UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INSTITUTE FOR FREE SPEECH, FKA Center for Competitive Politics, Plaintiff-Appellant, v. XAVIER BECERRA, in his official capacity as Attorney General of the State of California, Defendant-Appellee.	No. 17-17403 D.C. No. 2:14-cv-00636-MCE-DB Eastern District of California, Sacramento ORDER (Filed Oct. 11, 2019)

Before: SILVERMAN, W. FLETCHER, and RAWLINSON, Circuit Judges.

Appellant's urgent motion to withdraw opposition to the motion for summary affirmance (Docket Entry No. 32) is granted.

The motion for summary affirmance (Docket Entry No. 25) is granted. *See Center for Competitive Politics v. Harris*, 784 F.3d 1307 (9th Cir. 2015); *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (summary disposition is appropriate for appeals clearly controlled by precedent).

AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA.

CENTER FOR COMPETITIVE POLITICS, Plaintiff, v. Kamala HARRIS, in her official capacity as Attorney General of the State of California, Defendant.	No. 2:14-cv-00636-MCE-DB **MEMORANDUM AND ORDER** (Filed Oct. 31, 2017)

Through the present action, Plaintiff Center for Competitive Politics ("Plaintiff") seeks to permanently enjoin against Defendant Kamala Harris in her official capacity as Attorney General of the State of California ("Defendant") from requiring an unredacted copy of Plaintiff's IRS Form 990 Schedule B as a condition of soliciting funds in California on grounds that said requirement violates Plaintiff's rights under the First and Fourth Amendments to the United States Constitution, and further violates the Constitution's Supremacy Clause.[1] Plaintiff brings those claims under the auspices of 42 U.S.C. § 1983. Now before the Court is Defendant's Motion to Dismiss Plaintiff's First

[1] In its opposition, Plaintiff does not substantively address Defendant's request that its Supremacy Clause preemption argument be dismissed, indicating only that it wishes to preserve that contention for [sic]

Amended Complaint ("FAC") in its entirety, brought under Federal Rule of Civil Procedure 12(b)(6) on grounds that it fails to state a claim upon which relief can be granted. For the reasons set forth below, Defendant's Motion is GRANTED.[2]

BACKGROUND

Plaintiff is a Virginia nonprofit corporation recognized by the Internal Revenue Service as a § 501(c)(3) public charity. FAC, ¶ 3. Its stated mission is "to promote and defend the First Amendment rights of free political speech, assembly, association, and petition through research, education, and strategic litigation." Center for Competitive Politics v. Harris ("CCP"), 784 F.3d 1307, 1311 (9th Cir. 2015). To support its activities, Plaintiff solicits charitable contributions nationwide, including California. Id.

To ensure that charitable status is not abused, the Attorney General has "broad powers under common law and California statutory law to carry out [its] charitable trust enforcement responsibilities." Id. at 1310; Cal. Gov't Code § 12598(a). In order to legally solicit tax-deductible contributions in California, for example, an entity must be registered with the state's Registry of Charitable Trusts ("Registry"), which is administered by California's Department of Justice under the Supervision of Trustees and Fundraisers for

[2] Having determined that oral argument would not be of material assistance, the Court ordered this Motion submitted on the briefs in accordance with E.D. Local Rule 230(g).

Charitable Purposes Act, Cal. Gov't Code §§ 12580 et seq. ("the Act"). In addition to requiring the California Attorney General to maintain a registry of charitable corporation and their trustees and trusts, the Act authorizes the Attorney General to obtain "whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the [Registry]. Id. at § 2485.

