release of tax information by any party), *aff'd*, 49 F.3d 1269 (7th Cir. 1995).

Plaintiff attempts to discount *Stokwitz* because that case addressed section 6103 and not section 6104 of the Internal Revenue Code, and generally faults the district court for considering 6103 in assessing its preemption claim. *See* AOB 26-30. However, the "ultimate task in any pre-emption case is to determine whether state regulation is consistent with the structure and purpose of the statute as a whole." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992). In determining Congressional intent, "we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law." *Id.* at 99 (citation and alteration omitted). Section 6104 includes exceptions to the general rule, set forth in section 6103, that *the IRS* must keep tax returns and return information confidential, *see* I.R.C. § 6103, which authorize *the IRS* to disclose certain information pertaining to tax-exempt organizations under certain circumstances. Plaintiff has no credible argument that section 6103 governs only the IRS, while section 6104, simply because it involves exempt charitable organizations, governs more globally. *See* ER 11 ("there is no legislative record to suggest that Congress intended to deviate from its intent as expressed in *Stokwitz*"). While plaintiff states that the available

legislative history supports its interpretation of section 6104, it points to nothing in the history of the Pension Protection Act of 2006 that suggests any intent to extend the statute's purview beyond the IRS. *See* AOB 32.

Moreover, and of particular significance, section 6104 specifically incorporates the meaning of "return" and "return information" set forth in section 6103.[18] A return means "any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title *which is filed with the Secretary* by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed." I.R.C. § 6103(b)(1) (emphasis added). Return information means specific information including, "the nature, source, or amount of [taxpayer] income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, *received by,*

[18] For this reason, plaintiff's attempt to distinguish *Stokwitz* on the basis that it involved an individual taxpayer as opposed to an exempt organization fails.

recorded by, prepared by, furnished to, or collected by the Secretary." *Id.* § 6103(b)(2) (emphasis added); *see also id.* § 6103(b)(3) ("The term 'taxpayer return information' means return information as defined in paragraph (2) *which is filed with, or furnished to, the Secretary* by or on behalf of the taxpayer to whom such return information relates.") (emphasis added). As this Court has held, these statutory definitions "confine the statute's coverage to information that is passed through the IRS." *Stokwitz*, 831 F.2d at 895-96; *see also id.* at 894 ("[S]ection 6103 is clearly designed to protect the information flow between taxpayers and the IRS by controlling the disclosure by the IRS of information received from taxpayers."). They do not apply to information given directly to a state by taxpayer or a tax exempt organization. Accordingly, the copy of the Schedule B sought by the Attorney General is not federal tax return information and thus section 6104 is not applicable. *See id.* at 896; *see also* SER 65 ("[C]opies of the Federal returns or the return information required by a State or local government to be attached to, or included in, the State and local return do not constitute Federal "returns of return information" subject to the Federal confidentiality rules.").

Given that it was not the "clear and manifest purpose" of Congress to preempt state reporting and disclosure requirements (for charitable

organizations), and that Congress affirmatively permits states to obtain both federal tax filings and the information contained in federal tax filings, there is no express preemption and "field preemption is not an issue." *Ting*, 319 F.3d at 1136. Plaintiff's conflict preemption argument is similarly flawed. It claims that "Congress's objective was to prevent state attorneys general from obtaining CCP's donor list for the very purpose that Attorney General demands it." AOB 35. As discussed above, all the evidence is to the contrary. Federal law specifically allows state officials to obtain tax returns and tax return information, including a complete Schedule B, and exempts state reporting and disclosure laws from federal confidentiality requirements. *See, e.g.*, *Stokwitz*, 831 F.2d at 895-96; SER 65. Accordingly, plaintiff cannot show that the Attorney General's demand (issued pursuant to her authority under the Act) that plaintiff furnish a complete copy of the Schedule B on file with the IRS, impedes any purpose or objective of Congress. *See Hillsborough County Fla. v. Automated Med Labs., Inc*., 471 U.S. 707, 716 (1985) (a party asserting "conflict" preemption "must . . . present a showing . . . of a conflict between a particular local provision and the federal scheme, that is strong enough to overcome the presumption that state and local regulation . . . can constitutionally coexist with federal regulation"). Plaintiff thus cannot overcome the strong presumption against

preemption, and, as the district court held, its preemption claim provides no basis for the requested preliminary injunction. ER 8; *Ting*, 319 F.3d at 1137, 1152.[19]

III. PLAINTIFF CANNOT MEET ITS BURDEN TO DEMONSTRATE IRREPARABLE HARM, OR DEMONSTRATE THAT THE BALANCE OF HARM TIPS IN ITS FAVOR.

As shown above, plaintiff has not established that it has suffered or would suffer a cognizable injury, and certainly not one that is irreparable. Although plaintiff asserts that the loss of its First Amendment and constitutional rights constitutes irreparable injury, *see* AOB 38-40, where, as here, a constitutional claim is unsupported and fails as a matter of law, it is "too tenuous" to support the requested relief. *Goldie's Bookstore, Inc. v. Superior Ct*., 739 F.2d 466, 472 (9th Cir. 1984); *see also Dex Media West,*

[19] Plaintiff's argument that the doctrine of constitutional avoidance "counsels in favor of preemption" is baseless. AOB 36-37. Constitutional avoidance is a rule of statutory interpretation that directs courts to construe ambiguous statutes to avoid constitutional doubts. *See Clark v. Martinez*, 543 U.S. 371, 395 (2005). It requires that "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Rust v. Sullivan*, 500 U.S. 173, 190 (1991). The constitutional avoidance doctrine does not, as plaintiff would have it, authorize a court to give credence to alleged constitutional violations that do not have merit. *Cf. Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712, 731 (9th Cir. 2003) (finding that the doctrine of constitutional avoidance did not apply and stating that it was not needed "in order to save the statute from unconstitutionality because . . . Plaintiffs' constitutional arguments 'do not carry the day.'") (citation omitted).

Inc. v. City of Seattle, 790 F. Supp. 2d 1276, 1289 (W.D. Wash. 2011) ("Because the court finds that Plaintiffs have failed to establish that they are likely to succeed on the merits of their First Amendment claim, the court cannot find that Plaintiffs have established that they are likely to suffer irreparable First Amendment injury in the absence of a preliminary injunction.").

Plaintiff's remaining assertions of injury are also unfounded. To the extent that plaintiff contends that it will be injured by fines that it could incur for failure to comply with the Act if it fails to furnish a complete copy of its schedule B, it can readily avoid such a consequence by simply complying with the law. *See Winter*, 555 U.S. at 22. Ultimately, plaintiff has not established, and cannot establish harm sufficient to outweigh the injury its requested injunction would inflict on the State.[20] "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 2 (2012) (quotation and citation omitted).

[20] Insofar as plaintiff is arguing that it is not in the public interest to allow the State to enforce its laws in violation of the Supremacy Clause, *see* AOB 39, this argument fails. As discussed above, the Act's disclosure requirements are not preempted.

Injury to the State aside, it is not in the public interest to interfere with the Attorney General's authority to supervise and regulate charitable organizations and to enforce the law by limiting her ability to request and receive highly relevant information.

Accordingly, the law, the balance of harms, and the public interest all weigh decisively against entry of a preliminary injunction in this matter.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that this Court affirm the decision of the district court.

Dated: July 8, 2014

Respectfully Submitted,

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14-15978

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CENTER FOR COMPETITIVE POLITICS,

Plaintiff-Appellant,

v.

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

Defendant-Appellee.

STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases.

Dated: July 8, 2014

Respectfully Submitted,

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Senior Assistant Attorney General
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CERTIFICATE OF COMPLIANCE
PURSUANT TO FED.R.APP.P 32(a)(7)(C) AND CIRCUIT RULE 32-1
FOR 13-15188

I certify that: (check (x) appropriate option(s))

[X] 1. Pursuant to Fed.R.App.P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached **answering** brief is

[X] Proportionately spaced, has a typeface of 14 points or more and contains _10,064_____ words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 14,000 words; reply briefs must not exceed 7,000 words

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[ ] 2. The attached brief is **not** subject to the type-volume limitations of Fed.R.App.P. 32(a(7)(B) because

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☐ 4. **Amicus Briefs**.

☐ Pursuant to Fed.R.App.P 29(d) and 9th Cir.R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more and contains 7,000 words or less,

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July 8, 2014
Dated

/s/ Alexandra Robert Gordon
Alexandra Robert Gordon
Deputy Attorney General

APPENDIX

Barclays Official California Code of Regulations Currentness
Title 11. Law
Division 1. Attorney General
Chapter 4. Regulations Adopted Pursuant to the Supervision of Trustees and Fundraisers for Charitable Purposes Act [FNA1]

11 CCR § 301

§ 301. Periodic Written Reports.

Except as otherwise provided in the Act, every charitable corporation, unincorporated association, trustee, or other person subject to the reporting requirements of the Act shall also file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by such corporation, unincorporated association, trustee, or other person. Except as otherwise provided in these regulations, these reports include the Annual Registration Renewal Fee Report, ("RRF-1" 3/05), hereby incorporated by reference, which must be filed with the Registry of Charitable Trusts annually by all registered charities, as well as the Internal Revenue Service Form 990, which must be filed on an annual basis with the Registry of Charitable Trusts, as well as with the Internal Revenue Service. At the time of the annual renewal of registration filing the RRF-1, the registrant must submit a fee, as set forth in section 311.

A tax-exempt charitable organization which is allowed to file form 990-PF or 990-EZ with the Internal Revenue Service, may file that form with the Registry of Charitable Trusts in lieu of Form 990.

A charitable organization that is not exempt from taxation under federal law shall use Internal Revenue Service Form 990 to comply with the reporting provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act. The form shall include, at the top of the page, in 10-point type, all capital letters, "THIS ORGANIZATION IS NOT EXEMPT FROM TAXATION."

Registration requirements for commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers are set forth in section 308.

Note: Authority cited: Sections 12586 and 12587, Government Code. Reference: Sections 12581, 12582, 12583, 12586, 12587, 12599, 12599.1 and 12599.2, Government Code.

HISTORY

1. Amendment filed 5-30-74; effective thirtieth day thereafter (Register 74, No. 22).

2. Amendment of section and new Note filed 10-7-99; operative 11-6-99 (Register 99, No. 41).

3. Amendment of section and Note filed 6-13-2005; operative 6-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 24).

This database is current through 6/20/14 Register 2014, No. 25

11 CCR § 301, 11 CA ADC § 301

End of Document

Barclays Official California Code of Regulations Currentness
Title 11. Law
Division 1. Attorney General
Chapter 4. Regulations Adopted Pursuant to the Supervision of Trustees and Fundraisers for Charitable Purposes Act [FNA1]

11 CCR § 306

§ 306. Contents of Reports.

(a) Periodic reports shall be submitted under oath and shall set forth in detail all of the information required by the applicable forms set forth in these regulations. Incomplete or incorrect reports will not be accepted as meeting the requirements of the law.

(b) A copy of an account filed by a trustee in a court having jurisdiction of the trust shall not be accepted in lieu of a report on official forms unless such court accounting is identical in form and content with the official forms and is compatible without alteration with electronic data processing equipment in the same manner as reports on official forms.

(c) When requested by the Attorney General any periodic report shall be supplemented to include such additional information as the Attorney General deems necessary to enable the Attorney General to ascertain whether the corporation, trust or other relationship is being properly administered.

Note: Authority cited: Sections 12586 and 12587, Government Code. Reference: Sections 12581, 12586 and 12587, Government Code.

HISTORY

1. New section filed 4-19-56 as an emergency; effective upon filing (Register 56, No. 7).

2. Repealer and new section filed 8-28-59 as an emergency; effective upon filing (Register 59, No. 14).

3. Amendment filed 5-30-74; effective thirtieth day thereafter (Register 74, No. 22).

4. Amendment of subsections (a) and (c) and new Note filed 6-13-2005; operative 6-13-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 24).

This database is current through 6/20/14 Register 2014, No. 25

11 CCR § 306, 11 CA ADC § 306

End of Document

United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle F. Procedure and Administration (Refs & Annos)
Chapter 61. Information and Returns
Subchapter B. Miscellaneous Provisions

26 U.S.C.A. § 6104

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

Currentness

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

(1) Public inspection.--

(A) Organizations described in section 501 or 527.--If an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year or a political organization is exempt from taxation under section 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) or notice of status filed by the organization under section 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) 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 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), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b),

(ii) any application filed with respect to the exemption from tax under section 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) shall apply with respect to--

(A) the application for exemption of any organization described in section 501(c) or (d) which is exempt from taxation under section 501(a) for any taxable year or notice of status of any political organization which is exempt from taxation under section 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), 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).

(b) Inspection of annual returns.--The information required to be furnished by sections 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) or a political organization exempt from taxation under section 527) which is required to furnish such information. In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization. In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c). Any annual return which is filed under section 6011 by an organization described in section 501(c)(3) and which relates to any tax imposed by section 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.

(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) and exempt from taxation under section 501(a), or has applied under section 508(a) for recognition as an organization described in section 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), 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 or chapter 41 or 42, 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) 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 or chapter 41 or 42, and

(iii) the names, addresses, and taxpayer identification numbers of organizations which have applied for recognition as organizations described in section 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) (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).

(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).

(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), 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 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a)--

(A) a copy of--

(i) the annual return filed under section 6033 (relating to returns by exempt organizations) by such organization,

(ii) any annual return which is filed under section 6011 by an organization described in section 501(c)(3) and which relates to any tax imposed by section 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 or notice of status under section 527(i), the exempt status application materials or any notice materials of such organization, and

(iv) the reports filed under section 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 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)) or a political organization exempt from taxation under section 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), paragraph (1) shall not require the disclosure of the copies referred to in section 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 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) [1]Application to nonexempt charitable trusts and nonexempt private foundations.--The organizations referred to in paragraphs (1) and (2) of section 6033(d) shall comply with the requirements of this subsection relating to annual returns filed under section 6033 in the same manner as the organizations referred to in paragraph (1).

(6) [1] Notice materials.--For purposes of paragraph (1), the term "notice materials" means the notice of status filed under section 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.

(6) [1]Disclosure of reports by Internal Revenue Service.--Any report filed by an organization under section 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.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 755; Sept. 2, 1958, Pub.L. 85-866, Title I, § 75(a), 72 Stat. 1660; Dec. 30, 1969, Pub.L. 91-172, Title I, § 101(e)(1) to (3), (j)(36), 83 Stat. 523, 530; Sept. 2, 1974, Pub.L. 93-406, Title II, § 1022(g)(1) to (3), 88 Stat. 940, 941; Oct. 4, 1976, Pub.L. 94-455, Title XII, § 1201(d)(1), Title XIII, § 1307(d)(2)(B), Title XIX, § 1906(b)(13)(A), 90 Stat. 1667, 1727, 1834; Feb. 10, 1978, Pub.L. 95-227, § 4(e), 92 Stat. 23; Oct. 20, 1978, Pub.L. 95-488, § 1(d), 92 Stat. 1638; Nov. 6, 1978, Pub.L. 95-600, Title VII, § 703(m), 92 Stat. 2943; Dec. 28, 1980, Pub.L. 96-603, § 1(b), (d)(3), 94 Stat. 3503, 3504; July 18, 1984, Pub.L. 98-369, Div. A, Title III, § 306(b), Title IV, § 491(d)(49), 98 Stat. 784, 852; Dec. 22, 1987, Pub.L. 100-203, Title X, § 10702(a), 101 Stat. 1330-459; July 30, 1996, Pub.L. 104-168, Title XIII, § 1313(a), 110 Stat. 1479; July 22, 1998, Pub.L. 105-206, Title VI, § 6019(a), (b), 112 Stat. 823; Oct. 21, 1998, Pub.L. 105-277, Div. J, Title I, § 1004(b)(1), 112 Stat. 2681-888; July 1, 2000, Pub.L. 106-230, §§ 1(b), 2(b), 3(b), 114 Stat. 478, 481, 482; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(7) [Title III, § 312(a)], 114 Stat. 2763, 2763A-640; Nov. 2, 2002, Pub.L. 107-276, § 3(b), 116 Stat.

1931; Aug. 17, 2006, Pub.L. 109-280, Title XII, §§ 1201(b)(3), 1224(a), (b)(4), 1225(a), 120 Stat. 1066, 1091, 1093; Dec. 29, 2007, Pub.L. 110-172, § 3(g), 121 Stat. 2475.)

Notes of Decisions (7)

Footnotes

1

So in original. Three pars. (6) were enacted.

26 U.S.C.A. § 6104, 26 USCA § 6104
Current through P.L. 113-120 approved 6-10-14

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West's Annotated California Codes
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Title 2. Government of the State of California
Division 3. Executive Department (Refs & Annos)
Part 2. Constitutional Officers (Refs & Annos)
Chapter 6. Attorney General (Refs & Annos)
Article 7. Uniform Supervision of Trustees for Charitable Purposes Act (Refs & Annos)

West's Ann.Cal.Gov.Code § 12584

§ 12584. Establishment of register of charitable corporations, unincorporated associations, and trustees

Effective: January 1, 2005

Currentness

The Attorney General shall establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to this article and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register.

Credits

(Added by Stats.1959, c. 1258, p. 3397, § 2, eff. June 30, 1959. Amended by Stats.2004, c. 919 (S.B.1262), § 5.)

Notes of Decisions (1)

West's Ann. Cal. Gov. Code § 12584, CA GOVT § 12584
Current with urgency legislation through Chs. 1-27, 30, 33-34, and 36-79 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

End of Document

West's Ann.Cal.Gov.Code § 12585

§ 12585. Filing of initial registration form; registration of trustee

Effective: January 1, 2007

Currentness

(a) Every charitable corporation, unincorporated association, and trustee subject to this article shall file with the Attorney General an initial registration form, under oath, setting forth information and attaching documents prescribed in accordance with rules and regulations of the Attorney General, within 30 days after the corporation, unincorporated association, or trustee initially receives property. A trustee is not required to register as long as the charitable interest in a trust is a future interest, but shall do so within 30 days after any charitable interest in a trust becomes a present interest.

(b) The Attorney General shall adopt rules and regulations as to the contents of the initial registration form and the manner of executing and filing that document or documents.

Credits

(Added by Stats.1959, c. 1258, p. 3397, § 2, eff. June 30, 1959. Amended by Stats.2004, c. 919 (S.B.1262), § 6; Stats.2006, c. 567 (A.B.2303), § 18.)

West's Ann. Cal. Gov. Code § 12585, CA GOVT § 12585
Current with urgency legislation through Chs. 1-27, 30, 33-34, and 36-79 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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Chapter 6. Attorney General (Refs & Annos)
Article 7. Uniform Supervision of Trustees for Charitable Purposes Act (Refs & Annos)

West's Ann.Cal.Gov.Code § 12586

§ 12586. Filing of additional reports as to nature of assets held and administration thereof; rules and regulations; time for filing; additional requirements concerning preparation of annual financial statements and auditing

Effective: January 1, 2005

Currentness

(a) Except as otherwise provided and except corporate trustees which are subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or to the Comptroller of the Currency of the United States, every charitable corporation, unincorporated association, and trustee subject to this article shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation, unincorporated association, or trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he or she shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him or her to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his or her office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(d) The first periodic written report, unless the filing thereof is suspended as herein provided, shall be filed not later than four

months and 15 days following the close of the first calendar or fiscal year in which property is initially received. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this article takes effect, the first report shall be filed at the close of the calendar or fiscal year in which it was registered with the Attorney General or not later than four months and 15 days following the close of the calendar or fiscal period.