To maintain membership in the Registry, nonprofit corporations must file annual periodic written reports with the state Attorney General, and the Act requires that the Attorney General promulgate rules and regulations specifying both the filing and procedures and the contents of the reports. Id. at § 12586(b); Cal. Code Regs. Tit. 11, §§ 300 et seq. (2014). One of the regulations adopted by the Attorney General requires the periodic written reports to include Internal Revenue Service Form 990. Form 990 has a supplement, Schedule B, which lists the names and addresses of an organization's contributors. Although many of the documents required by the Registry are open to public inspection, the contents of Form 990 Schedule B have always been considered confidential, accessible only to in-house-staff and handled separately from non-confidential documents. See CCP, 784 F.3d at 1311. Moreover, in order to codify that longstanding practice on only nonpublic disclosure, California Code of Regulations § 310 was amended effective July 8, 2016 to provide as follows:

> Donor information exempt from public inspection pursuant to Internal Revenue Code section 6104(d)(3)(A) shall be maintained as confidential by the Attorney General and shall not be disclosed except as follows: (1) In a court or administrative proceeding brought pursuant to the Attorney General's charitable trust enforcement responsibilities; or (2) In response to a search warrant.

Cal. Code Regs., tit. 11, § 310(b) (2016).

Plaintiff has been a member of the Registry since 2008. On January 9, 2014, Plaintiff filed its Annual Registration Renewal Fee Report with Defendant, including a copy of its Form 990 and a redacted version of its Schedule B omitting the names and addresses of its contributors. Plaintiff subsequently received a letter from Defendant dated February 6, 2014 ("Letter"). See ECF No. 37-2. In the Letter, Defendant acknowledged receipt of Plaintiff's periodic written report, but stated that "[t]he filing is incomplete because the copy of [its] Schedule B, Schedule of Contributors, does not include the names and addresses of contributors." Id. (emphasis omitted). The Letter advised that "[t]he Registry retains Schedule B as a confidential record for IRS Form 990 and 990-EZ filers" and requires that Plaintiff must "[w]ithin 30 days of the date of this letter . . . submit a complete copy of Schedule B, Schedule of Contributors, for the fiscal year noted above, as filed with the Internal Revenue Service." Id. (emphasis omitted).

On March 7, 2014, Plaintiff filed the present suit against then Attorney General Kamala Harris, in her official capacity, challenging the Attorney General's disclosure requirements and seeking declaratory and injunctive relief. Plaintiff subsequently filed a motion for preliminary injunction claims on grounds that said requirements unconstitutionally infringed upon its freedom of association, and that requiring the submission of an unredacted Schedule B was preempted by federal law in any event. That motion was denied. With respect to the freedom of association claim, the Court reasoned that Plaintiff had not articulated any objective, specific harm that would befall its members as a result of compliance with the Schedule B Requirement, and thus had failed to make a prima facie showing of infringement concerning its associational rights. Center for Competitive Politics v. Harris, No. 2:14-cv-00636-MCE-DAD, 2014 WL 2002244 at *6 (E.D. Cal. May 14, 2014). The Court further opined that the requirement was valid in any event because it substantially related to the Attorney General's compelling interest in performing her regulatory and oversight functions. Id. at *7.

Plaintiff appealed this Court's denial of its preliminary injunction request and the Ninth Circuit affirmed, determining, in relevant part, that the requirement to disclose unredacted Schedule B information to the Attorney General posed no actual burden on Plaintiff's First Amendment rights and was facially constitutional. CCP, 784 F.3d at 1317. In assessing the burden on Plaintiff's First Amendment rights as a

result of the disclosure requirements, the appellate panel made it clear that compelled disclosure alone does not constitute a First Amendment injury. See id. at 1314. Rather to prevail on a First Amendment challenge to compelled disclosure of its donor information, the court found Plaintiff had to produce "evidence to suggest that their significant donors would experience threats, harassment, or other potentially chilling conduct as a result of the Attorney General's disclosure requirements." Id. at 1316. Plaintiff did not attempt, and thus failed to make, any such showing. Id.