(e) Every charitable corporation, unincorporated association, and trustee required to file reports with the Attorney General pursuant to this section that receives or accrues in any fiscal year gross revenue of two million dollars ($2,000,000) or more, exclusive of grants from, and contracts for services with, governmental entities for which the governmental entity requires an accounting of the funds received, shall do the following:

(1) Prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards. For any nonaudit services performed by the firm conducting the audit, the firm and its individual auditors shall adhere to the standards for auditor independence set forth in the latest revision of the Government Auditing Standards, issued by the Comptroller General of the United States (the Yellow Book). The Attorney General may, by regulation, prescribe standards for auditor independence in the performance of nonaudit services, including standards different from those set forth in the Yellow Book. If a charitable corporation or unincorporated association that is required to prepare an annual financial statement pursuant to this subdivision is under the control of another organization, the controlling organization may prepare a consolidated financial statement. The audited financial statements shall be available for inspection by the Attorney General and by members of the public no later than nine months after the close of the fiscal year to which the statements relate. A charity shall make its annual audited financial statements available to the public in the same manner that is prescribed for IRS Form 990 by the latest revision of Section 6104(d) of the Internal Revenue Code and associated regulations.

(2) If it is a corporation, have an audit committee appointed by the board of directors. The audit committee may include persons who are not members of the board of directors, but the member or members of the audit committee shall not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. If the corporation has a finance committee, it must be separate from the audit committee. Members of the finance committee may serve on the audit committee; however, the chairperson of the audit committee may not be a member of the finance committee and members of the finance committee shall constitute less than one-half of the membership of the audit committee. Members of the audit committee shall not receive any compensation from the corporation in excess of the compensation, if any, received by members of the board of directors for service on the board and shall not have a material financial interest in any entity doing business with the corporation. Subject to the supervision of the board of directors, the audit committee shall be responsible for recommending to the board of directors the retention and termination of the independent auditor and may negotiate the independent auditor's compensation, on behalf of the board of directors. The audit committee shall confer with the auditor to satisfy its members that the financial affairs of the corporation are in order, shall review and determine whether to accept the audit, shall assure that any nonaudit services performed by the auditing firm conform with standards for auditor independence referred to in paragraph (1), and shall approve performance of nonaudit services by the auditing firm. If the charitable corporation that is required to have an audit committee pursuant to this subdivision is under the control of another corporation, the audit committee may be part of the board of directors of the controlling corporation.

(f) If, independent of the audit requirement set forth in paragraph (1) of subdivision (e), a charitable corporation, unincorporated association, or trustee required to file reports with the Attorney General pursuant to this section prepares financial statements that are audited by a certified public accountant, the audited financial statements shall be available for inspection by the Attorney General and shall be made available to members of the public in conformity with paragraph (1) of subdivision (e).

(g) The board of directors of a charitable corporation or unincorporated association, or an authorized committee of the board, and the trustee or trustees of a charitable trust shall review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the term of employment, if any, of the officer is renewed or extended, and whenever the officer's compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees. If a charitable corporation is affiliated with other charitable corporations, the requirements of this section shall be satisfied if review and approval is obtained from the board, or an authorized committee of the board, of the charitable corporation that makes retention and compensation decisions regarding a particular individual.

Credits

(Added by Stats.1959, c. 1258, p. 3397, § 2, eff. June 30, 1959. Amended by Stats.1976, c. 1320, p. 5919, § 6; Stats.1978, c. 1346, p. 4409, § 8; Stats.1996, c. 1064 (A.B.3351), § 786, operative July 1, 1997; Stats.2004, c. 919 (S.B.1262), § 7.)

Notes of Decisions (1)

West's Ann. Cal. Gov. Code § 12586, CA GOVT § 12586
Current with urgency legislation through Chs. 1-27, 30, 33-34, and 36-79 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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West's Ann.Cal.Gov.Code § 12588

§ 12588. Investigation of transactions and relationships of corporations and trustees; authority to require persons to give information, produce books, etc.

Currentness

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.

Credits

(Added by Stats.1959, c. 1258, p. 3398, § 2, eff. June 30, 1959.)

Notes of Decisions (1)

West's Ann. Cal. Gov. Code § 12588, CA GOVT § 12588
Current with urgency legislation through Chs. 1-27, 30, 33-34, and 36-79 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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Chapter 6. Attorney General (Refs & Annos)
Article 7. Uniform Supervision of Trustees for Charitable Purposes Act (Refs & Annos)

West's Ann.Cal.Gov.Code § 12598

§ 12598. Supervision of charitable trusts; enforcement

Effective: January 1, 2005

Currentness

(a) The primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities. These powers include, but are not limited to, charitable trust enforcement actions under all of the following:

(1) This article.

(2) Title 8 (commencing with Section 2223) of Part 4 of Division 3 of the Civil Code.

(3) Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(4) Sections 8111, 11703, 15004, 15409, 15680 to 15685, inclusive, 16060 to 16062, inclusive, 16064, and 17200 to 17210, inclusive, of the Probate Code.

(5) Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, and Sections 17500 and 17535 of the Business and Professions Code.

(6) Sections 319, 326.5, and 532d of the Penal Code.

(b) The Attorney General shall be entitled to recover from defendants named in a charitable trust enforcement action all reasonable attorney's fees and actual costs incurred in conducting that action, including, but not limited to, the costs of auditors, consultants, and experts employed or retained to assist with the investigation, preparation, and presentation in court of the charitable trust enforcement action.

(c) Attorney's fees and costs shall be recovered by the Attorney General pursuant to court order. When awarding attorneys' fees and costs, the court shall order that the attorney's fees and costs be paid by the charitable organization and the individuals named as defendants in or otherwise subject to the action, in a manner that the court finds to be equitable and fair.

(d) Upon a finding by the court that a lawsuit filed by the Attorney General was frivolous or brought in bad faith, the court may award the defendant charity the costs of that action.

(e)(1) The Attorney General may refuse to register or may revoke or suspend the registration of a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer has violated or is operating in violation of any provisions of this article.

(2) All actions of the Attorney General shall be taken subject to the rights authorized pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2.

Credits

(Added by Stats.1987, c. 892, § 2. Amended by Stats.1988, c. 1199, § 15, operative July 1, 1989; Stats.2000, c. 475 (S.B.2015), § 5; Stats.2003, c. 159 (A.B.1759), § 6, eff. Aug. 2, 2003; Stats.2004, c. 183 (A.B.3082), § 144.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

1988 Amendment

Section 12598 is amended to correct section references [19 Cal.L.Rev.Comm. Reports 1037 (1988)].

Notes of Decisions (10)

West's Ann. Cal. Gov. Code § 12598, CA GOVT § 12598
Current with urgency legislation through Chs. 1-27, 30, 33-34, and 36-79 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

End of Document

CERTIFICATE OF SERVICE

Case Name: **Center for Competitive Politics v. Kamala Harris** No. **14-15978**

I hereby certify that on July 8, 2014, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

ANSWERING BRIEF OF APPELLEE

APPELLEE'S SUPPLEMENTAL EXCERPTS OF RECORD

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 8, 2014, at San Francisco, California.

N. Newlin	/s/ N. Newlin
Declarant	Signature

41015363.doc

14-15978

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CENTER FOR COMPETITIVE POLITICS,

Plaintiff-Appellant,

v.

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

Defendant-Appellee.

On Appeal from the United States District Court
for the District of California

No. 14-cv-00636-MCE-DAD
The Honorable Morrison C. England, Jr., Judge

APPELLEE'S SUPPLEMENTAL EXCERPTS OF RECORD

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CENTER FOR COMPETITIVE POLITICS,

Plaintiff,

v.

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

Defendant.

Case No. 2:14-CV-00636-MCE-DAD

NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION [Fed. R. Civ. Proc. 65(a)]

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

TO DEFENDANT AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Thursday, April 17, 2014, at 2:00 p.m. or as soon thereafter as the matter may be heard, in Courtroom 7, floor 14, of the United States District Court for the Eastern District of California, 501 I Street, Sacramento, California, 95814, Plaintiff Center for Competitive Politics, by and through undersigned counsel, will move this Honorable Court to enjoin the Defendant from requiring an unredacted copy of Plaintiff's IRS Form 990

Schedule B as a condition of soliciting funds in California.

This motion is based upon this notice of motion and motion, the attached memorandum of points and authorities, any material in the Court's files, and any other relevant matter to be considered by the Court.

Plaintiff expects that this motion will be opposed.

Plaintiff respectfully asks that the motion be granted.

Dated: March 20, 2014

Respectfully submitted,

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

CENTER FOR COMPETITIVE POLITICS,

Plaintiff,

v.

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

Defendant.

Case No.: 2:14-CV-006236-MCE-DAD

DECLARATION OF DAVID KEATING IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

1. I, David Keating, am over the age of 18. Being duly sworn, I make this declaration based on personal knowledge as to the matters set forth herein.
2. I am the President of the Center for Competitive Politics. As such, I am familiar with its affairs.
3. The Center for Competitive Politics filed for registration with the Registry of Charitable Trusts on November 4, 2008, and has been registered to solicit charitable contributions in California since that time.

4. The Center for Competitive Politics in fact does solicit such contributions in California, and wishes to continue doing so.

5. Attached as Exhibit A to the Complaint is a true and correct copy of the letter dated February 6, 2014 that Plaintiff received from Defendant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 17th day of March, 2014.

David Keating

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Attorney General Kamala D. Harris

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

CENTER FOR COMPETITIVE POLITICS, Plaintiff, **v.** **KAMALA HARRIS, in her Official Capacity as Attorney General of the State of California,** Defendant.	2:14-cv-00636-MCE-DAD **DEFENDANT ATTORNEY GENERAL KAMALA D. HARRIS'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** Date: April 17, 2014 Time: 2:00 p.m. Courtroom: 7, 14th Floor Judge: Hon. Morrison C. England, Jr. Trial Date: None Set Action Filed: March 7, 2014

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INTRODUCTION

The California Attorney General has primary responsibility for the supervision and regulation of charitable organizations in California. State law, including the Supervision of Trustees and Fundraisers for Charitable Purposes Act, California Government Code sections 12580 et seq., vests the Attorney General with broad authority to carry out these enforcement responsibilities, including the power to require charitable organizations to furnish information and reports. Plaintiff takes issue with one such requirement: that it annually submit to the Attorney General a complete copy of its IRS Form 990, Schedule B, which lists the names and addresses of its major contributors. The Attorney General maintains this information in the Registry of Charitable Trusts, where it is kept confidential and is used exclusively for law enforcement purposes.

Although this reporting requirement is both an ordinary exercise of the State's police power and a critical enforcement tool, plaintiff insists that it violates its constitutional rights. Specifically, plaintiff alleges that the Attorney General's demand for the same Schedule B on file with the IRS violates both the Supremacy Clause and its First Amendment right to freedom of association, and has moved to preliminarily enjoin enforcement of that demand.

The Attorney General respectfully submits that this Court should deny the motion because plaintiff has not met the standard for issuance of a preliminary injunction: it has not demonstrated either a likelihood of success on the merits of its claims or that it will be injured if an injunction does not issue. There is no evidence that Congress intended to preempt state reporting requirements nor is there any conflict between the relevant federal and state laws. Similarly, plaintiff has offered no evidence that the disclosure of donor information to a confidential state registry would have any effect on, let alone infringe, its associational rights. Moreover, even if plaintiffs could establish a prima facie case of infringement, the challenged requirement is narrowly tailored to achieve a compelling state interest and would therefore be constitutional. Thus, plaintiff cannot show a likelihood of success on the merits of either of its claims for relief. Plaintiff's motion is also unsubstantiated by any evidence of injury that it would suffer in the absence of injunctive relief. By contrast, the harm to the State's ability to effectively

enforce its laws and to the public interest, were a preliminary injunction to issue, would be considerable. Accordingly, the law, the balance of equities, and the public interest all weigh against issuing a preliminary injunction.

BACKGROUND

I. THE FACTS, AS ALLEGED IN THE COMPLAINT

Plaintiff Center for Competitive Politics is a non-profit corporation organized under I.R.C. section 501(c)(3). *See* Complaint for Declaratory and Injunctive Relief ("Complaint") ¶ 3. In order to solicit tax-deductible contributions in California, plaintiff is registered with the State's Registry of Charitable Trusts. *Id.* ¶¶ 5-9. Although it is required by state law to file an unredacted copy of its IRS Form 990 Schedule B with the Registry, *see e.g.,* Cal. Code Regs. tit. 11, § 301 (2014), plaintiff is not in the habit of doing so and apparently this omission had not been caught before this year, *see* Complaint ¶ 8. Plaintiff received a letter from the Attorney General's Office dated February 6, 2014, instructing it to submit a complete copy of its Schedule B as filed with the Internal Revenue Service. *Id.*, Exh. 1. Plaintiff alleges that this demand violates the Supremacy Clause, the First Amendment, and 42 U.S.C. section 1983 and asks that this Court enjoin the Attorney General from enforcing and demanding that plaintiff comply with state law.[1]

II. THE RELEVANT STATUTORY SCHEMES

A. The Confidentiality and Disclosure Requirements of the Internal Revenue Code

Most tax exempt organizations, such as those organized under Internal Revenue Code section 501(c)(3), are required to file with the IRS an annual information return — the Form 990 or some variation thereof. *See* I.R.C. § 6033. The Form 990 is an eleven-part core form and schedules to be completed by those organizations that satisfy the applicable requirements for each schedule. *See* Declaration of Alexandra Robert Gordon in Support of Defendant's Opposition to

[1] Although plaintiff ostensibly challenges only the Attorney General's letter demanding the complete copy of its Schedule B, this demand cannot be properly understood or evaluated except in the context of the statutory scheme pursuant to which it is made. Accordingly, the relevant state law is set forth and analyzed herein.

Motion for Preliminary Injunction ("Gordon Decl."), ¶ 3, Exh. A. Exempt organizations, including 501(c)(3) corporations, must make their annual returns available to the public, and must provide copies upon request. *See* I.R.C. § 6104(d). Exempt organizations, however, need not provide the names and addresses of contributors in response to such requests by the public. *Id.* § 6104(d)(3)(A). Thus, many exempt organizations maintain a "public disclosure" copy of their Schedule B that omits identifying information about their contributors. In contrast, contributor names and addresses listed on an organization's application for exempt status remain subject to disclosure requirements. *See* Gordon Decl. ¶ 5, Exh. C.

As a general rule, the IRS cannot disclose tax returns or tax return information. I.R.C. § 6103(a). However, there are exceptions. IRC section 6104 provides rules for public inspection at IRS offices of the information returns, annual reports, applications, contributions, expenditures, and other information pertaining to exempt organizations. Section 6104 also provides rules pursuant to which the IRS can disclose to Congress and "appropriate" state officials certain information pertaining to tax-exempt organizations. *Id.* § 6104(a)-(c). No such disclosures can be made unless the agency, body, or commission to which disclosure is made establishes procedures satisfactory to the IRS for safeguarding the tax information they receive. *See* I.R.C. § 6103(p)(4); Treas. Reg. 301.6103(c)-1; *Procedure for Disclosure of Returns and Return Information*, U.S. Tax Rep. P 61,034.02. These safeguards must include: a permanent system of standardized records, a secure place to store the information, restrictions on access, protection of confidentiality, reports to the IRS on the procedures to maintain confidentiality, and the return or destruction (or safekeeping, in some cases) of used material. I.R.C. § 6103(p)(4); Treas. Reg. 301.6103(c)-1. California has established and maintains such procedures. *See generally* Declaration of Kevis Foley in Support of Defendant's Opposition to Motion for Preliminary Injunction ("Foley Decl.").

B. The Supervision of Trustees and Fundraisers for Charitable Purposes Act

Plaintiff incorrectly suggests that the Attorney General does not have authority to "substantiate her demand" for an unredacted copy of its Schedule B. *See* Plaintiff's Motion for Preliminary Injunction ("Plaintiff's Motion") at 2, 6. In fact, the Attorney General's demand is

made pursuant to her extensive and well-established powers under state and common law. Specifically, the Attorney General is the chief law officer of the State of California, CAL. CONST. art. 5, §13, and has broad authority under the California Constitution, statute, and common law to bring actions to enforce the laws of the state and to protect public rights and interests, *see D'Amico v. Bd. of Medical Examiners*, 11 Cal. 3d 1, 14 (1974). Of particular relevance here, the Attorney General has primary responsibility, under the Supervision of Trustees and Fundraisers for Charitable Purposes Act (the "Act"), to supervise charitable trusts and public benefit corporations incorporated in, or conducting business in California (of which plaintiff is one) and to protect charitable assets for their intended use. *See* Cal. Gov't Code §§ 12598(a), 12581; *see also* Complaint ¶¶ 3-9. She also has "broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities." Cal. Gov't Code § 12598(a); *see also* Cal. Bus. & Prof. Code §§ 17510-17510.95; Cal. Corp. Code §§ 5110, et seq.; *Hardman v. Feinstein*, 195 Cal. App. 3d 157, 161 (1987). The Attorney General may investigate transactions and relationships to ascertain whether the purposes of the corporation or trust are being carried out. In order to do so, she may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear and to produce records. Cal. Gov't Code § 12588. Any such order has the same force as a subpoena. *Id.* § 12589. The Attorney General has specific authority to require periodic written reports deemed necessary to her supervisory and enforcement duties. *Id.* § 12586.

Pursuant to the Act, the Attorney General is required to maintain a register of charitable corporations and their trustees and trusts (the "Registry"), and "to that end," to obtain "whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register." *Id.* § 12584. Within 30 days after receiving property, every charitable corporation and trustee subject to the Act must file an initial registration form, *id.* § 12585, and thereafter must also file periodic written reports with the Attorney General, *id.* § 12586(b); *see also Younger v. Wisdom Society*, 121 Cal. App. 3d 683, 691 (1981). The Attorney General is required to promulgate rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. Cal. Gov't Code § 12586(b).

These regulations state that the "periodic written reports" include: "…the Annual Registration Renewal Fee Report, ("RRF-1")….which must be filed with the Registry of Charitable Trusts annually, as well as the Internal Revenue Service Form 990, which must be filed on an annual basis with the Registry of Charitable Trusts, as well as with the Internal Revenue Service…." Cal. Code Regs. tit. 11, § 301 (2014). Moreover, "[w]hen requested by the Attorney General any periodic report shall be supplemented to include such additional information as the Attorney General deems necessary to enable the Attorney General to ascertain whether the corporation, trust or other relationship is being properly administered." *Id.* § 306. If a charitable organization fails to register or file its periodic report with the Registry, its state tax exemption may be disallowed. *See* Cal. Rev. & Tax. Code § 23703(b)(1).