Given the absence of any actual burden on Plaintiff's First Amendment rights, the Ninth Circuit then weighed the Attorney General's "compelling interest in enforcing the laws of California," which included having "immediate access to form 990 Schedule B" filings. Id. at 1316. The panel recognized that immediate access to Schedule B filings "increases her investigative efficiency" by allowing her to "flag suspicious activity" by reviewing significant donor information. The court thus concluded that requiring the disclosure of Schedule Bs "bears a 'substantial relation' " to a " 'sufficiently important' government interest", therefore satisfying examination under exacting scrutiny. Id.

Following the Ninth Circuit's denial of its interlocutory appeal, Plaintiff filed a petition for writ of certiorari, which was denied by the United States Supreme Court on November 9, 2015. Plaintiff then filed its FAC on August 12, 2016. ECF No. 37. The FAC continues to allege that the Attorney General's unredacted Schedule B requirement violates Plaintiff's First

Amendment rights to free association and speech and is preempted by federal law. Plaintiff further argues that its Fourth Amendment right to be free from unreasonable search and seizure is also being violated. Plaintiff allegedly has chosen to cease fundraising in California rather than comply with the requirement that it file a complete copy of its Schedule B with the Registry. FAC, ¶ 51.

STANDARD

On a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief" in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require detailed factual allegations. However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (internal citations and quotations omitted). A court is not required to accept as true a "legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009) (quoting Twombly,

550 U.S. at 555). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain something more than "a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.")).

Furthermore, "Rule 8(a)(2) . . . requires a showing, rather than a blanket assertion, of entitlement to relief." Twombly, 550 U.S. at 556 n.3 (internal citations and quotations omitted). Thus, "[w]ithout some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirements of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Id. (citing 5 Charles Alan Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. If the "plaintiffs . . . have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Id. However, "[a] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.' " Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

A court granting a motion to dismiss a complaint must then decide whether to grant leave to amend. Leave to amend should be "freely given" where there is no "undue delay, bad faith or dilatory motive on the

part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment. . . . " Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to be considered when deciding whether to grant leave to amend). Not all of these factors merit equal weight. Rather, "the consideration of prejudice to the opposing party . . . carries the greatest weight." Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that "the complaint could not be saved by any amendment." Intri-Plex Techs. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) ("Leave need not be granted where the amendment of the complaint . . . constitutes an exercise in futility. . . .")).

ANALYSIS

As the Ninth Circuit recognized in CCP, Plaintiff's challenge to the Attorney General's Schedule B filing requirement is made on facial grounds. CCP, 784 F.3d at 1314, n.5. This is because Plaintiff's claim is not limited to its particular case, but instead challenges application of the Attorney General's requirement to all Registry submissions. Since the relief as requested by Plaintiff would necessarily reach beyond Plaintiff's particular circumstances, Plaintiff's claim must satisfy the standards of a facial challenge. John Doe. No.

1 v. Reed, 561 U.S. 186, 194; citing United States v. Stevens, 559 U.S. 460, 472-73 (2010). In order to invalidate a law as facially overbroad, at the very least Plaintiff must show that "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." Stevens, 559 U.S. at 473. The Court will thus analyze Plaintiff's claims here under those criteria.

A. Absence of Injury Forecloses Plaintiff's First Amendment Associational Rights Claim

First Amendment challenges to disclosure requirements are evaluated under "exacting scrutiny." See John Doe No. 1 v. Reed, 561 U.S. at 196; CCP, 784 F.3d at 1314-15. In making this analysis, the Court must "first ask whether the challenged regulation burdens First Amendment rights. If it does, [it] then assesses whether there is a 'substantial relation' between the burden imposed by the regulation and a 'sufficiently important' governmental interest." Protectmarriage.com – Yes on 8 v. Bowen, 752 F.3d 827, 832 (9th Cir. 2014). Compelled disclosure like that challenged here does not alone constitute First Amendment injury. Instead, the court must balance the "actual burden" posed by such a requirement on a plaintiff's First Amendment rights. CCP, 784 F.3d at 1315, citing John Doe No. 1 v. Reed, 561 U.S. at 196. Where there has been no factual showing of injury, a regulation generally passes muster under the exacting scrutiny standard. Buckley v. Valeo, 424 U.S. 1, 69-71 (1976).