To reduce the reporting burden on filers, the California Attorney General's Office adopted IRS Form 990 as the primary reporting document for charitable entities required to file annual reports with the Registry. *See* Cal. Code Regs. tit. 11, § 301 (2014). Although other documents filed with the Registry are open to public inspection, *see* Cal. Gov't Code § 12590, the Schedule B filed by public charities has always been treated as a confidential document, *see* Foley Decl. ¶ 6. All confidential documents are kept in separate files that are not available for public viewing. *Id.* Those "files" are now electronic records. *Id.* The confidential documents are scanned separately and labeled confidential. *Id.* The Registry publishes the non-confidential documents on its searchable website, but maintains the schedule B records as confidential records, accessible to in-house staff only. *Id.*[2]

ARGUMENT

I. LEGAL STANDARD

To prevail on a motion for a preliminary injunction, a plaintiff "must establish 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

[2] In response to Public Records Act request for an organization's filings, only the "public file" is made available for review. The Attorney General does not produce confidential information or documents in response to such requests. *See* Cal. Gov't Code § 6254(k); Cal. Evid. Code § 1040.

public interest." *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). Alternatively, "[a] preliminary injunction is appropriate when a plaintiff demonstrates…that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotations omitted). A plaintiff must establish all four *Winter* factors even under the alternative sliding scale test. *Id*. at 1135.

"A preliminary injunction is an extraordinary remedy never awarded as a matter of right. In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (internal quotations and citations omitted). Because a preliminary injunction is an extraordinary remedy, the moving party must establish the elements necessary to obtain injunctive relief by a "clear showing." *Id.* at 22. A plaintiff's burden is particularly heavy when, as here,[3] it seeks to enjoin operation of a statute because "it is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined." *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997). "A strong factual record is therefore necessary before a federal district court may enjoin a State agency." *Cupolo v. Bay Area Rapid Transit*, 5 F. Supp. 2d 1078, 1085 (N.D. Cal. 1997). In this case, plaintiff cannot meet its burden and the motion for a preliminary injunction should be denied.

II. PLAINTIFF HAS FAILED TO SHOW A LIKELIHOOD OF SUCCESS ON THE MERITS

A. Federal Law Does Not Preempt State Law Disclosure Requirements for Tax Exempt Organizations.

Plaintiff asserts that federal law preempts state law requiring organizations with tax-exempt status to disclose federal tax return information generally, and a complete copy of the Schedule B

[3] As noted above, plaintiff's challenge to the Attorney General's demand that it comply with state law by furnishing a complete copy of its Schedule B cannot be divorced from the state law that authorizes this request and that the Attorney General is seeking to enforce. Accordingly, plaintiff's claim is properly understood as a challenge to the Supervision of Trustees and Fundraisers for Charitable Purposes Act and should be evaluated as such.

form in particular. *See* Plaintiff's Motion at 7-11. In support of this contention, plaintiff strings together a few IRC provisions in which Congress has generally restricted the authority *of the IRS* to disclose tax returns and information and/or has provided penalties for the illegal disclosure of taxpayer information as purported evidence that Congress intended to displace the exercise of the State's traditional police power to supervise and regulate charitable trusts and public benefit corporations. This argument is unavailing and plaintiff is therefore unlikely to prevail on the merits of its Supremacy Clause claim. *See, e.g.*, *Ting v. AT&T*, 319 F.3d 1126, 1136 (9th Cir. 2003).

Federal law may preempt state law in one of three ways, none of which apply here. First, Congress may expressly state its intent to preempt state law in the direct language of a statute. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Second, Congressional intent to preempt state law can be inferred when Congress "occupies the field" by passing a comprehensive legislative scheme that leaves "no room" for supplemental regulation. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Third, federal law may preempt state law to the extent that state law directly conflicts with federal law. *See Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141-43 (1963). Conflict preemption requires a showing that "compliance with both federal and state regulations is a physical impossibility," *id.,* or that state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Pacific Gas & Electric Co. v. State Energy Resources Cons. and Dev. Comm.*, 461 U.S. 190, 204 (1983).

Congressional intent is the "ultimate touchstone" in every preemption case. *Retail Clerks Int'l Ass'n v. Schermerhorn*, 375 U.S. 96, 103 (1963). Preemption analysis "starts with the assumption that the historic police powers of the States [are] not to be superseded by [a] Federal Act unless that is the clear and manifest purpose if Congress." *Rice*, 331 U.S. at 230; *see also Florida Lime & Avocado Growers*, 373 U.S. at 142 ("[F]ederal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons — either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained"). A court must presume that a state statute is not

preempted, and the moving party has the burden of overcoming that presumption. *Pharmaceutical Research and Mfrs. of America v. Walsh*, 538 U.S. 644, 661-662 (2003); *Chemical Specialties Mfrs. Ass'n, Inc. v. Allenby*, 958 F.2d 941, 943 (9th Cir. 1992). Plaintiff has not met and cannot meet this burden.

With respect to express and field preemption, there is no credible argument that Congress intended to preempt states from seeking information about donors either generally or by requiring complete copies of a tax exempt organization's informational tax returns and related schedules. Plaintiff seizes primarily upon I.R.C. section 6104 as proof that Congress has "comprehensively regulated" the disclosure of returns and return information and prohibited state officials from demanding an unredacted copy of any 501(c)(3) organization's Schedule B. *See* Plaintiff's Motion at 7-11. This argument is baseless. On its face, section 6104 governs what *the IRS* can and cannot do with information it receives from filers; it does not govern what states may ask of federal filers, including charitable organizations. Further, section 6104 includes exceptions to the general rule that *the IRS* must keep tax returns and return information confidential, *see* I.R.C. § 6103, which authorize *the IRS* to disclose certain information pertaining to tax-exempt organizations under certain circumstances. At most, section 6104 sets forth the procedure by which the Attorney General could obtain tax return information about an exempt organization *from* the IRS. *See* I.R.C. §§ 6104 (c) & (d). Section 6104 does not limit the authority of the Attorney General or other state officials to obtain this or other information, including a complete Schedule B, directly from plaintiff or any other 501(c)(3) organization registered to do business in California. *See* I.R.C. § 6104.

Not only does section 6104 fail to evince a "clear and manifest purpose" of Congress to preempt state reporting and disclosure requirements (for charitable organizations), but the legislative history of section 6104 and related provisions demonstrates that Congress had no intent to do so. As explained in the *General Explanation of the Tax Reform Act of 1976*:

> The [Tax Reform] Act provides that Federal tax returns and return information may be disclosed to State tax officials solely for use in administering the State's tax laws…. No disclosure may be made to any State that requires taxpayers to attach to, or include in, State tax returns a copy of any portion of the Federal return (or any information reflected on the Federal return) unless the State adopts provisions of law

> by December 31, 1978, protecting the confidentiality of the attached copies of the Federal returns and the included return information. *Although the copies of the Federal returns or the return information required by a State or local government to be attached to, or included in, the State and local return do not constitute Federal "returns of return information" subject to the Federal confidentiality rules*, the policy underlying this requirement is that the attached copy of the return and the included information should be treated by State and local governments as confidential rather than effectively as public information. However, *it is not intended that States be required to enact confidentiality statutes which are copies of the Federal statutes. Thus, State tax authorities can disclose State returns and return information, including any portion of the Federal return (or the information reflected on the Federal return) which the State requires the tax payer to attach to, or include in, his State tax return, to any State or local officers or employees whose official duties or responsibilities require access to such State return or return information pursuant to the laws of that State*.

STAFF OF THE JOINT COMMITTEE ON TAXATION, 94TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976, 314 (Comm. Print 1976) (emphasis added), attached to Gordon Decl. ¶ 7, Exh E, p. 57.[4]

Thus, rather than preempting a State's ability to obtain either federal tax filings or the information contained in federal tax filings, Congress both explicitly allowed for this and made clear that state reporting and disclosure requirements are not subject to or affected by federal law. *See id.* Indeed, there is additional evidence that Congress did not intend to restrict the states' authority to request copies of federal tax filings. For example, the Instructions to IRS Form 990 Schedule B indicate that States may require exempt organizations to file a Schedule B form. *See* Gordon Decl. ¶ 4, Exh. B, p. 5 ("If an organization files a copy of Form 90 or 990-EZ, and attachments, with any state, it should not include its Schedule B (Form 990, 990-EZ, or 990-PF) in the attachments for the state, unless a schedule of contributors is specifically required by the state"). And the IRS training on "Form 990 Basics" states that nearly 40 states require Form 990, and related schedules in order to regulate charitable and tax exempt organizations.[5] In light of the

[4] The Tax Reform Act of 1976 completely overhauled the rules governing the privacy of federal tax returns. Prior to 1976, income tax returns were deemed to be public records. In response to Watergate and the resulting loss of public confidence, Congress enacted a general rule that the government is to keep tax returns and tax return information confidential except as specifically provided by the Internal Revenue Code, and increased protections against disclosure by the IRS. *See, e.g.*, 13 Mertens Law of Federal Income Taxation, § 47:2 (2014). As discussed above, the Tax Reform Act of 1976 does not address or limit a state's ability to obtain federal returns from a taxpayer or a tax exempt organization directly.

[5] Pursuant to Treasury Regulation section 1.6033-3(c)(1), 501 (c)(3) organizations that are private foundations are required to file Form 990-PF with the Attorney General of (1) the state (continued…)

plain language, legislative history, and operation of the Internal Revenue Code, and because state law unquestionably can and does play a role in the regulation of tax exempt and charitable organizations, there is no express preemption and "field preemption is not an issue." *Ting*, 319 F.3d at 1136.

Plaintiff's conflict preemption argument is similarly flawed. Plaintiff apparently concedes that it is not physically impossible to comply with both the Act and federal law. *See* Plaintiff's Motion at 10. It argues instead that "Congress wanted to prevent state attorneys general from seeking, willy-nilly, the unredacted Schedule B forms of [section] 501(c)(3) organizations" and thus "expressly blocked them" from obtaining these forms. As discussed above, all the evidence is to the contrary. Congress specifically allowed for state officials to obtain tax returns and tax return information, including a complete Schedule B, and exempted state reporting and disclosure laws from federal confidentiality requirements. *See, e.g.*, Gordon Decl. ¶ 7, Exh E. Accordingly, plaintiff cannot show that the Attorney General's letter (issued pursuant to her authority under the Act) demanding that plaintiff furnish a complete copy of the Schedule B on file with the IRS, impedes any purpose or objective of Congress. *See Hillsborough County Fla. v. Automated Med Labs., Inc.*, 471 U.S. 707, 716 (1985) (a party asserting "conflict" preemption "must…present a showing…of a conflict between a particular local provision and the federal scheme, that is strong enough to overcome the presumption that state and local regulation…can constitutionally coexist with federal regulation."). Plaintiff thus cannot overcome the strong presumption against preemption, and its preemption claim provides no basis for the requested preliminary injunction. *Ting*, 319 F.3d at 1137, 1152.

B. State Law Reporting Requirements Do Not Violate the First Amendment.

Plaintiff also argues that the demand to furnish a complete copy of its Schedule B unconstitutionally infringes upon its members' First Amendment right to freedom of association. *See* Plaintiff's Motion at 11-14. Although compelled disclosure of membership lists can

(…continued)
in which the foundation's principal office is located (2) the state in which the foundation is incorporated or created, and (3) each state which the foundation is required to list in its annual information return pursuant to Treasury regulation § 1.6033-2(a)(2)(iv).

constitute a substantial infringement on the freedom of association guaranteed by the First and Fourteenth Amendments, *see, e.g.*, *NAACP v. Alabama*, 357 U.S. 449, 462 (1958), plaintiff's claim finds no support in fact or law and thus must fail. As a threshold matter, plaintiff has not provided any evidence that the challenged disclosure requirement will have any impact on, let alone "chill" its associational rights, and thus has not made "a prima facie showing of arguable First Amendment infringement." *See Brock v. Local 373, Plumbers Int'l Union of America*, 860 F.2d 346, 349-50 (9th Cir. 1988). Moreover, even if plaintiff could demonstrate that the demand for an unredacted copy of its Schedule B (which the Registry keeps confidential and does not disclose to the public) could harm to its members' associational rights, the Act's reporting and disclosure requirements would survive even the most exacting scrutiny and thus be constitutional. *See, e.g.*, *ProtectMarriage.com v. Bowen*, 599 F. Supp. 2d. 1197, 1224 (E.D. Cal. 2009); *cf. United States v. Mayer*, 503 F.3d 740, 748 (9th Cir. 2007).[6]

1. Plaintiff has not made a prima facie showing of a violation of its associational rights.

To make a prima facie showing of infringement of its right to freedom of association, plaintiff must demonstrate that enforcement of the Act's reporting and disclosure requirements will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences that objectively suggest an impact on, or "chilling" of the member's associational rights. *Brock*, 860 F.2d at 350. The prima facie test has two tiers: first, plaintiff "must demonstrate a causal link between the disclosure and the prospective harm to associational rights;" and second, plaintiff "must demonstrate that [it] is the type of association where exposure could incite threats, harassment, acts of retribution, or other adverse consequences from affiliating with it." *Dole v. Local Union 375, Plumbers Int'l Union of America*, 921 F.2d 969, 972 (9th Cir. 1990).

[6] As this Court has noted, the appropriate standard of review for reporting and disclosure requirements such as those contained in the Act is "an open question." *ProtectMarriage.com*, 599 F. Supp. 2d at 1207. However, because plaintiff's "likelihood of success on the merits is minimal even under the most stringent review, the Court [can] assume without deciding that strict scrutiny applies." *Id.*

Plaintiff fails to make this showing. It offers only the mere suggestion that by requiring disclosure of donor information to the Attorney General, specifically, the name and address of contributors of more than 5,000 dollars, the Act "threatens to curtail" financial support. *See* Plaintiff's Motion at 12. However, plaintiff provides absolutely no evidence to support this assertion, and it is not obvious that submitting to the Registry in confidence the same Schedule B filed with the IRS would have any effect on financial support, either generally or to plaintiff in particular. Mere speculation about or opinion of the possible consequences of such disclosure is entirely inadequate. Although plaintiff seeks to "equate[] the mere fact of disclosure with a first amendment chill," "more than an argument that disclosure leads to exposure" or any other undesired outcome is required. *Dole v. Local Union 375, Plumbers Int'l Union of America*, 921 F.2d at 974. Rather, in order to meet their burden, plaintiff must present objective and articulable facts, which go "beyond broad allegations or subjective fears." *Dole v. Local Union 375, Plumbers Int'l Union of America*, 950 F.2d 1456, 1469 (9th Cir. 1991) (citation and internal quotation omitted); *see also Dole,* 921 F.2d at 974 (noting that in addition to failing to offer any objective indicia of an "associational chill," plaintiffs did not explain "how its subjective fear of reprisals could be realized," given that government policy protected the information from public disclosure). Because plaintiff has not offered even a single objective fact to show that there is an infringement of its associational rights or a "reasonable probability" that the Act's reporting and disclosure requirements will subject its members to "threats, harassment, or reprisals from either government officials or private parties," it cannot succeed on the merits of its freedom of association claim.[7] *See Dole,* 921 F.2d at 973 ("factual gaps in [plaintiff's] evidence are fatal to

[7] This complete lack of objective evidence differentiates this case from the cases upon which plaintiff relies. *See, e.g.*, *Dole*, 921 F.2d at 974 ("The cases in which the Supreme Court has recognized a threat to first amendment associational rights, however, have consistently required more than [] argument…"). In *NAACP v. Alabama*, 357 U.S. 449, for example, the plaintiff "made an uncontroverted showing that on past occasions revelation of the identity of its rank and file members [had] exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." *Id.* at 462. Similarly, in *Bates v. Little Rock*, 361 U.S. 516 (1960), plaintiff presented "substantial uncontroverted evidence that public identification of persons in the community as members of the organizations had been followed by harassment and threats of bodily harm," as well as evidence that "fear of community hostility and economic reprisals that would follow public disclosure of the

(continued…)

its case"); *see also ProtectMarriage.com*, 599 F. Supp. 2d at 1251 (denying motion for preliminary injunction on freedom of association claim where "notably absent from this case is any evidence that those burdens hypothesized by the Supreme Court would befall the current Plaintiffs.").

2. The State reporting and disclosure requirements at issue would survive any level of scrutiny.

Because plaintiff has not made a prima facie showing, the Court need not examine whether the contested Schedule B disclosure requirement is justified by compelling state interests and is narrowly tailored to achieve those interests. *See Dole*, 921 F.2d at 974. However, even if the Court were to undertake this analysis, this requirement would be found valid. Although plaintiff asserts that the Attorney General's request, and by extension the Act's disclosure requirements, are not based on a compelling interest, this argument borders on frivolous. As noted above, the Attorney General has primary responsibility for supervising charitable trusts and public benefit corporations in California to protect charitable assets for their intended use. *See* Cal. Gov't Code §§ 12598(a) & 12581. Her interest, and that of the State, in performing this regulatory and oversight function and securing compliance with the law is compelling. *See, e.g.*, *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.,* 487 U.S. 781, 792 (1988); *Buckley*, 466 U.S. at 66-68; *NAAP*, 357 U.S. at 463-64. It is also substantially related to the Act's challenged disclosure requirements. Of particular relevance here, the information contained in the IRS Form 990 and Schedule B filed with the IRS allows the Attorney General to determine, often without conducting an audit,[8] whether an organization has violated the law, including laws against self

(…continued)
membership lists had discouraged new members from joining the organizations and induced former members to withdraw." *Id.* at 524. Here, by contrast, "any serious infringement on First Amendment rights brought about by the compelled disclosure is highly speculative." *Buckley v. Valeo*, 424 U.S. 1, 69-70 (1976). As demonstrated below, the substantial relationship between the Act's disclosure requirements and the compelling government interest served by those requirements also distinguishes this case from *NAACP* and *Bates* as well as from *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963), where no similar nexus was established.

[8] Given that a ten-year statute of limitations applies to any action by the Attorney General against any charitable corporation, *see* Cal. Gov't Code § 12596, an audit can be particularly burdensome and disruptive. *See* Gordon Decl. ¶ 8, Exh. F. The reporting and disclosure (continued…)

dealing, Cal. Corp. Code § 5233; improper loans, *id.* § 5236; interested persons, *id.* § 5227; or illegal or unfair business practices, Cal. Bus. & Prof. Code § 17200. In order to reduce the burden on filers and insure that the organization is reporting the same information to the state and federal government, the Attorney General uses the Form 990 and related schedules as a proxy, which relieves charitable organizations of the burden of providing the same information on a different, state form. Given that the Registry keeps confidential the identities of contributors reported on Schedule B, *see* Foley Decl. ¶ 6, the reporting and disclosure requirements of the Act are narrowly tailored to avoid unnecessarily impinging upon rights of association, if at all. *See ProtectMarriage.com*, 599 F. Supp. 2d at 1211, 1223-24 (citations omitted). Thus, these requirements are constitutionally valid.[9]

III. PLAINTIFFS HAVE FAILED TO DEMONSTRATE IRREPARABLE INJURY OR DEMONSTRATE THAT THE BALANCE OF HARMS AND THE PUBLIC INTEREST WEIGH IN FAVOR OF AN INJUNCTION

In addition to failing to show a likelihood of success on the merits of its claims, plaintiff also has not met its burden to demonstrate irreparable injury. As shown above, plaintiff has not established that it has suffered or would suffer a cognizable injury, and certainly not one that is irreparable. Although plaintiff asserts that the loss of its First Amendment and constitutional rights constitutes irreparable injury, *see* Plaintiff's Motion at 14, where, as here, a constitutional claim is unsupported and fails as a matter of law, it is "too tenuous" to support the requested relief. *Goldie's Bookstore, Inc. v. Superior Ct.*, 739 F.2d 466, 472 (9th Cir. 1984); *see also ProtectMarriage.com*, 599 F. Supp. 2d at 1226 (no risk of irreparable injury where no serious First Amendment claims are raised); *Dex Media West, Inc. v. City of Seattle*, 790 F. Supp. 2d 1276, 1289 (W.D. Wash. 2011) ("Because the court finds that Plaintiffs have failed to establish that they are likely to succeed on the merits of their First Amendment claim, the court cannot find

(…continued)
requirements of the Act help avoid this disruption and waste of both State and the charitable organization resources.

[9] To the extent that plaintiff alleges a violation of 42 U.S.C. section 1983, this claim fails along with the underlying constitutional claims, on which it is dependent. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

that Plaintiffs have established that they are likely to suffer irreparable First Amendment injury in the absence of a preliminary injunction.").

Plaintiff's remaining assertions of injury are also unfounded. It claims that by disclosing the names and addresses of its donors to the Attorney General, it will lose fundraising support,[10] and thus will be unable to carry out is mission. However, plaintiff has not provided any evidence to establish that by complying with the law and submitting the required information about its contributors to the Registry, it will lose any meaningful financial support either at all or such that its mission would be compromised.[11] Such speculative and unsubstantiated assertions of harm do not constitute irreparable injury. *See Goldie's Bookstore, Inc.*, 739 F.2d at 472. To the extent that plaintiff contends that the fines that could be imposed under the Act if it fails to furnish a complete copy of its schedule B will cause it harm, it can readily avoid such a consequence by simply complying with the law. *See Winter*, 555 U.S. at 22. Ultimately, plaintiff has not established, and cannot establish harm sufficient to outweigh the injury its requested injunction would inflict on the State. "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 2 (2012) (quotation and citation omitted). Injury to the State aside, it is not in the public interest to interfere with the Attorney General's authority to supervise and regulate charitable organizations and to enforce the law by limiting her ability to request and receive highly relevant information. Accordingly, the law, the balance of harms, and the public interest all weigh decisively against entry of a preliminary injunction in this matter.

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[10] Standing alone, monetary harm or loss of revenue is not sufficient to establish irreparable injury. *See Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc*., 762 F.2d 1374, 1376 (9th Cir. 1985); *see also Sampson v. Murray*, 415 U.S. 61, 90 (1974) ("The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended . . . are not enough.").

[11] Plaintiff's related assertion that absent injunctive relief, its ability to engage in "fully protected fundraising speech" is also entirely unsubstantiated and is particularly weak. The challenged requirements require charitable organizations to furnish information about their donors; they do not place any limitations on protected speech nor do they (unconstitutionally) compel any speech by fundraisers. *See* Cal. Gov't Code §§ 12584 & 12586; Cal. Code Regs. tit. 11, §§ 301 & 306 (2014); *compare Riley*, 487 U.S. at 788-802.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that the Court deny plaintiff's motion for a preliminary injunction.

Dated: April 3, 2014

Respectfully Submitted,

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Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General

/s/ Alexandra Robert Gordon

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

CENTER FOR COMPETITIVE POLITICS, Plaintiff, **v.** **KAMALA HARRIS, in her Official Capacity as Attorney General of the State of California,** Defendant.	2:14-cv-00636-MCE-DAD **DECLARATION OF ALEXANDRA ROBERT GORDON IN SUPPORT OF DEFENDANT ATTORNEY GENERAL KAMALA D. HARRIS'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** Date: April 17, 2014 Time: 2:00 p.m. Courtroom: 7, 14th Floor Judge: Hon. Morrison C. England, Jr. Trial Date: None Set Action Filed: March 7, 2014

I, Alexandra Robert Gordon, declare as follows:

1. I am a Deputy Attorney General at the California Department of Justice and serve as counsel to Attorney General Kamala D. Harris in the above-titled matter.

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

3. A true and correct copy of Internal Revenue Service (IRS) Form 990 is attached hereto as **Exhibit A**.

4. A true and correct copy of IRS Form 990, Schedule B is attached hereto as **Exhibit B**.

5. A true and correct copy of guidance provided by the IRS regarding public disclosure of exempt organizations tax returns and return information found at http://www.irs.gov/Charities-&-Non-Profits/Public-Disclosure-and-Availability-of-Exempt-Organizations-Returns-and-Applications is attached hereto as **Exhibit C**.

6. A true and correct copy of guidance provided by the IRS regarding periodic state reporting requirements for charitable organizations found at http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Charitable-Solicitation-Periodic-State-Reporting is attached hereto as **Exhibit D**.

7. A true and correct copy of an excerpt from the General Explanation of the Tax Reform Act of 1976, prepared by the Staff of the Joint Committee on Taxation of the 94th Congress is attached hereto as **Exhibit E**.

8. A true and correct copy of a sample audit letter from the Office of the Attorney General to a charitable organization is attached hereto as **Exhibit F**.

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

Executed on April 3, 2014, at San Francisco, California.

/s/ *Alexandra Robert Gordon*

ALEXANDRA ROBERT GORDON

EXHIBIT A

Form **990**

Return of Organization Exempt From Income Tax

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

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

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

OMB No. 1545-0047

2013

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

A For the 2013 calendar year, or tax year beginning , 2013, and ending , 20

B Check if applicable:
- ☐ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Terminated
- ☐ Amended return
- ☐ Application pending

C Name of organization

Doing Business As

Number and street (or P.O. box if mail is not delivered to street address) | Room/suite

City or town, state or province, country, and ZIP or foreign postal code

D Employer identification number

E Telephone number

G Gross receipts $

F Name and address of principal officer:

H(a) Is this a group return for subordinates? ☐ Yes ☐ No

H(b) Are all subordinates included? ☐ Yes ☐ No
If "No," attach a list. (see instructions)

H(c) Group exemption number ▶

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

J Website: ▶

K Form of organization: ☐ Corporation ☐ Trust ☐ Association ☐ Other ▶

L Year of formation:

M State of legal domicile:

Part I Summary

Activities & Governance

1 Briefly describe the organization's mission or most significant activities:

2 Check this box ▶ ☐ if the organization discontinued its operations or disposed of more than 25% of its net assets.

3	Number of voting members of the governing body (Part VI, line 1a)	3	
4	Number of independent voting members of the governing body (Part VI, line 1b)	4	
5	Total number of individuals employed in calendar year 2013 (Part V, line 2a)	5	
6	Total number of volunteers (estimate if necessary)	6	
7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	
b	Net unrelated business taxable income from Form 990-T, line 34	7b	

		Prior Year	Current Year
Revenue	8 Contributions and grants (Part VIII, line 1h)		
	9 Program service revenue (Part VIII, line 2g)		
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)		
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)		
	12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)		
Expenses	13 Grants and similar amounts paid (Part IX, column (A), lines 1–3)		
	14 Benefits paid to or for members (Part IX, column (A), line 4)		
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)		
	16a Professional fundraising fees (Part IX, column (A), line 11e)		
	b Total fundraising expenses (Part IX, column (D), line 25) ▶		
	17 Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)		
	18 Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)		
	19 Revenue less expenses. Subtract line 18 from line 12		

		Beginning of Current Year	End of Year
Net Assets or Fund Balances	20 Total assets (Part X, line 16)		
	21 Total liabilities (Part X, line 26)		
	22 Net assets or fund balances. Subtract line 21 from line 20		

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here

▶ Signature of officer — Date

▶ Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN

Firm's name ▶ — Firm's EIN ▶

Firm's address ▶ — Phone no.

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

Part III **Statement of Program Service Accomplishments**

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

1 Briefly describe the organization's mission:

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? . . . . . ☐ Yes ☐ No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? . . . . . ☐ Yes ☐ No

If "Yes," describe these changes on Schedule O.

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

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

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

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

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

4e Total program service expenses ▶

Part IV Checklist of Required Schedules

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

Part IV Checklist of Required Schedules *(continued)*

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

Part V **Statements Regarding Other IRS Filings and Tax Compliance**

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

				Yes	No
1a	Enter the number reported in Box 3 of Form 1096. Enter -0- if not applicable	1a			
b	Enter the number of Forms W-2G included in line 1a. Enter -0- if not applicable	1b			
c	Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?		1c		
2a	Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return	2a			
b	If at least one is reported on line 2a, did the organization file all required federal employment tax returns? .		2b		
	Note. If the sum of lines 1a and 2a is greater than 250, you may be required to *e-file* (see instructions) . .				
3a	Did the organization have unrelated business gross income of $1,000 or more during the year?		3a		
b	If "Yes," has it filed a Form 990-T for this year? *If "No" to line 3b, provide an explanation in Schedule O* . .		3b		
4a	At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?		4a		
b	If "Yes," enter the name of the foreign country: ▶ ---------- See instructions for filing requirements for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts.				
5a	Was the organization a party to a prohibited tax shelter transaction at any time during the tax year? . . .		5a		
b	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?		5b		
c	If "Yes" to line 5a or 5b, did the organization file Form 8886-T?		5c		
6a	Does the organization have annual gross receipts that are normally greater than $100,000, and did the organization solicit any contributions that were not tax deductible as charitable contributions?		6a		
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?		6b		
7	**Organizations that may receive deductible contributions under section 170(c).**				
a	Did the organization receive a payment in excess of $75 made partly as a contribution and partly for goods and services provided to the payor?		7a		
b	If "Yes," did the organization notify the donor of the value of the goods or services provided?		7b		
c	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?		7c		
d	If "Yes," indicate the number of Forms 8282 filed during the year	7d			
e	Did the organization receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?		7e		
f	Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? .		7f		
g	If the organization received a contribution of qualified intellectual property, did the organization file Form 8899 as required?		7g		
h	If the organization received a contribution of cars, boats, airplanes, or other vehicles, did the organization file a Form 1098-C?		7h		
8	**Sponsoring organizations maintaining donor advised funds and section 509(a)(3) supporting organizations.** Did the supporting organization, or a donor advised fund maintained by a sponsoring organization, have excess business holdings at any time during the year?		8		
9	**Sponsoring organizations maintaining donor advised funds.**				
a	Did the organization make any taxable distributions under section 4966?		9a		
b	Did the organization make a distribution to a donor, donor advisor, or related person?		9b		
10	**Section 501(c)(7) organizations.** Enter:				
a	Initiation fees and capital contributions included on Part VIII, line 12	10a			
b	Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities .	10b			
11	**Section 501(c)(12) organizations.** Enter:				
a	Gross income from members or shareholders	11a			
b	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them.)	11b			
12a	**Section 4947(a)(1) non-exempt charitable trusts.** Is the organization filing Form 990 in lieu of Form 1041?		12a		
b	If "Yes," enter the amount of tax-exempt interest received or accrued during the year . .	12b			
13	**Section 501(c)(29) qualified nonprofit health insurance issuers.**				
a	Is the organization licensed to issue qualified health plans in more than one state?		13a		
	Note. See the instructions for additional information the organization must report on Schedule O.				
b	Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans	13b			
c	Enter the amount of reserves on hand	13c			
14a	Did the organization receive any payments for indoor tanning services during the tax year?		14a		
b	If "Yes," has it filed a Form 720 to report these payments? *If "No," provide an explanation in Schedule O* .		14b		

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

Check if Schedule O contains a response or note to any line in this Part VI . . . . . ☐

Section A. Governing Body and Management

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

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

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

Section C. Disclosure

17 List the states with which a copy of this Form 990 is required to be filed ▶

18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.

☐ Own website ☐ Another's website ☐ Upon request ☐ Other *(explain in Schedule O)*

19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

20 State the name, physical address, and telephone number of the person who possesses the books and records of the organization: ▶

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

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

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

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

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

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

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

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

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

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

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

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

Section B. Independent Contractors

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

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

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

Part VIII Statement of Revenue

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

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

Part IX Statement of Functional Expenses

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

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

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

Part X Balance Sheet

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

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

Part XI Reconciliation of Net Assets

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

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

Part XII Financial Statements and Reporting

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

			Yes	No
1	Accounting method used to prepare the Form 990: ☐ Cash ☐ Accrual ☐ Other _____ If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.			
2a	Were the organization's financial statements compiled or reviewed by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both: ☐ Separate basis ☐ Consolidated basis ☐ Both consolidated and separate basis	2a		
b	Were the organization's financial statements audited by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both: ☐ Separate basis ☐ Consolidated basis ☐ Both consolidated and separate basis	2b		
c	If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.	2c		
3a	As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?	3a		
b	If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits.	3b		

EXHIBIT B

Schedule B (Form 990, 990-EZ, or 990-PF)
Department of the Treasury
Internal Revenue Service

Schedule of Contributors

▶ Attach to Form 990, Form 990-EZ, or Form 990-PF.
▶ Information about Schedule B (Form 990, 990-EZ, or 990-PF) and its instructions is at *www.irs.gov/form990*.

OMB No. 1545-0047

2013

Name of the organization | **Employer identification number**

Organization type (check one):

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

Check if your organization is covered by the **General Rule** or a **Special Rule.**

Note. Only a section 501(c)(7), (8), or (10) organization can check boxes for both the General Rule and a Special Rule. See instructions.

General Rule

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

Special Rules

☐ For a section 501(c)(3) organization filing Form 990 or 990-EZ that met the 33⅓% support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi) and received from any one contributor, during the year, a contribution of the greater of **(1)** $5,000 or **(2)** 2% of the amount on (i) Form 990, Part VIII, line 1h, or (ii) Form 990-EZ, line 1. Complete Parts I and II.

☐ For a section 501(c)(7), (8), or (10) organization filing Form 990 or 990-EZ that received from any one contributor, during the year, total contributions of more than $1,000 for use *exclusively* for religious, charitable, scientific, literary, or educational purposes, or the prevention of cruelty to children or animals. Complete Parts I, II, and III.

☐ For a section 501(c)(7), (8), or (10) organization filing Form 990 or 990-EZ that received from any one contributor, during the year, contributions for use *exclusively* for religious, charitable, etc., purposes, but these contributions did not total to more than $1,000. If this box is checked, enter here the total contributions that were received during the year for an *exclusively* religious, charitable, etc., purpose. Do not complete any of the parts unless the **General Rule** applies to this organization because it received *nonexclusively* religious, charitable, etc., contributions of $5,000 or more during the year . . . . . ▶ $_____

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

Name of organization	Employer identification number

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

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
		$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II for noncash contributions.)
		$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II for noncash contributions.)
		$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II for noncash contributions.)
		$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II for noncash contributions.)
		$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II for noncash contributions.)
		$	Person ☐ Payroll ☐ Noncash ☐ (Complete Part II for noncash contributions.)

Name of organization	Employer identification number

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

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

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

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

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

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

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

Name of organization	Employer identification number

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

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

(e) Transfer of gift

Transferee's name, address, and ZIP + 4	Relationship of transferor to transferee

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

(e) Transfer of gift

Transferee's name, address, and ZIP + 4	Relationship of transferor to transferee

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

(e) Transfer of gift

Transferee's name, address, and ZIP + 4	Relationship of transferor to transferee

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

(e) Transfer of gift

Transferee's name, address, and ZIP + 4	Relationship of transferor to transferee

General Instructions

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

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

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

Purpose of Schedule

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

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

Who Must File

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

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

See the separate instructions for these lines on those forms.

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

Accounting Method

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

Public Inspection

- Schedule B is open to public inspection for an organization that files Form 990-PF.
- Schedule B is open to public inspection for a section 527 political organization that files Form 990 or 990-EZ.
- For all other organizations that file Form 990 or 990-EZ, the names and addresses of contributors are not required to be made available for public inspection. All other information, including the amount of contributions, the description of **noncash contributions,** and any other information, is required to be made available for public inspection unless it clearly identifies the contributor.

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

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

Contributors to be Listed on Part I

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

Contributions

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

General Rule

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

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

Special Rules

Section 501(c)(3) organizations that file Form 990 or 990-EZ. For an organization described in section 501(c)(3) that meets the 33$^1/_3$% support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi), and not just the 10% support test (whether or not the organization is otherwise described in section 170(b)(1)(A)), list in Part I only those contributors whose contribution of $5,000 or more during the tax year is greater than 2% of the amount reported on Form 990, Part VIII, line 1h, or Form 990-EZ, line 1.

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

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

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

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

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

Specific Instructions

CAUTION

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

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

In column (d), check the type of contribution. Check all that apply for the contributor listed. If a *cash contribution* came directly from a contributor (other than through payroll deduction), check the "Person" box. A cash contribution includes contributions paid by cash, credit card, check, money order, electronic fund or wire transfer, and other charges against funds on deposit at a financial institution.

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

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

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

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

In columns (c) and (d), report property with readily determinable market value (for example, marked quotations for securities) by listing its **fair market value (FMV).** If the organization immediately sells **securities** contributed to the organization (including through a broker or agent), the contribution still must be reported as a gift of property (rather than cash) in the amount of the net proceeds plus the broker's fees and expenses. See the Instructions for Form 990, Part VIII, line 1g, which provide an example to illustrate this point. If the property is not immediately sold, measure market value of marketable securities registered and listed on a recognized securities exchange by the average of the highest and lowest quoted selling prices (or the average between the *bona fide* bid and asked prices) on the contribution date. See Regulations section 20.2031-2 to determine the value of contributed stocks and bonds. When FMV cannot be readily determined, use an appraised or estimated value. To determine the amount of a noncash contribution subject to an outstanding debt, subtract the debt from the property's FMV. Enter the date the property was received by the organization, but only if the donor has fully given up use and enjoyment of the property at that time.

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

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

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

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

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

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

EXHIBIT C

IRS

Public Disclosure and Availability of Exempt Organizations Returns and Applications: Contributors' Identities Not Subject to Disclosure

Is a tax-exempt organization required to disclose the names or addresses of its contributors?

A tax-exempt organization is generally not required to disclose publicly the names or addresses of its contributors set forth on its annual return, including Schedule B (Form 990, 990-EZ, or 990-PF). The regulations specifically exclude *the name and address of any contributor to the organization* from the definition of disclosable documents. Contributor names and addresses listed on an exempt organization's exemption application are subject to disclosure, however.

This general exclusion for contributor information on annual returns does not apply to private foundations, or to political organizations described in section 527 of the Internal Revenue Code. Certain tax-exempt political organizations must report *the name and address, and the occupation and employer (if an individual), of any person that contributes in the aggregate $200 or more in a calendar year* on Schedule A of Form 8872. Tax-exempt political organizations may also be required to file Form 990, including Schedule B. Political organizations must make both of these forms available to the public, including the contributor information.