Applying this analysis to the present matter, the Ninth Circuit has already noted that Plaintiff "does not claim and produces no evidence to suggest that their significant donors would experience threats, harassment or other potential chilling conduct as a result of the Attorney's General's disclosure requirement," and thus has failed to demonstrate any "actual burden" on its freedom of association cognizable as a First Amendment injury. CCP, 784 F.3d at 1314, 1316. CCP made this finding in the face of Plaintiff's arguments that "the Attorney General's systems for preserving are not secure, and that its significant donors' names might be inadvertently accessed or released." Id. at 1316 (emphasis added). The Ninth Circuit rejected that argument, however, describing it as "speculative" and not constituting "evidence that would support CCP's claim that disclosing its donor to the Attorney General for her confidential use would chill its donors' participation." Id., citing United States v. Harriss, 347 U.S. 612, 626 (1954). Consequently, given the lack of cognizable injury and the Attorney General's "compelling interest" in enforcing California laws pertaining to charitable contributions, CCP found that the Attorney General's Schedule B disclosure requirement was facially constitutional. Moreover, another Ninth Circuit panel which reviewed a preliminary injunction ruling on the very same issue some six months later reached the same conclusion, stating that it was "bound by our holding in [CCP] that the Attorney General's nonpublic Schedule B disclosure regime is facially constitutional." Americans for Prosperity Foundation v. Harris, 809 F.3d 536, 538 (9th Cir. 2015)

Plaintiff urges this Court not to accept the Ninth Circuit's analyses in this regard since they were made in the context of preliminary injunction decisions that may have been made "hastily on less than a full record" and consequently may "provide little guidance as to the appropriate disposition on the merits." Rodriguez v. Robbins, 804 F.3d 1060, 1080 (9th Cir. 2015). Plaintiff therefore contends that "this Court is not bound by the Court of Appeals' decision to give the Attorney General the benefit of the doubt" in finding that the regulation satisfied exacting scrutiny. See Pl.'s Opp., 6:3-4.

Plaintiff's argument in this regard is misplaced since Plaintiff amended its complaint in the face of the Ninth Circuit's admonition as to the shortcomings of their claims, yet the FAC still fails to identify any cognizable burden on Plaintiff's freedom of association. Indeed, the FAC still falls short of the mark in that there are no allegations that the Attorney General's demand for and collection of Schedule B forms for non-public use has caused any threat, harm, or negative consequences to Plaintiff or its members. To the contrary, as Defendant point outs, "the singular effect of the Schedule B requirement on [P]laintiff appears to be that it has chosen not to fundraise in California rather than comply with state law." Def.'s Mot, 11:1-3, citing FAC, ¶ 51.

This argument is insufficient to satisfy the requirement that an actual injury be shown. Plaintiff's voluntary decision to forego the privilege of soliciting funds as a tax-exempt entity, rather than comply with a law it deems unconstitutional, is not a cognizable

First Amendment harm. See Citizens United v. Schneiderman, 203 F. Supp. 3d 397, 407 (S.D.N.Y. 2016) ("[T]he desire for privacy and loss of donations alone does not render viable an as-applied challenge to a disclosure regime." (citing Buckley, 424 U.S. at 71-72)); see also Caplan v. Fellheimer Eichen Braverman & Kaskey, 68 F.3d 828, 839 (3rd Cir. 1995) ("Because defendants have acted to permit the outcome that they deem unacceptable, we must conclude that such an outcome is not an irreparable injury. If the harm complained of its self-inflicted, it does not qualify as irreparable.").