Page Last Reviewed or Updated: 28-Apr-2013

EXHIBIT D

IRS

Charitable Solicitation - Periodic State Reporting

Most states have statutes that require charitable organizations that solicit contributions from the public to register and file periodic financial reports. Many states accept a copy of the Form 990 in place of all or part of their financial report forms. If you use Form 990, Form 990-EZ, or 990-PF to satisfy state or local filing requirements, note the following -

Determine State Filing Requirements
You should consult the appropriate officials of all states and other jurisdictions in which the organization does business to determine their specific filing requirements. "Doing business" in a jurisdiction may include any of the following: (1) soliciting contributions or grants by mail or otherwise from individuals, businesses, or other charitable organizations; (b) conducting programs; (c) having employees within that jurisdiction; (d) maintaining a checking account; or (e) owning or renting property there.

Monetary Tests May Differ
Dollar limitations that apply to Form 990, 990-EZ, or 990-PF, when filed with the IRS may not apply when using the return in place of state or local report forms. Examples of IRS dollar limitations that do not meet some state requirements are the $25,000 gross receipts minimum that creates an obligation to file Form 990 or 990-EZ with the IRS and the $50,000 minimum for listing professional fees in Part II of Schedule A (Form 990, 990-EZ, or 990-PF).

Additional Information May Be Required
State or local filing requirements may require you to attach to Form 990, 990-EZ, or 990-PF, one or more of the following: (a) additional financial statements, such as a complete analysis of functional expenses or a statement of changes in net assets; (b) notes to financial statements; (c) additional financial schedules; (d) a report on the financial statements by an independent accountant; and (e) answers to additional questions and other information. Each jurisdiction may require the additional material to be presented on forms they provide. The additional information does not have to be submitted with the return filed with the IRS.

Even if IRS accepts the return that the organization files as complete, a copy of the same return filed with a state will not fully satisfy that state's filing requirement if required information is not provided, including any of the additional information discussed above, or if the state determines that the form was not completed by following the applicable Form 990, 990-EZ, or 990-PF instructions or supplemental state instructions. If so, the organization may be asked to provide the missing information or to submit an amended return.

Use of Audit Guides May Be Required
To ensure that all organizations report similar transactions uniformly, many states require that contributions, gifts, grants, etc., and functional expenses be reported according to the AICPA industry audit and accounting guide, *Not-for-Profit Organizations* (New York, NY, AICPA, 2003), supplemented by *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* (Washington, DC, National Health Council, Inc., 1998, 4th edition).

Donated Services And Facilities
Although the two publications named above sometimes call for reporting donated services and facilities as items of revenue and expenses, many states and the IRS do not permit the inclusion of those amounts in Parts I and II of the Form 990 or Form 990-PF or Part I of Form 990-EZ. The optional reporting of donated services and facilities is discussed in the instructions for all three returns.

Amended Returns
If the organization submits supplemental information or files an amended Form 990, 990-EZ, or 990-PF with the IRS, it must also send a copy of the information or amended return to any state with which it filed a copy of the return originally to meet that state's filing requirement.

Method Of Accounting
Most states require that all amounts be reported based on the accrual method of accounting.

Time For Filing May Differ
The deadline for filing Form 990, 990-EZ, or 990-PF with the IRS differs from the time for filing reports with some states.

Public Inspection
Form 990, 990-EZ, or 990-PF information made available for public inspection by the IRS may differ from that made available by the states.

Return to Life Cycle of a Public Charity

Page Last Reviewed or Updated: 04-Mar-2014

EXHIBIT E

SUMMARY
OF THE
TAX REFORM ACT OF 1976
(H.R. 10612, 94TH CONGRESS, PUBLIC LAW 94-455)

PREPARED BY THE

STAFF OF THE

JOINT COMMITTEE ON TAXATION

OCTOBER 4, 1976

U.S. GOVERNMENT PRINTING OFFICE

77-889 O WASHINGTON : 1976 JCS-31-76

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $1.55

The Act generally requires any corporation (other than a subchapter S corporation, a family corporation, a nursery or a "small corporation") and any partnership in which a corporation is a partner to use the accrual method of accounting and to capitalize preproductive period expenses.

The exception for family corporations provides that a corporation is a family corporation if the members of one family own, directly or through attribution, at least 50 percent of the voting stock and of all other classes of stock of such corporation. Under the family corporation exception, stock ownership is attributed not only through partnerships and trusts, and (generally) one tier of corporations, but also, under certain circumstances, through two tiers of corporations.[1]

The Act also provides an exception to cover small corporations. This provision exempts any corporation whose gross receipts (when combined with the gross receipts of related corporations) do not exceed $1,000,000 per year. However, once this level of receipts is exceeded for a taxable year beginning after December 31, 1975, the corporation must change to the accrual method of accounting for subsequent taxable years and may not change back to the cash method of accounting for subsequent taxable years even if its receipts subsequently fall below $1,000,000.

The Act provides an exception to the required accrual accounting rules for nurseries. Thus, a corporation which is engaged in the business of operating a nursery will not be required to utilize the accrual method of accounting by reason of this new provision (sec. 447). No inference is intended, however, with respect to any business operation which is required to utilize the accrual method of accounting under provisions of existing law.

For purposes of this provision, a corporation engaged in forestry or the growing of timber is not thereby engaged in the business of farming.[2] Consequently, this provision is not intended to affect the method of accounting (or treatment of preproductive period expenses) of corporations engaged in forestry or the growing of timber.

The Act also provides special rules which provide that if a corporation (or its predecessors) has, for a 10-year period prior to the date of enactment, used an "annual" accrual method of accounting (in which preproductive period expenses are either deducted currently or charged to the current year's crops), it may continue to use this method of accounting. Also, a taxpayer who has used, for a 10-year period,the static value method of accounting for the costs of deferred crops may change to the annual accrual method of accounting and be treated as if it had used such method of accounting for that 10-year period.

If a taxpayer is required to change its accounting method because of the application of this new provision, it will be allowed to spread the accounting adjustments required by this change over a period of 10

[1] In determining family ownership under this provision, if the trustee of a trust has discretion to distribute income or principal to family members or charities and if the trustee has made no distributions (or taken deductions for set-asides) to charities, family beneficiaries should be treated as the sole beneficiaries of the trust.

[2] This exclusion of forestry or the growing of timber from "farming" is consistent with the distinction drawn in regulations relating to provisions of the Code allowing taxpayers engaged in the trade or business of farming to deduct currently expenditures for soil or water conservation, fertilizer for land used in farming, and land clearing (secs. 175, 180, 182 and Regs. §§ 1.175–3, 1.180–1(b), and 1.182–2).

years. This provision applies to taxable years beginning after December 31, 1976.[3]

Sec. 208. Prepaid Interest

A taxpayer reporting his income on the accrual method of accounting can deduct prepaid interest only in the period or periods in which the interest represents the cost of using the funds during that period. However, a cash method taxpayer has generally been able to deduct expenses in the year he actually paid them. It was unsettled under prior law, however, whether (or under what circumstances) a cash method taxpayer could deduct prepaid interest in full in the year paid. Recent court decisions have supported the Internal Revenue Service in requiring a cash method taxpayer to allocate his deductions for prepaid interest over the period of the loan.

The Act requires a cash method taxpayer to deduct prepaid interest over the period of the loan to the extent the interest represents the cost of using the borrowed funds during each taxable year in the period. This rule applies to interest paid for personal, business or investment purposes. The Act also requires points paid on a loan to be deducted ratably over the term of the loan, except in the case of a mortgage incurred in connection with the purchase or improvement of, and secured by, the taxpayer's principal residence. However, the rule permitting current deductibility of points on a home mortgage applies only if points are generally charged in the geographical area where the loan is made and to the extent of the number of points generally charged in that area for a home loan. These new provisions apply to prepayments of interest on and after January 1, 1976, except for interest paid before January 1, 1977, pursuant to a binding contract or written loan commitment in existence on September 16, 1975 (and at all times thereafter).

Sec. 209. Limitation on Deduction of Investment Interest

Under prior law (sec. 163(d)), the deduction for interest on investment indebtedness was limited to $25,000 per year plus the taxpayer's net investment income and long-term capital gain plus one-half of any interest in excess of these amounts.

Under the Act, interest on investment indebtedness is limited to $10,000 per year, plus the taxpayer's net investment income. No offset of investment interest is permitted against long-term capital gain. An additional deduction of up to $15,000 more per year is permitted for interest paid in connection with indebtedness incurred by the taxpayer to acquire the stock in a corporation, or a partnership interest, where the taxpayer, his spouse, and his children have (or acquire) at least 50 percent of the stock or capital interest in the enterprise. Interest deductions which are disallowed under these rules are subject to an unlimited carryover and may be deducted in future years (subject to the applicable limitation). Under the Act, no limitation is imposed on the deductibility of personal interest.

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[3] A partnership with a corporate general partner may be required to use the accrual method of accounting and may also be a farming syndicate subject to limitations on deductible expenses for prepaid feed and other farm supplies, expenses for poultry, and certain expenses of orchards, groves and vineyards. However, feed and other farm supplies are required to be inventoried under the accrual method of accounting, and the expenses (of poultry, orchards, groves and vineyards) that must be capitalized under the farming syndicate rules are also capitalizable preproductive period expenses under the accrual method of accounting (as required by this provision). Consequently, the application of both provisions is not inconsistent; the farming syndicate rules do not appear to impose any additional requirements for an organization subject to this provision.

Generally, these rules are applicable to taxable years beginning after December 31, 1975. However, under a transitional rule, prior law (sec. 163(d) before the amendments made under the Act) continues to apply in the case of interest on indebtedness which is attributable to a specific item of property, is for a specified term, and was either incurred before September 11, 1975, or was incurred after that date under a binding written contract or commitment in effect on that date and at all times thereafter (hereinafter referred to as "pre-1976 interest"). As under prior law, interest incurred before December 17, 1969 ("pre-1970 interest") is not subject to a limitation.

Under the Act, carryovers are to retain their character. Thus, carryovers of pre-1976 interest will continue to be deductible under the limitation of prior law. Carryovers of post-1975 interest will be subject to the new rules adopted under the Act.

In a case where the taxpayer has interest which is attributable to more than one period (pre-1970, pre-1976, and post-1975), the taxpayer's net investment income is to be allocated between (or among) these periods. For example, assume a taxpayer has $30,000 of pre-1976 interest and $60,000 of post-1975 interest; also assume that the taxpayer has $45,000 of investment income. Under the Act, one-third of the investment income ($15,000) is to be allocated to the pre-1976 interest, which would be fully deductible (the $25,000 allowance, plus the $15,000 of net investment income—exceeds the $30,000 of pre-1976 interest, which is therefore fully deductible). Two-thirds of the net investment income ($30,000) is allocated to the post-1975 interest; this amount, added to the $10,000 allowance provided under the Act, would result in a total deduction of $40,000 for the post-1975 interest. The remaining amount ($20,000) could be carried forward.

Sec. 210. Amortization of Production Costs of Motion Pictures, Books, Records, and Other Similar Property

The Act contains a capitalization rule which requires individuals, trusts, subchapter S corporations, and personal holding companies, to capitalize the costs of producing motion pictures, books, records and other similar property and permits them to deduct these capitalized costs over the life of the income stream generated from the production activity. These rules are only to apply to production costs (including the costs of making prints of the film for distribution) and not to distribution costs. The provision applies to amounts paid or incurred after December 31, 1975, with respect to property the principal production of which begins after December 31, 1975.

Sec. 211. Clarification of Definition of Produced Film Rents

Under present law, "produced film rents" is one category of personal holding company income. Generally, this category covers payments received by a corporation from the distribution and exhibition of motion picture films if these rents arise from an "interest" in the film acquired before the completion of production. Produced film rents are not treated as personal holding company income, however, if such rents constitute 50 percent or more of the corporation's ordinary gross income.

The Act clarifies any ambiguities in present law regarding whether a qualifying "interest" in a film includes interests other than depreciable interests. Under the Act, in the case of a producer who

TITLE XII—ADMINISTRATIVE PROVISIONS

Sec. 1201. Public Inspection of Written Determinations by Internal Revenue Service

Under prior law, private letter rulings and other written determinations of the IRS were made public by the courts under the Freedom of Information Act. Certain confidential and other information was exempted from disclosure by the FOIA, but the taxpayer's identity was disclosed.

Under the Act, IRS written determinations such as letter rulings and technical advice memoranda are to be made public, after deletion of certain information. Deleted material includes the taxpayer's name and other identifying details; commercial or financial information which is privileged or confidential; trade secrets; classified matter; information exempted by statute; bank regulation information; matters of personal privacy; and geological and geophysical information including maps concerning wells. The Act establishes procedures for resolution of disputes regarding deletion of information before public inspection of the written determination is available, including court actions to restrain disclosure and to obtain additional disclosure.

Background file documents related to a written determination are to be made available upon request. Determinations requested before November 1, 1976, are made public, except for certain required rulings, contingent upon funds being appropirated to the IRS for that purpose. Rules are established for the order in which prior determinations will be released, with the more recent determinations given priority.

If the IRS receives a communication concerning a pending request for a written determination from anyone outside the IRS (other than the taxpayer), the contact is to be noted, or "flagged", on the determination when it is made public. Any person may file suit and learn the identity of the taxpayer, if the Tax Court finds evidence that an impropriety occurred or undue influence was exercised with respect to the determination. The Tax Court could also order disclosure of other material previously deleted.

The Act provides that the Secretary may determine any precedential effect of these written determinations by regulation and creates a civil remedy for intentional or willful failure of the IRS to make required deletions or to follow the procedures of this section, including minimum damages of $1,000 plus costs. It permits the IRS to collect fees for search and duplication costs in making information available on request, and establishes rules for IRS records disposal.

Sec. 1202. Disclosure of Returns and Return Information

(*a*) *General.*—Under prior law, tax returns were "public records", but they were generally open to inspection only under regulations or executive orders. Additionally, the statute provided a number of specific situations in which tax returns could be disclosed. The Act provides that returns and return information are to be confidential and not subject to disclosure except as specifically provided by statute.

In general, "returns" were defined in the regulations previously in effect as including information returns, schedules, lists, and other written statements filed with the IRS which are supplemental to, or become a part of, the return and other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof relating to returns and schedules, etc. The Act defines the term "return" to mean any tax or information return, declaration of estimated tax or claim for refund which is required or permitted to be filed with respect to any person. It also includes any amendment, supplemental schedule or attachments filed with the tax return, information return, etc. "Return information" is defined as any data received by or prepared by the Secretary with respect to a return or with respect to the determination of the existence of the liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition. Information as to whether a taxpayer's return was, is being, or will be examined is also to be considered return information. Under the Act, data in a form that cannot be associated with or otherwise identify a particular taxpayer will not constitute return information.

(*b*) *Disclosure to Congress.*—Congressional committees were classified in three categories for disclosure purposes under prior law. The tax committees could inspect tax information in executive session. Select committees of the House and Senate could inspect tax information in executive session if specifically authorized to do so by a resolution of the appropriate body. Standing and select committees could inspect tax information under an executive order issued by the President for the committee in question and on the adoption of a resolution (by the full committee) authorizing inspection.

The Act provides that the tax-writing committees, upon written request of their respective chairmen, may have access to returns and return information in executive session. The Chief of Staff of the Joint Committee on Taxation may have access to returns and return information. Nontax committees are to be furnished returns and return information in executive session upon (1) a committee action approving the decision to request such returns, (2) an authorizing resolution of the House or Senate, as the case may be, and (3) a written request by the Chairman of the committee. The resolution of the appropriate body authorizing these committees to obtain returns or return information must specify the purpose for the inspection and that the inspection is to be made only if there is no alternative source of information reasonably available to the committee. The committees, through the committee Chairman and ranking minority member, can designate no more than 4 agents (2 majority and 2 minority) to inspect the returns or return information requested.

Under prior law, the tax committees and select committees authorized to inspect tax information could submit "any relevant or useful" information obtained to the House or Senate. The Act provides that the tax-writing committees may submit tax information to the Senate or House, as the case may be. The nontax-writing committees may submit such information to the Senate or House sitting in executive session. The Joint Committee on Taxation, or its Chief of Staff, may submit tax information to the House Committee on Ways and Means or to the Senate Committee on Finance sitting in executive session.

(c) *Disclosure to the President (and other Federal agencies).*—A previous executive order permitted so-called "tax checks" and inspection of tax returns by the President and certain designated White House employees. Requests for tax checks and inspection were to be in writing and signed by the President personally.

The Act provides that disclosure of returns and return information can be made to the President and/or to certain named employees of the White House Office upon the written request of the President, signed by him personally. A request is to specify, among other things, the reason disclosure is requested. The President (or a duly authorized representative of the Executive Office) and the head of a Federal agency also may make a written request for a "tax check" with respect to prospective appointees. The "tax check" is limited to the inquiry as to whether the individual has filed income tax returns for the last 3 years, has failed to pay any tax within 10 days after notice and demand or has been assessed a negligence penalty within the current or immediately preceeding 3 years, has been or is under any criminal tax investigation (and the results of such investigation), or has been assessed a civil penalty for fraud. A prospective employee will be notified by the IRS within 3 days of its receipt of a request for a tax check on the prospective employee. The President and the head of any agency requesting returns and return information under this section will be required to file quarterly a confidential report with the Joint Committee on Taxation identifying the taxpayers, the returns or return information involved, and the reason for requesting such returns or return information. However, the President will not be required to report on requests pertaining to current employees of the executive branch. The reports will be maintained by the Joint Committee on Taxation for a period not exceeding 2 years unless, within that period of time, the Joint Committee on Taxation determines that a disclosure to the Congress is necessary.

(d) *Criminal and civil tax cases.*—Under prior law, tax returns and other tax information of any taxpayer could be furnished upon request, without written application, to U.S. Attorneys and Justice Department attorneys in civil or criminal tax cases referred by the IRS to the Justice Department for prosecution or defense. Where the Justice Department was investigating a possible violation of the civil or criminal tax laws and the matter had not been referred to the Justice Department by the IRS, a Justice Department attorney or U.S. attorney could obtain tax information upon written application where it was "necessary in the performance of his official duties". The Justice Department could also obtain the returns of potential witnesses and third parties. Also, the IRS would answer an inquiry from the Justice Department as to whether a prospective juror had been investigated by the IRS.

Under the Act, the Justice Department will continue to receive returns and return information with respect to the taxpayer whose civil or criminal tax liability is at issue. Written request is required in cases other than refund cases and cases referred by the IRS. The return or return information of a third party will be disclosed to the Justice Department in the event that the treatment of an item reflected on his return is or may be relevant to the resolution of an issue of the taxpayer's liability. The return or return information of a third

party will also be disclosed to the Justice Department if the third party's return or return information relates or may relate to a transaction between the third party and the taxpayer whose tax liability is or may be at issue and if the return information pertaining to that transaction may effect the resolution of an issue of the taxpayer's tax liability. A third party return may also be disclosed in a court proceeding, subject to the same item and transactional tests described above, except that the items and transactions must have a direct relationship to the resolution of an issue of the taxpayer's liability. In tax cases, the Justice Department and the taxpayer whose liability is at issue will be allowed to inquire of the IRS as to whether a prospective juror has been under an audit or investigation by the IRS. However, responses to such inquiries are to be limited to the existence or nonexistence of an IRS audit or investigation.

(*e*) *Nontax criminal cases.*—Under prior law, a U.S. Attorney or an attorney of the Department of Justice could obtain tax information in any case "where necessary in the performance of his official duties". This could be obtained on written application, giving the name of the taxpayer, the kind of tax involved, the taxable period involved, and the reason inspection was desired. The application was to be signed by the U.S. Attorney involved or by the Attorney General, Deputy Attorney General, or an Assistant Attorney General. Tax information obtained by the Justice Department could be used in proceedings conducted by or before any department or establishment of the Federal Government or in which the United State was a party. The IRS also would answer an inquiry from the Justice Department as to whether a prospective juror had been investigated by the IRS.

Under the Act, tax information may be disclosed to the Justice Department and other Federal agencies for nontax criminal purposes only by order of a U.S. District Court. The order will be issued upon a showing that: (i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed; (ii) there is reason to believe that the return or return information is probative evidence of a matter in issue related to the commission of the criminal act; and (iii) the information sought to be disclosed cannot reasonably be obtained from any other source unless it is determined that, notwithstanding the reasonable availability of the information from another source, the return or return information sought constitutes the most probative evidence of a matter in issue relating to the commission of the criminal act.

The first requirement set forth above ("reasonable cause . . .") is intended to be less strict than the "probable cause" standard for issuing a search warrant, and this "reasonable cause" requirement is to be construed according to the plain meaning of the words involved. The term "criminal act" includes any act with respect to which the criminal penalty provisions of a Federal nontax statute (which may also include civil penalty provisions) would apply. This court procedure contemplates an *in camera* inspection of the return or return information by the judge to determine whether any part or parts thereof meet the requirements outlined above. Only the part or parts of the return or return information determined by the court to meet these requirements would be subject to disclosure under this provision. In this regard, the Congress intends that the more personal the infor-

mation involved (e.g., medical and psychiatric information), the more restrictive the court would be in allowing disclosure.

The return or return information may be introduced in an administrative or judicial hearing if the court finds that it is probative of a matter at issue relevant in establishing the commission of a crime or the guilt of a party. The credibility of a witness does not constitute a matter in issue for purposes of these rules. Thus, under the Act, a return or return information will not be admissible for purposes of "collateral impeachment" (i.e., discrediting a witness on matters not bearing upon the question of the commission of a crime or the guilt of a party). Only those parts of the return determined by the court to be necessary to the investigation or prosecution will be subject to disclosure.

The Act also authorizes the IRS, either upon its own initiative or pursuant to written request, to disclose in writing to the Justice Department or any other Federal agency information relating to the possible violation of a Federal criminal law which is received from sources other than the taxpayer or his representatives.

(*f*) *Nontax civil matters.*—Under prior law, U.S. Attorneys and officials of other Federal agencies could obtain tax information in nontax civil cases in the same manner and to the same extent as in nontax criminal cases. The Act provides that disclosure of returns and return information cannot be made to the Justice Department or other Federal enforcement agencies in nontax civil cases except in those instances where the Department is defending the United States in a suit involving a renegotiation of contracts previously determined by the Renegotiation Board. Disclosure is also allowed under the Act to Treasury personnel of returns or return information for purposes of tax administration.

(*g*) *GAO.*—Under prior law, the GAO did not have independent authority to inspect tax returns. It did have access to tax returns when it audited IRS operations as the agent of the Joint Committee on Taxation. The Act authorizes the GAO to inspect returns and return information to the extent necessary in conducting an audit of the IRS or the Bureau of Alcohol, Tobacco and Firearms required by section 117 of the Budget and Accounting Procedures Act of 1950. It is intended that the GAO examine returns and individual tax transactions only for the purpose of, and to the extent necessary to serve as a reasonable basis for, evaluating the effectiveness, efficiency and economy of IRS operations and activities. It is not intended that the GAO would superimpose its judgment upon that of the IRS in specific tax cases. GAO is to notify the Joint Committee on Taxation in writing of the subject matter of the planned audit and any plans for inspection of tax returns. GAO can proceed with its planned audit unless the Joint Committee, by a two-thirds vote of its members, vetoes the GAO audit plan within 30 days of receiving written notice of the proposed audit from GAO.

The Act also authorizes the GAO to review and evaluate the compliance by the Federal and State agencies which have received returns and return information from the IRS with the requirements regarding the use and safeguarding of the returns and return information.

(*h*) *Statistical use.*—The Census Bureau, the Bureau of Economic Analysis, the Federal Trade Commission, and the Securities & Ex-

change Commission have previously been authorized to use tax returns and return information for statistical purposes. Under the Act, Census, the BEA, the FTC, and non-IRS Treasury personnel can obtain tax returns and limited return information for statistical and research purposes. The BEA and the FTC will only receive corporate tax information. Publication of statistical studies identifying any particular taxpayer is prohibited.

(*i*) *Inspection by Federal agencies.*—Under prior law, several agencies could generally inspect tax information for qualified purposes without making a specific written request for the information. Inspection of tax information on a general basis was made most often by HEW, the Renegotiation Board and the FTC. Under the Act, limited disclosures on a general basis are permitted to the Social Security Administration, the Railroad Retirement Board, the Department of Labor, the Pension Benefit Guaranty Corporation, and the Renegotiation Board in certain limited situations where the return information is directly related to programs administered by the agency in question.

(*j*) *State and local governments.*—On the written request of the State Governor, tax returns could previously be inspected by State tax officials for purposes of administering the State's tax laws. Tax information could also be obtained by the States for local governments for their use in administering the local tax laws.

The Act provides that Federal tax returns and return information may be disclosed to State tax officials solely for use in administering the State's tax laws. The tax information will not be available to the State Governor or any other nontax personnel, or to local governments. No disclosure may be made to any State that requires taxpayers to attach to, or include in, State tax returns a copy of any portion of the Federal return (or any information reflected on the Federal return) unless the State adopts provisions of law by December 31, 1978, protecting the confidentiality of the attached copies of the Federal returns and the included return information. Although the copies of the Federal returns or the return information required by a State or local government to be attached to, or included in, the State or local return do not constitute Federal "returns or return information" subject to the Federal confidentiality rules, the policy underlying this requirement is that the attached copy of the return and the included information should be treated by State and local governments as confidential rather than effectively as public information. However, it is not intended that States be required to enact confidentiality statutes which are copies of the Federal statutes. Thus, State tax authorities can disclose State returns and return information, including any portion of the Federal return (or information reflected on the Federal return) which the State requires the taxpayer to attach to, or to include in, his State tax return, to any State or local officers or employees whose official duties or responsibilities require access to such State return or return information pursuant to the laws of that State.

In order to protect the confidentiality of returns which the States receive from the IRS under the present exchange programs, the returns are, in most States, processed on computers used solely by the State tax authorities. In certain States, however, the requirements of the tax authorities are not sufficient to justify a separate computer, and, accordingly, the tax authorities have the Federal tax returns

processed on central computers shared by several State agencies which are operated by State employees who are not in the tax department. In such situations, the IRS requires that tax department personnel be present at all times when the Federal tax returns are being processed. The Act permits those States currently time-sharing with other State agencies to continue to do so to the extent authorized and under the conditions specified in Treasury regulations.

(*k*) *Taxpayers with a material interest.*—Income tax returns have previously been open to inspection by certain persons with a material interest in those returns. For example, returns were open to the filing taxpayers, trust beneficiaries, partners, heirs of the decedent, etc. Under the Act, persons with a material interest will continue to have the right to inspect returns and, where appropriate, return information to the same extent as provided under current regulations. Return information (in contrast to "returns") can be disclosed to persons with a material interest only to the extent the IRS determines this would not adversely affect the administration of the tax laws.

(*l*) *Miscellaneous disclosures.*—Several provisions of prior regulations allowed the disclosure of tax information for miscellaneous administrative and other purposes. In other cases, the statute specifically required public disclosure and certain types of returns (e.g., applications for exempt status by organizations). Under the Act, returns will continue to be open to public inspection in those situations where public disclosure is required in present law. Limited disclosure of returns and return information is permitted in some, but not all, of the miscellaneous situations where disclosure was permitted under prior law.

Under prior law, address information was provided to the Federal Parent Locator Service regarding "absent parents" under Public Law 93–647 (section 453 of the Social Security Act). The Act modifies the rules for the disclosure of return information to the Federal, State and local child support enforcement offices by providing for disclosure of certain information from IRS master files. Disclosure of other return information is permitted only to the extent that it cannot be reasonably obtained from another source.

The Act also authorizes the IRS to disclose to other Federal agencies the mailing addresses of taxpayers from whom the agencies are attempting to collect a claim under the Federal Claims Collection Act.

(*m*) *Procedures and records concerning disclosure.*—Several different offices of the IRS have had the responsibility for approving the disclosure of tax information to particular agencies. The IRS has maintained records concerning disclosure, but the type of records maintained have not been standardized as between, e.g., Service Centers, and a complete inventory of records has not been maintained. The Act provides that in those cases in which disclosure or inspection of returns or return information is permitted, it is to be permitted only at the times, in the manner, and at the places prescribed by regulations. The IRS and each Federal and State agency receiving tax information will be required to maintain a standardized system of permanent records on the use and disclosure of returns and return information.

(*n*) *Safeguards.*—Except for the general criminal penalty for unauthorized disclosure, the tax law did not previously provide rules for safeguarding tax information disclosed by the IRS to other agencies.

The IRS had no authority to audit the safeguards established by other agencies or to stop disclosure to other agencies that did not properly maintain safeguards. Under the Act, no tax information is to be furnished by the IRS to another agency (including commissions, States, etc.) unless the other agency complies with a comprehensive system of administrative, technical, and physical safeguards designed to protect the confidentiality of the returns and return information. In the event of an unauthorized disclosure by the other agency or its failure to maintain adequate safeguards, the IRS may (subject to an administrative appeal procedure) terminate disclosure to that agency.

(*o*) *Reports to Congress.*—Since 1971, the Joint Committee on Taxation has received from the IRS a semi-annual report on disclosure of tax information. The Act requires the IRS to make a confidential report to the Joint Committee each year on all requests (and the reasons therefor) received for disclosure of tax returns or return information. The report is to include, as a separate section to be publicly disclosed, a listing of all agencies receiving tax return information, the number of cases in which disclosure was made to them during the year, and the general purposes for which the requests were made. In addition, the IRS is required to file a quarterly report with the tax committees regarding procedures and safeguards followed by recipients of returns and return information.

(*p*) *Enforcement.*—Under prior law, unauthorized disclosure of a Federal income tax return or financial information appearing thereon by a Federal or State employee was a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to one year, or both. It was also a misdemeanor punishable in the same manner for any person to print or publish an income tax return or financial information appearing therein. Under the Act, the criminal violation of the disclosure rules is a felony punishable by a fine of up to $5,000 and imprisonment of up to 5 years, or both. It is also a felony, subject to the same penalties, for any person willfully to receive returns or return information as a result of an offer by that person of an item of material value in exchange for the unauthorized disclosure. A civil remedy is provided for any taxpayer damaged by any unlawful disclosure of returns or return information.

(*q*) *Effective date.*—The provisions in the Act concerning the confidentiality of tax returns are effective as of January 1, 1977.

Sec. 1203. Income Tax Return Preparers

Prior law provided only that tax return preparers must sign returns they prepared. No penalties were provided for failure to sign. Preparers were subject to criminal fraud penalties of fines up to $5,000 and 3 years' imprisonment for willfully aiding or assisting in the preparation of a fraudulent return. (Also, preparers were subject to penalties for improper disclosure of tax return information.)

Under the Act, the provisions affecting tax return preparers are enlarged and strengthened. Any person who prepares or employs another to prepare a return or claim for refund for compensation must meet specific disclosure requirements and is subject to penalties for negligent or fraudulent preparation of returns. An exception is provided for preparers of refund claims filed as a result of an IRS audit.

EXHIBIT F

«{SELECT('SELECT PROFNAME FROM PROFESSIONALS WHERE PROFTITLE = 'ATTORNEY AND ISACTIVE='Y'')}»
Attorney General

State of California
DEPARTMENT OF JUSTICE

«Firm Contact Address: Uppercase Type Mailing»

Public: «Firm Contact Phone No.: Type Main»
Telephone: «Professional Phone No.»
Facsimile: «Professional Fax No.»
E-Mail: «Professional Internet E-mail»

«Today: July 4, 1996»

«Addressee Address Block, Full Name first: Type Mailing»

RE: [insert charity name] (CT No. «Client Reference Numbers Client Ref #: (List)»)

Dear «Addressee Salutation»: [insert Mr. or Ms. and surname]

The Office of the Attorney General has the duty to supervise charitable organizations under California Corporations Code section 5250, and Government Code sections 12580 through 12599.7. One of the ways the Office performs this duty is by conducting audits of charitable organizations. We have selected [insert charity name] for a correspondence audit. In this regard, please send the below-listed documentation and information to the undersigned within 30 days of the date of this letter. Unless otherwise stated, documents and information produced in response to the below requests are to cover the period from [insert date] to [insert date]. Please send copies rather than original documents.

[Delete any of the below which do not apply and add others which do apply.]

1. Articles of Incorporation;
2. Bylaws;
3. IRS Form 1023 and related correspondence;
4. IRS Forms 990, 990EZ, or 990PF, and Questionnaires;
5. Registry of Charitable Trusts Form RRF-1;
6. Financial statements (audited or unaudited); Management Letters, Auditor's Engagement Letters, and Withdrawal Letters from Auditors;
7. Budgets and Budget Variances;
8. General Ledgers;
9. Cash Receipts and Disbursement Journal;
10. Bank statements for all bank accounts;
11. Canceled checks for all bank accounts;
12. Contracts for goods and/or services;
13. Provider invoices or bills for goods and/or services received;
14. Correspondence related to donations received from the public;

15. Names, addresses, and telephone numbers of all past and current members of the board of directors and officers;
16. Minutes of the proceedings of corporate members, board of directors, board committees, and any board resolutions;
17. Records of all grant applications received and grants made;
18. Reports or accountings made to or received from any other state agency, grantor or grantee, and fundraisers;
19. Written information regarding the policies or criteria used in selecting the grant recipients;
20. Names, addresses, and telephone numbers of persons and organizations who have received grants;
21. Copies of all employment contracts, including employees or independent contractors;
22. Names and addresses of all fundraisers;
23. Copies of any agreements or contracts with fundraisers;
24. Conflict of Interest Policy, Whistleblower Policy and Logs, and Record Retention Policy;
25. Policies and procedures related to fiscal controls; and
26. Policies and procedures related to governance.

If you have any questions, I can be reached at the above telephone number.

Sincerely,

«Professional Full Name: Uppercase»
«Professional Title»

For «{SELECT('SELECT PROFNAME FROM PROFESSIONALS WHERE PROFTITLE = 'ATTORNEY GENERAL' AND ISACTIVE='Y')}»
Attorney General

«Professional Initials: Uppercase»:

«Carbon Copy Recipients»
«Blind Carbon Copy Recipients»

«Matter Matter ID»
CHT Initial Desk Audit Letter for Charity (W).doc

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CENTER FOR COMPETITIVE POLITICS,

Plaintiff,

v.

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

Defendant.

2:14-CV-00636-MCE-DAD

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

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

Come now Plaintiff Center for Competitive Politics, by and through undersigned counsel, and submit their Memorandum of Points and Authorities in Reply to Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction.

Dated this 10th day of April, 2014.

Respectfully Submitted,

/s/ Alan Gura
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ARGUMENT

I. THE ATTORNEY GENERAL'S PREEMPTION DEFENSES WOULD DEPRIVE SECTION 6104 OF ANY PRACTICAL EFFECT.

Title 26 U.S.C. § 6104(c)[1] regulates the disclosure of charitable organizations' tax returns to state officers. Section 6104(c)(3) governs the release of the Schedule B information of § 501(c) organizations, which is only permitted "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 organization." (emphasis supplied). The same provision also bars the Secretary of the Treasury from releasing Schedule B information to state officials—even for the narrow purpose authorized by Congress—if that form belongs to a § 501(c)(3) organization. These provisions are not ambiguous.

In response to CCP's arguments that § 6104(c)(3) conclusively preempts the Attorney General from compelling the release of CCP's Schedule B, Defendant nowhere grapples with, or even references, the language of the statute. Rather, she contends that the applicable portions of federal law merely "set[] forth the procedure by which the Attorney General could obtain tax information about an exempt organization from the IRS." Def. Br. at 8. (citing I.R.C. §§ 6104(c); (d)). In Defendant's view, the extensive, specific procedure outlined in § 6104(c)(3) does not limit her ability to obtain that same confidential information from Plaintiff by means of an "order ha[ving] the same force as a subpoena." Def. Br. at 4 (citing Cal. Gov't Code § 12589).

But "Congress does not legislate in a vacuum." *Alexander v. Sandoval*, 532 U.S. 275, 313 (2001) (Stevens, J. dissenting). Section § 6104(c) must have some meaning, and the Attorney

[1] All further statutory references are to Title 26 of the U.S. Code unless otherwise noted.

General's interpretation would render it devoid of any practical effect. Congress's purpose would be plainly frustrated if state officials regulating charitable solicitations could unilaterally compel Schedule B information from tax-exempt organizations. *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"); *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'").

Congress noted that Schedule B information may, in certain cases, be useful to state officials regulating a charitable solicitation regime. 26 U.S.C. § 6104(c)(3) (disclosure to state official only permitted "for the purpose of…the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations"). But federal law requires that state attorneys general[2] address any requests for such information to the Secretary of the Treasury, and that any release be calibrated to the state's need for the information. *Id.* Congress required that state officials seeking this precise information provide a reasoned analysis of why it

[2] Congress in fact limited the range of state officers given access to IRS information: "[s]uch 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." *Id.*

is needed. Not only has the Attorney General failed to provide such an analysis to the Secretary of the Treasury, she has failed to provide one to this Court. Furthermore, even if the Defendant submitted a reasonable written request to the Treasury Secretary seeking Plaintiff's Schedule B information, the Secretary *could not comply* without violating the law. *Id*.

Instead, the Attorney General justifies her demands on two grounds. First, she claims that incidental legislative history belies the direct language of § 6104(c)(3). Second, albeit less explicitly, she states that, by virtue of her office, she wields considerable powers in the area of charitable solicitation. Plaintiff takes each argument in turn.

A. The Attorney General's Citations to Legislative History Are Inapposite.

Although the Attorney General never quotes § 6104(c)(3) directly, she does claim that "Congress specifically allowed for state officials to obtain tax returns and tax return information, including a complete Schedule B." Def. Br. at 10. To support this statement, the Attorney General relies on no statute, but rather on the Joint Committee on Taxation's "Summary of the Tax Reform Act of 1976," a brief note listed on Form 990, and an uncited assertion regarding IRS training.

The Attorney General's reliance on legislative history for the Tax Reform Act of 1976 is misplaced. "[C]ourts 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." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citations and quotation marks omitted). In any event, that same summary document prepared by the Joint Committee states that "[t]he Act provides that returns and return information are to be confidential and not subject to disclosure except as specifically provided by statute." STATEMENT OF THE JOINT COMMITTEE ON TAXATION, 94TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1976, 314, attached to Gordon Decl. ¶ 7, Ex. E, p. 52; *see also Church of*

Scientology v. IRS, 484 U.S. 9, 16 (1987) ("One of the major purposes" of the 1976 revisions to § 6103 "was to tighten the restrictions on the use of return information by entities other than [the IRS]"). Second, as the quotation supplied by Defendant indicates, the Tax Reform Act of 1976 merely "provides that Federal tax returns and return information may be disclosed to State tax officials *solely* for use in administering the State's tax laws," not a State's charitable solicitation regime, which is governed by § 6104(c)(3). Ex. E, p. 57 (emphasis supplied). The text further notes that disclosed "tax information will not be available to the State Governor or any other nontax personnel." *Id.* Third, as the reference to a taxpayer possessing "his" tax return indicates, the cited legislative history appears focused on individual tax returns, not those of organizations. *Id.* Finally, the Tax Reform Act of 1976 did not modify § 6104(c)(3) in any way—the legislative history cited by the Attorney General in her brief refers to Section 1202 of the 1976 law, which merely amended § 6103.

The Attorney General's citation to instructions on the Form 990 is similarly unhelpful. A number of organizations, including § 501(c)(6) business leagues and § 527 organizations (entities whose donor information is not protected by § 6104(c)(3)), file 990 forms with the Internal Revenue Service. Nothing on the form demonstrates that the IRS considered, much less sanctioned, the action taken by Defendant. Moreover, even if the Attorney General correctly understands the form, no species of agency deference would permit general instructions on a government form to trump the explicit language of a duly enacted statute. *Compare, e.g. Auer v. Robbins*, 519 U.S. 452, 461 (1997) (judicial deference applies to agency interpretation of agency's own regulations). The Attorney General's reference to IRS "Form 990 Basics" training is equally unavailing for similar reasons.[3]

[3] Curiously, the State also cites Treasury Regulation 1.6033-3(c)(1) for the principle that private foundations, organizations that nominally are classified under § 501(c)(3) but meet certain criteria

B. The Attorney General's Broad Enforcement Powers Are Irrelevant in the Federal Preemption Context.

The Attorney General correctly notes that she has "broad powers under common law and California statutory law to carry out [her] charitable trust enforcement responsibilities." Cal. Gov't Code § 12598. She then suggests that denying her the ability to unilaterally compel confidential tax information would infringe upon her traditional police powers. Def. Br. at 7. But of course, the general breadth of her powers in the realm of charitable solicitation oversight is irrelevant if federal law has preempted that authority. *See Livadas v. Bradshaw*, 512 U.S. 107, 120 (1994) ("The power to tax is no less the power to destroy…merely because a state legislature has an undoubtedly rational and 'legitimate' interest in raising revenue") (citing *McCulloch v. Maryland*, 17 U.S. 316 (1819)). Further, and particularly relevant for Plaintiff's First Amendment claim discussed *infra*, the Attorney General predicated her demand for CCP's donors upon a conclusory two-sentence explanation of the State's interest in preventing fraud, self-dealing, and the like. Def. Br. at 13-14. But Defendant offers no explanation whatsoever as to how Plaintiff's Schedule B will help further those interests.[4]

This leaves the case precisely as it was initially pled by CCP. The evidence of Congress's intention to preempt California rests in the language of § 6104 itself.

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under 26 U.S.C. § 509(a), provide Schedule B information to state attorneys general. Def. Br. at 9-10, n. 5. Perhaps so, but Schedule B information for private foundations is not generally kept confidential, and is available for public inspection. 2 U.S.C. § 6104(d)(3)(A). Regardless, CCP is not a private foundation. *See Stanbury Law Firm, P.A. v. IRS*, 221 F.3d 1059, 1062 (8th Cir. 2000) ("[A] tax-exempt organization is not automatically classified as a private foundation. Indeed, if a § 501(c)(3) organization does not meet the distinct requirements provided by § 509(a), the organization is treated as public charity").

[4] In fact, information that would be helpful toward these legitimate ends is available on the publically available remainder of Plaintiff's Form 990, which Plaintiff has provided to Defendant.

II. THE ATTORNEY GENERAL OFFERS NO EVIDENCE THAT HER DEMAND FOR PLAINTIFF'S SCHEDULE B IS NARROWLY TAILORED TO THE STATE'S COMPELLING INTERESTS.

The Attorney General's defense to Plaintiff's First Amendment claim rests on three premises. First, that state-mandated disclosure of donors may only be cabined upon a demonstration that such disclosure will lead to threats, harassment, and reprisals. Def. Br. at 11. Second, that the Attorney General's law enforcement interest permits this sort of disclosure, even under the harsh test of strict scrutiny. Def. Br. at 13. Third, the Attorney General offers assurances that the private identities of CCP's donors will never be made public. *Id.*

For the first principle, the Attorney General relies upon a series of labor cases. Def. Br. at 11-13. But these cases are all distinguishable, as each stemmed from the same set of facts. There, the Secretary of Labor, pursuant to his statutory powers, "initiated a compliance audit of Local 375." *Brock v. Local 375, Plumbers Int'l Union*, 860 F.2d 346, 348 (9th Cir. 1988). The audit revealed various discrepancies and suspect transactions, and only then did the government subpoena information about the union's funding. *Id.*; *see also Dole v. Local Union 375, Plumbers Int'l Union*, 921 F.2d 969, 970-971 (9th Cir. 1990) (reciting same facts).

This case is markedly different. Aside from generalized pronouncements concerning her authority over the Registry of Charitable Trusts, the Attorney General has provided no particularized rationale for obtaining CCP's donor information.[5] Indeed, the Attorney General has even posited that obtaining Plaintiff's Schedule B eliminates the need for her to audit entities in the Registry.[6]

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[5] Moreover, in previous years the State apparently had no difficulty in regulating CCP, despite having no access to Plaintiff's confidential Schedule B information. Def. Br. at 2.

[6] Plaintiff again notes that its donor information is unlikely to be particularly helpful in enforcing laws against "self dealing, improper loans, interested persons, or illegal and unfair business practices." Def. Br. at 13-14 (citations to California statutes omitted). Furthermore, Plaintiff notes

Moreover, the unconstitutionality of the disclosure of an organization's financial supporters is not always predicated upon a finding of threats, harassment, or reprisals. *Talley v. California*, 362 U.S. 60, 65 (1960) (striking down city ordinance requiring the identification of persons who prepared, distributed, or sponsored handbills on the condition of public distribution as overbroad without finding that plaintiff was at risk of threat, harassment, and reprisal); *Acorn Investments v. City of Seattle*, 887 F.2d 219, 225 (9th Cir. 1989) (declaring municipality's shareholder disclosure regime for certain adult businesses unconstitutional without such a *prima facie* showing). And the *Brock* and *Dole* courts both recognized this. *Dole v. Local 375,* 921 F.2d at 971 (9th Cir. 1990) (noting plaintiffs would have 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'") (quoting *Brock*, 860 F.2d at 350).

To the second point, the burden is on the Attorney General to demonstrate that the specific disclosure demanded is properly tailored to the asserted state interests. *Buckley v. Valeo*, 424 U.S. 1, 65 (1976). The Attorney General notes that she has a compelling interest in pursuing her "primary responsibility for supervising charitable trusts and public benefit corporations in California to protect charitable assets for their intended use." Def. Br. at 13. Yet nothing demonstrates that the disclosure she demands fits that interest. Even under "exacting scrutiny", a somewhat lower standard of review than "strict scrutiny," a state must demonstrate that it has used the "least restrictive means" in breaching the associational rights of an organization. *McCutcheon v. FEC*, 572 U.S. ___, No. 12-536 slip op. at 7-8 (2014) (Roberts, C.J. for the plurality). The Attorney

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that while constitutional violations may make government prosecution more efficient, that is beside the point. *See e.g. Griffin v. California*, 380 U.S. 609, 614 (1965) (finding it unconstitutional for the prosecution to "comment on the refusal to testify").

General has plainly not done so here. For example, given that her powers rest within the state of California, CAL. CONST. art. V, § 13, she could have limited her demand to only the names and addresses of in-state donors.[7]

Furthermore, Plaintiff agrees that the State's interest in preventing the parade of horribles Defendant's brief details is indeed compelling. But once again, CCP notes that the Attorney General has provided no explanation of the mechanism by which this form of disclosure serves that interest, especially as all the information on Plaintiff's Form 990—with the sole exception of the names and addresses of its donors—is available. The Attorney General's suggestion of a link—any link—between this specific information and the State's interest is entirely conclusory.

The Attorney General does make one (fleeting) tailoring argument. She argues that "[g]iven that the Registry keeps confidential the identities of contributors reported on Schedule B…the reporting and disclosure requirements…avoid unnecessarily impinging upon rights of association, if at all." Def. Br. at 14. But any compelled disclosure—even if the state never publicizes the disclosed information—infringes upon associational freedoms. Indeed, *NAACP v. Alabama* controls in this regard, as it spoke to "*state* scrutiny of membership lists," not merely public disclosure. 357 U.S. 449, 466 (1958) (emphasis supplied).

Finally, the Attorney General's assurances—bolstered by Mr. Foley's sparse declaration (Ex. F)—offer scant support for the proposition that CCP's donor information will always remain confidential. Defendant's claims pale in light of her belief that "Congress…[has] exempted state reporting and disclosure laws from federal confidentiality requirements." Def. Br. at 10.

[7] Plaintiff does not concede that such a rule would be necessarily constitutional, but it would provide more "breathing space" for First Amendment freedoms than does the Attorney General's current approach. *NAACP v. Button*, 371 U.S. 415, 433 (1963) ("Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity") (citing *Cantwell v. Connecticut*, 310 U.S. 296, 311 (1940)).

Defendant's demonstrable belief that this includes laws against the disclosure of contributor information undermines these assurances. Furthermore, Defendant has provided Plaintiff no concrete assurance that her confidentiality system is a permanent fixture, nor that line employees will scrupulously protect Plaintiff's donor information. Plaintiff is especially concerned given Defendant's confusion concerning certain portions of federal tax law, such as the distinction between private foundations and other § 501(c)(3) organizations. *See* note 2, *supra.*

In sum, the Attorney General has simply asserted a right to obtain CCP's donor information. She has provided no case law that supports her endeavor. She has not demonstrated that this information would serve her stated interests. She has not demonstrated that this is the least restrictive means of furthering those interests. And she has not provided more than vague, unenforceable assurances that Plaintiff's contributor data will remain confidential.

III. DEFENDANT MISSTATES IRREPARABLE INJURY.

In the Attorney General's discussion of irreparable injury, she suggests that "it is not in the public interest to interfere with the Attorney General's authority to supervise and regulate charitable organizations and to enforce the law by limiting her ability to request and receive highly relevant information." Def. Br. at 15. Once again, Plaintiff questions the relevance of this information: unless the Defendant can articulate a rationale under which CCP's donor list would be relevant to the regulation of the Registry of Charitable Trusts, it is difficult to see the threat to the public interest.

The Attorney General further argues that "[t]o the extent that plaintiff contends that the fines that could be imposed under the Act if it fails to furnish a completely copy of its schedule B will cause it harm, it can readily avoid such a consequence by simply complying with the law." Def. Br. at 15. Giving Plaintiff a choice between compliance with an unconstitutional statute, and

the threat of losing its ability to raise funds in California, is precisely the dilemma necessitating this injunction. *See NAACP v. Button*, 371 U.S. at 433 ("The threat of sanctions may deter the[] exercise" of First Amendment liberties "almost as potently as the actual application of sanctions") (citation omitted).

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for a Preliminary Injunction ought to be granted.

Dated this 10th day of April, 2014.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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

I hereby certify that on April 10, 2014, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

PLAINTIFF'S REPLY TO DEFENDANT ATTORNEY GENERAL KAMALA D. HARRIS'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 10, 2014, at Alexandria, Virginia.

Allen Dickerson
Declarant

/s/ Allen Dickerson
Signature

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CENTER FOR COMPETITIVE POLITICS,

Plaintiff,

v.

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

Defendant.

2:14-CV-00636-MCE-DAD

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Courtroom: 7, 14th Floor
Judge: Hon. Morrison C. England, Jr.
Trial Date: None Set
Action Filed: March 7, 2014

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INTRODUCTION

Plaintiff Center for Competitive Politics ("CCP") is an educational nonprofit organized under § 501(c)(3) of the Internal Revenue Code ("IRC"). CCP's mission is to promote and defend the First Amendment rights to free political speech, assembly and petition through strategic litigation, communication, activism, training, research and education. To support its activities, CCP solicits charitable contributions nationwide, including in California. Consequently, CCP registers with the State, and submits its publicly available IRS Form 990 to the Attorney General. This year, for the first time since CCP began soliciting contributions in California in 2008, the Attorney General has also requested an unredacted copy of CCP's Schedule B.

Schedule B is an addendum to Form 990 which lists the names and addresses of CCP's contributors. While a redacted version of this form is publicly available, per the disclosure and privacy provisions of the IRC, the Schedule B contributor information of § 501(c)(3) organizations is exempt not only from public disclosure, 26 U.S.C. § 6104(d)(3), but also from disclosure to state officials. The IRC creates a specific means for state officials to seek confidential tax return information by direct request to the Secretary of the Treasury. 26 U.S.C. § 6104(c)(3). But § 501(c)(3) organizations are explicitly exempted from this provision.[1]

The California Attorney General's request for CCP's Schedule B consequently violates the clear terms of the IRC, and ignores the Supremacy Clause of the United States Constitution, which forbids state action that conflicts with federal law. U.S. CONST. art. VI, cl. 2. Worse still,

[1] The law provides:

> 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).

the Attorney General cites no authority whatsoever to substantiate her demand for the Schedule B.

The Attorney General's demand creates a stark choice for CCP. Either of its potential courses of action would result in constitutional harm actionable under 42 U.S.C. § 1983. CCP may refuse to comply with the Attorney General's Letter and risk losing its ability to solicit charitable contributions in California, despite Ninth Circuit and U.S. Supreme Court precedent holding that fundraising for charitable organizations is 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)). On the other hand, if CCP does give the Attorney General its confidential Schedule B as a precondition of engaging in protected fundraising speech, its 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.

As the United States Supreme Court first recognized in the civil rights cases of the 1950s, the anonymity of contributors to nonprofit educational organizations is generally protected, lest an individual be subject to retaliation for supporting an organization that educates the public on an unpopular topic. The State may only demand disclosure of an organization's funders if necessary to advance a sufficiently important governmental interest. Defendant has not even attempted to make such a showing.

Should CCP act in the interest of its contributors and forgo fundraising efforts in the State to protect its donors' names and addresses, it and its donors will be irreparably harmed. This will include not only lost contributions (and a corresponding loss of funding to advance CCP's mission) during the pendency of this litigation (which CCP will not be able to recover as damages from the state at a later time), but also the silencing of CCP's speech directed at potential donors in California.

STATEMENT OF FACTS

CCP filed for registration with the Registry of Charitable Trusts on November 4, 2008, and has been registered to solicit charitable contributions in California since that time. Keating Decl. at 1. CCP solicits contributions in California, and wishes to continue doing so. *Id.* However, CCP received a letter from Defendant dated February 6, 2014 which conditions continued registration with the Registry of Charitable Trusts upon providing Defendant with an unredacted version of CCP's Schedule B. Complaint, Ex. 1.

STANDARD FOR PROSPECTIVE RELIEF

CCP seeks a preliminary injunction preventing the Attorney General from obtaining its Schedule B as a precondition to CCP engaging in lawful activity in California.

The United States Supreme Court has set out, and the Ninth Circuit Court of Appeals has applied, a four-factor test for an injunction to issue. A plaintiff "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.'" *National Meat Ass'n v. Brown*, 599 F.3d 1093, 1097 (9th Cir. 2010) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Beardslee v. Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005)).

ARGUMENT

I. There is a high likelihood that CCP will succeed on the merits of its case.

a. Federal law shields the very information the Attorney General seeks.

i. Federal Law

Under the IRC (26 U.S.C. § 1, *et seq.*), Congress created nonprofit entities, including the well-known § 501(c)(3) organization. 26 U.S.C. § 501(c)(3). Like most incorporated entities, § 501(c)(3) organizations must file tax returns. Educational nonprofits organized under this

provision of the code—like most § 501(c) organizations—must file tax information on Form 990. 26 U.S.C. § 6033(b); 26 C.F.R. § 1.6033-1(a)(2)(i). Much of the information on Form 990 is public, including the organization's general budget and information about its projects. 26 U.S.C. § 6104(b) s*ee also* IRS Form 990 *available at* http://www.irs.gov/pub/irs-pdf/f990.pdf (warning filers not to include personal information such as Social Security Numbers because the Form may be made public).

Form 990 has a supplement, Schedule B, which lists the names and addresses of an organization's contributors. While a public, redacted version of the Schedule is made available for public review, a § 501(c)(3) organization's unredacted Schedule B is not disclosed to the states or to the public, per the disclosure and privacy provisions of the IRC. The privacy provisions are comprehensive, including a general exemption for contributor privacy. 26 U.S.C. § 6104(b) ("The 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 has also specifically provided that § 501(c)(3) donors should not be subject to public disclosure. 26 U.S.C. § 6104(d)(3) (stating that the public inspection copy of a § 501(c)(3) Form 990 "shall not require the disclosure of the name or address of any contributor to the organization").

Most important for this case is that Congress banned *state agencies* from seeking the donor lists of a § 501(c)(3) non-profit's Schedule B. The statutory language is clear:

> Upon written request by an appropriate State officer, the Secretary [of the Treasury] 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) (emphasis supplied). Through this language, Congress specifically exempted § 501(c)(3) organizations from donor disclosure to state agencies, including in the precise context (charitable solicitations) at issue here.

This case involves California's compelled disclosure of tax returns and return information reported to the Internal Revenue Service on Schedule B. "Return" and "return information" are terms of art in the IRC. A "return" is

> any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

26 U.S.C. ("IRC") § 6103(b)(1). This would include an IRC § 501(c)(3) organization's Schedule B. Likewise, "return information" includes the detailed data of the person's income, standing before the IRS on tax liability (paid, under review, assessment for a penalty, etc.), and attendant documents (memoranda, letters to the taxpayer, etc.). *See* 26 U.S.C. § 6103(b)(2) (enumerating data that defines "return information"). Anonymous data unconnected to any taxpayer is not "return information." 26 U.S.C. § 6103(b)(2)(D).

A focus of the IRC is on privacy and undue disclosure of tax returns, particularly the contributors to § 501(c)(3) organizations. CCP is a non-profit organized under IRC § 501(c)(3). Therefore, CCP files a Form 990 with the IRS, and knows that certain portions of the Form are made public. What is at issue is the possibility of disclosing CCP's confidential Schedule B as filed with the Internal Revenue Service —listing the names and addresses of its contributors—as a condition to soliciting contributions in California. CCP has in previous years provided the State with its publicly-available version of Schedule B, which redacts the names and addresses of its contributors, but lists the amount donated by each contributor. It does not object to continuing to file this version of Schedule B.

ii. California's Action

The California Attorney General is vested with the power to supervise compliance with the state's regulation of charitable corporations and solicitations. *See, e.g.*, CAL GOV. CODE § 12584. Charities are required to register with the state if they wish to solicit contributions from California citizens. CAL GOV. CODE § 12585. Generally, the filings are available for public inspection. CAL GOV. CODE § 12590. The Attorney General has the power to block such 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." CAL GOV. CODE § 12591.1(b)(3).

In a February 6, 2014 letter ("Letter"), the California Attorney General demanded that CCP produce a copy of its confidential Schedule B as filed with the Internal Revenue Service. *See* Complaint, Ex. 1. The Letter claims that failure to provide this information will make CCP's financial report incomplete, potentially rendering the organization ineligible to solicit charitable contributions. The three-paragraph demand contains no citation to authority—federal or state—authorizing such disclosure. Under CAL GOV. CODE § 12591.1(b)(3), however, failure to comply with the Letter's demand gives the Attorney General the power to impose substantial fines and block CCP's fundraising efforts in California.

Although it is infrequent (and often inadvertent), state officials occasionally act beyond the bounds of federal law. In these circumstances, even if the underlying state law is not null and void via preemption, the actions of a state official may constitute a Supremacy Clause violation. *See, e.g., Duke Energy Trading & Mktg.*, 267 F.3d 1042, 1058-1059 (9th Cir. 2001) (overturning California governor's executive order as pre-empted by Congressional grant of jurisdiction to the Federal Energy Regulatory Commission); *Abraham v. Hodges*, 255 F. Supp. 2d 539, 553-54 (D.S.C. 2002) (blocking South Carolina governor's executive order as pre-empted by the Atomic

Energy Act). Thus, a state executive officer's acts are reviewable for compliance with federal statutory law under the doctrine of federal preemption.

b. The Attorney General's demand is preempted by federal statute.

Article VI, cl. 2, of the U.S. Constitution provides that the laws of the United States "shall be the supreme Law of the Land…any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Upon this clause rests the "familiar rule" of federal preemption, the fact that "[b]ecause the Constitution and federal laws are supreme, conflicting state laws are without legal effect." *Rice v. Board of Trade*, 331 U.S. 247, 253 (1947); *Am. Trucking Ass'ns v. City of Los Angeles*, 133 S. Ct. 2096, 2106 (2013) (Thomas, J., concurring). Naturally, federal preemption "presents a federal question which the federal courts have jurisdiction to resolve." *Shaw v. Delta Air Lines*, 463 U.S. 85, 96 n. 14 (1983).

Federal preemption is guided by two "touchstones:" the Congress's intent in acting, and that, "unless [it is]…the clear and manifest purpose of Congress," a state's "historic police powers" are presumed not to have been "superseded." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). However, "the purpose of Congress is the ultimate touchstone in every pre-emption case." *Id.* (quoting and citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)) (internal quotation marks and brackets omitted). The intent of Congress may be perceived in a number of ways, which are commonly broken out into three broad categories of preemption: express, field, and conflict. *Altria Group, Inc. v. Good*, 555 U.S. 70, 76-77 (2008). While "the categories of preemption are not rigidly distinct," we will discuss each of these in turn. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 n. 6 (2000).

i. Express Preemption

Express preemption, as its name suggests, occurs when the federal government uses

express language to preempt a state action. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 542 (2001). In the instant case, Congress made its purpose manifestly clear.

First, Congress provided that the tax returns of certain tax-exempt organizations would generally be public, including an organization's Schedule B form. Second, Congress expressly protected § 501(c)(3) and § 501(c)(4) organizations from mandatory public disclosure of the donor information contained on their Schedule B forms. 26 U.S.C. § 6104(d)(3)(A). Third, Congress limited the ability of state officers, such as a state attorney general, to obtain the unredacted Schedule B from those entities. Under the law, a state attorney general may only obtain a Schedule B form of a §501(c) "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).

Thus, even at this juncture in our analysis, the state attorney general could only demand Plaintiff's unredacted Schedule B by first requesting it from—and explaining the purpose for the request to—the Secretary of the Treasury. But Congress went even further, and explicitly prohibited state officials from requesting the Schedule B forms of § 501(c)(3) organizations. 26 U.S.C. § 6104(d)(3) ("the [Treasury] 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." (emphasis supplied).

Thus, the IRC expressly preempts a state attorney general from compelling Plaintiff to hand over its Schedule B as filed.

ii. Field Preemption

Field preemption occurs when Congress and federal agencies put together a framework

"so pervasive" that it "occupie[s] the field" demonstrating that the federal government "left no room for the States to supplement it." *Arizona v. United States*, 132 S. Ct. 2492, 2501, 2502 (2012) (internal quotation marks and citations omitted).

In this case, Congress has well occupied the field regarding the disclosure of federal tax returns.[2] The IRC comprehensively regulates how confidential tax return information must be treated—and assesses significant sanctions for violations.

Such provisions include 26 U.S.C. §§ 6103 (general confidentially of tax returns); 6104 (controlling disclosure by nonprofit organizations organized under IRC §§ 501 and 527); 7431 (civil damages for unauthorized inspection or disclosure of returns or return information); 7213(a)(1) (criminal sanctions for disclosure of returns or return information by federal employees); 7213(a)(2) (criminal sanctions for disclosure of returns or return information by state employees); 7213A(a)(2), 7213A(b)(1) (criminal sanctions for unauthorized inspection of returns or return information, including by state employees); 7216 (criminal sanctions for disclosure of tax return or return information by tax preparers). Thus, Congress created multiple sanctions for the numerous ways tax returns and return information may be inappropriately disclosed. These provisions "provide a full set of standards governing [federal tax disclosure]…including the punishment for noncompliance. It was designed as a harmonious whole." *Arizona*, 132 S. Ct. at 2502 (internal quotation marks and citations omitted). The privacy of returns and return information is thus comprehensively regulated by federal law. In this context, that includes a § 501(c)(3) organization's unredacted Schedule B. 26 U.S.C. §§ 6104(c)(3) and (d)(3).

The Attorney General's action, if fully implemented, would interfere with Congress's occupation of the field. "When Congress occupies an entire field…even *complementary* state regulation is impermissible." *Arizona*, 132 S. Ct. at 2502 (emphasis supplied). Permitting state

[2] *Federal* tax returns, of course, generally not being subject to the historic police power of a *state*.

officials to contravene the federal government's comprehensive scheme regulating the disclosure of *federal* tax returns would absolutely "ignore[] the basic premise of field preemption—that States may not enter…an area the Federal Government has reserved for itself." *Id.* (capitalization in original).

iii. Conflict Preemption

Conflict preemption occurs when "federal law…[is] in irreconcilable conflict with state" action. *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 31 (1996) (internal quotation marks and citations omitted). This occurs when there is "such actual conflict between the two schemes of regulation that both cannot stand in the same area." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141 (1963). In this case, the Attorney General's actions "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby*, 530 U.S. at 372-373 (internal quotation marks and citations omitted).

As discussed in the examination of field preemption, *supra*, the intent of Congress is clear. *See Crosby*, 530 U.S. at 373 n. 6 ("field pre-emption may be understood as a species of conflict pre-emption" (quoting *English v. Gen. Elec. Co.*, 496 U.S. 72, 79-80 n. 5 (1990))). Here, Congress acted to regulate the disclosure of tax return information and to prevent state officials from obtaining the names and addresses of contributors to § 501(c)(3) organizations. Technically, Plaintiff could *sua sponte* voluntarily mail a copy of its Schedule B to the Attorney General without running afoul of federal law or state action—"compliance with both the federal and state regulations is [not] a physical impossibility"—but doing so only because the Attorney General has threatened to cut Plaintiff off from soliciting contributions in California is obviously contrary to Congress's intention. *Arizona*, 132 S. Ct. at 2501 (internal quotation marks and citations omitted). Congress wanted to prevent state attorneys general from seeking, willy-nilly, the unredacted Schedule B forms of § 501(c) organizations—and expressly blocked them from

obtaining the Schedule B of Plaintiff and its fellow § 501(c)(3) entities. Permitting the Attorney General to obtain Plaintiff's Schedule B would frustrate Congress's intent that § 501(c)(3) organizations operate in the states without having to provide sensitive information regarding their contributors.

c. **The Attorney General's demand unconstitutionally infringes upon the freedom of association**.

Duly enacted federal law shielding contributor information coincides with and complements seven decades of Supreme Court jurisprudence concerning associational liberty. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the liberty assured by the Due Process Clause of the Fourteenth Amendment." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958); *see also Perry v. Schwarzenegger*, 591 F.3d 1126, 1132 (9th Cir. 2010) ("The freedom to associate with others for the common advancement of…beliefs and ideas lies at the heart of the First Amendment"). After all, "[a]n individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).

Certainly, a government may compel certain disclosures in certain circumstances. Like all freedoms, associational freedom may be limited, so long as the state does so narrowly and specifically, in pursuit of an obvious and compelling government interest. *See Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960). But states may only do so with great care. *Id.* It has been long recognized that "[c]ompelled disclosure[]" of the type the Attorney General seeks "ha[s] a deterrent effect on the exercise of First Amendment rights and…[is] therefore subject to…exacting scrutiny." *Perry*, 591 F.3d at 1139-1140. "[I]t is immaterial whether the beliefs

sought to be advanced by association pertain to political, economic, religious[,] or cultural matters…state action which may have the effect of curtailing the freedom to associate is subject to" this heightened standard of review. *NAACP*, 357 U.S. at 460-61. It falls to the Attorney General to justify her act, to describe the compelling government interest involved, and to demonstrate that her demand is specifically tailored toward that interest.

Financial support is the lifeblood of organizations engaged in public debate. *See, e.g. Buckley v. Valeo*, 424 U.S. 1, 22 (1976). But the Attorney General's effort to obtain the names and addresses of financial supporters of (presumably) all § 501(c)(3) organizations electing to do business in California threatens to curtail that necessary supply of resources. It is altogether well-established that "[f]inancial transactions can reveal much about a person's activities, associations, and beliefs," much of which is no business of the state Attorney General's office. *California Bankers Ass'n v. Shultz*, 416 U.S. 21, 78-79 (1974) (Powell, J., concurring). The First Amendment's protection of free association "need[s] breathing space to survive," and associational liberty is "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); *Bates*, 361 U.S. at 523. This is precisely why the IRC statutes listed *supra* stringently regulate the disclosure and use of confidential tax records: they are designed to prevent our federal tax laws from deterring the freedom of association. *See* p. 9-10, citing to 26 U.S.C. § 6103, etc. The Attorney General's demand, if fulfilled, will work the opposite result.

There is analogous precedent which works against the Attorney General's untailored demand for contributor names and addresses. In *NAACP v. Alabama ex rel. Patterson*, the state sought the names and addresses of registered supporters of the National Association for the Advancement of Colored People ("NAACP") "to determine whether petitioner was conducting intrastate business in violation of the Alabama foreign corporation registration statute." *NAACP*,

357 U.S. at 464. The Supreme Court found that "the effect of compelled disclosure of the membership lists…[would] abridge the rights of" NAACP members "to engage in lawful association in support of their common beliefs." *Id*. at 460. Moreover, the government could find no interest to overwhelm the constitutional presumption against disclosure. *Id*. at 466. Indeed, the *NAACP* Court was "unable to perceive" how the names and addresses of the NAACP's registered supporters were relevant to the state's proffered interest in regulating intrastate business. *Id*. at 464. Without such a nexus between the mandated disclosure and the state's interest, Alabama's efforts to obtain the names and addresses of NAACP supporters failed. *Id*. at 466.

Other cases from the same era rebuffed similar justifications for a state's obtaining the names and addresses of members or financial contributors to organizations. For example, municipalities in Arkansas argued for the right to obtain names and addresses of NAACP supporters as "an adjunct of their power to impose occupational license taxes." *Bates*, 361 U.S. at 525. Although the municipalities also intended to publish these names and addresses, the Court noted that "[n]o power is more basic to the ultimate purpose and function of government than is the power to tax." *Id.* at 524. Even against such a weighty interest, the Court could find "no relevant correlation between the power of the municipalities to impose occupational license taxes and the compulsory disclosure and publication of the membership lists." *Id*. at 525; *see also Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 557-58 (1963) (order compelling organization president to bring names and addresses of contributors and members to a state investigation into alleged Communist infiltration of outside organizations unconstitutional where the state had no indication the targeted organization was under Communist influence).

Here, the Attorney General seeks to compel the disclosure of names and addresses of Plaintiff's financial contributors—without tailoring her demand to a government interest. Just as the *NAACP* Court was "unable to perceive" how the names and addresses of the NAACP's

registered supporters would permit the state "to determine whether petitioner was conducting intrastate business in violation of the Alabama foreign corporation registration statute," it is not readily apparent what compelling state interest would be served by the Attorney General obtaining Plaintiff's contributor list. The names, addresses, and total contribution amounts of Plaintiff's contributors will provide the state with *zero* relevant information as to Plaintiff's corporate purpose or educational activities. *See* Form 990, Schedule B.

In these circumstances, the Constitution does not permit the Attorney General's action. Plaintiff has a First Amendment interest in keeping the identities of its financial supporters out of the Attorney General's hands, and the Attorney General has not shown a compelling governmental interest to support her demand. "[S]omething…outweighs nothing every time." *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (en banc) (internal citation and quotation omitted) (ellipsis in original).

II. Absent the requested relief, CCP will suffer irreparable harm.

"'The 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) ("*Valle Del Sol I*") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). And as the Ninth Circuit Court of Appeals reiterated, "the Supreme Court has held that fund-raising for charitable organizations is fully protected speech." *Gaudiya Vaishnava Soc. v. San Francisco*, 952 F.2d 1059, 1063 (9th Cir. 1991) (citing *Bd. of Trs. v. Fox*, 492 U.S. 469 (1989)); *see also Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781 (1988) (striking down North Carolina law compelling speech of professional fundraisers on First Amendment grounds). Nevertheless, absent injunctive relief, CCP jeopardizes its ability to engage in "fully protected" fundraising speech unless it discloses information about its contributors—information which the federal government has *explicitly* acknowledged both CCP and its contributors have an interest in

keeping private. 26 U.S.C. §§ 6104(c)(3) and (d)(3). Thus, CCP is faced with a stark choice: refuse to turn over its Schedule B and risk heavy fines, loss of protected speech rights, and diminished resources with which to further its charitable mission; or turn over its Schedule B, thereby violating the confidentiality of CCP's contributors. Either option would result in irreparable harm. Thus, action in this Court is essential to vindicate the protections of federal law and the First Amendment.

a. Irreparable harm will result if CCP does not turn over its Schedule B to the Defendant.

California is one of the wealthiest and most populous states in the nation. Given CCP's status as a relatively small nonprofit organization with a lean financial structure, loss of the ability to fundraise there would certainly cause CCP financial harm and would retard CCP's ability to further its mission. The Ninth Circuit has found that where "organizational plaintiffs have shown ongoing harms to their organizational missions as a result of" challenged statutes, "the plaintiffs have established a likelihood of irreparable harm." *Valle Del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) ("*Valle Del Sol II*") (citations omitted). *See also Arizona v. United States*, 641 F.3d 339, 366 (2011) *aff'd in part, rev'd in part on other grounds* 567 U.S. ___, 132 S. Ct. 2492 (2012) ("We have 'stated that an alleged constitutional infringement will often alone constitute irreparable harm.'") (quoting *Assoc. Gen. Contractors v. Coal. For Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991).

Moreover, absent the requested relief, CCP faces more than the loss of fundraising ability in a large and prosperous state. Under California law, "[t]he Attorney General may issue a cease and desist order whenever the Attorney General finds that any entity…has committed an act that would constitute a 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." CAL.

GOV. CODE § 12591.1(b)(3). After making such a finding, in addition to suspending membership in the Registry, the Attorney General

> may impose a penalty on any person or entity, not to exceed one thousand dollars ($1,000) per act or omission. Penalties shall accrue, commencing on the fifth day after notice [of the violation] is given, at a rate of one hundred dollars ($100) per day for each day until that person or entity corrects that violation."

CAL. GOV. CODE. § 12591.1(c). These fines would be significant for an organization of CCP's size and resources, and would further harm CCP and its mission. This is particularly so because, once such fines begin to accrue, a nonprofit's suspension from the Registry continues until it has paid them off. CAL. GOV. CODE § 12591.1(d).

b. Irreparable harm will result if CCP produces its Schedule B in response to the Attorney General's demand.

If CCP does produce its Schedule B, it may avoid suspension from the Registry, fines, and loss of fundraising rights, but this action too will work irreparable harm. CCP's right to associate with its donors will be chilled by this disclosure. Worse still, irreparable harm will come to CCP's donors, whose private information will be disclosed to the Attorney General in violation of federal law. Respectfully, CCP and its supporters do not wish to entrust their confidences to Defendant, and enjoy a First Amendment right not to do so absent some compelling, properly tailored authority.

Perhaps most concerning, even if CCP does turn over its Schedule B, there is nothing to stop the Attorney General from demanding further information from CCP (or another nonprofit), and conditioning the permission to fundraise upon compliance with that demand. Thus, even assuming the good faith of California government officials, if this Court does not grant preliminary relief, it will set a dangerous precedent. Indeed, it will confirm that an elected, partisan official may demand whatever information he or she desires from an organization, and condition the organization's solicitation of charitable contributions (and thus, its very existence in

some cases) upon compliance with that demand.

III. The balance of equities favors CCP, and the requested injunction serves the public interest.

The final considerations before this Court in considering CCP's request for injunctive relief—the balance of equities and the public interest—are closely related in cases where First Amendment rights are at stake. Indeed, "[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. LEXIS 106058 at *34 (E.D. Cal. 2013) (citing *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1128-29 (9th Cir. 2011); *Kline v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009)).

The case at bar presents a clear-cut illustration of why these two factors reinforce one another in the context of protected speech. If CCP discloses its Schedule B, this will tread upon the First Amendment association rights of CCP and its donors. If CCP does not disclose its Schedule B, it must give up its First Amendment right to the "fully protected speech" that is charitable solicitation. The Attorney General, on the other hand, has asserted no interest whatsoever in CCP's Schedule B, has never before requested this information in all of the years CCP has solicited charitable contributions in the state, and is already in receipt of CCP's publicly available Form 990. Thus, the balance of equities clearly favors CCP in this case.

Moreover, "[i]t is clear that it would not be equitable or in the public's interest to allow the state to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle Del Sol II*, 732 F.3d at 1029 (internal citations, quotations, and ellipses

omitted). Here, any outcome other than preliminary relief would result in a violation of federal law. Thus, the public interest also favors the grant of the relief requested. Finally, as regards to the bond requirement for an injunction, CCP is not creating any financial harm to Defendant, "and the bond amount may be zero if there is no evidence the party will suffer damages from the injunction." *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003).

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for a Preliminary Injunction should be granted.

Dated this 20th day of March, 2014.

Respectfully Submitted,

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