Although compelled disclosures have been upheld as interfering with an entity's associational rights on an as-applied basis, and while the Ninth Circuit recognized in CCP that such disclosures could succeed if such disclosure of a contributors' names would subject the entity "to threats, harassment, or reprisals from either Governmental officials or private parties" (CCP, 784 F.3d at 1315, citing Buckley v. Valeo, 424 U.S. at 74), no such showing has been made here. As indicated above, the FAC still contains no allegation suggesting that the Attorney General's demand for and collection of Schedule B forms has caused any such consequences. Therefore, Plaintiff cannot analogize its position to as-applied challenges involving plaintiffs, generally minority groups, who were "unpopular, vilified and historically rejected by the government and the citizenry" like the NAACP in the pre-Civil Rights Era and the Socialist Party during the Cold War. Brown v. Socialist Workers '74 Campaign, 459 U.S. 87, 88 (1982); NAACP v. Alabama, 357 U.S. 449, 462-63

(1958); see also John Doe No. 1 v. Reed, 823 F. Supp. 2d 1195, 1201 (W.D. Wash. 2011) (noting that as-applied exemption from disclosure requirements "have been upheld in only a few cases"). As indicated above, groups so qualifying were generally subjected to both government-sponsored hostility and brutal, pervasive private violence both generally and as a result of disclosure (see, e.g., Brown, 459 U.S. at 89-99; Bates v. Little Rock, 361 U.S. 516, 525 (1960); NAACP, 357 U.S. at 462-63) such that they could not seek adequate relief from either law enforcement or the legal system. See Protectmarriage.com v. Bowen, 599 F. Supp. 2d 1197, 1217-18 (E.D. Cal. 2009). Plaintiff's FAC does not even remotely demonstrate that Plaintiff falls into this limited exception, despite being advised by the Ninth Circuit's CCP decision of the requirements for doing so. CCP, 784 F.3d at 1315.

The only thing Plaintiff does try to do is to allege that the Attorney General's professed policy of nondisclosure is less than foolproof. To support that argument, Plaintiff points to a decision rendered by the Central District following a bench trial in Americans for Prosperity Foundation v. Harris ("AFPF"), No. CV 14-9448-R, 2016 WL 1610591 (C.D. Cal. April 21, 2016). In that case, plaintiff AFPF argued that the Attorney General's Schedule B disclosure requirement was unconstitutional on an as-applied basis, and the Court's decision was "focuse[d] solely" on that as-applied challenge.

The as-applied nature of the challenge in AFPF alone distinguishes that case from the matter at bar.

Indeed, after recognizing that plaintiff's challenge in AFPF was brought on an as-applied basis, the court further observed that "the Ninth Circuit in [CCP] foreclosed any facial challenge to the Schedule B requirement." Id. at 1055. Moreover, unlike the present case, the AFPF decision indicates that "[d]uring the course of trial, the Court heard ample evidence establishing that AFPF, its employees, supporters and donors face public threats, harassment, intimidation, and retaliation once their support for and affiliation with the organization becomes publicly known." Id. The court went on to cite specific instances in that regard. Accordingly, the AFPF court found that AFPF supporters were "subjected to abuses that warrant relief on an as-applied challenge." Id. Significantly, no such abuses have been identified in the present case.

In the face of the actual burden on associational rights identified in AFPF, the Court went on to examine the strength of the Attorney General's legitimate interest in the disclosure. It found that the record before it lacked "even a single, concrete instance in which pre-investigation collection of a Schedule B did anything to advance the Attorney General's investigative, regulatory or enforcement efforts." Id. at 1055. Consequently, "in light of the requirement's burdens on AFPF's First Amendment rights," it found that the Attorney General's interests did not justify those burdens. Id.

Here, the absence of any articulated burden, even in the wake of the Ninth Circuit's CCP decision and Plaintiff's subsequent opportunity to file its FAC,

makes the balancing engaged in by AFPF unnecessary. In the present case, we have, in the face of no identified First Amendment burden, the Attorney General's argument that disclosing the names of significant donors "is necessary to determine whether a charity is actually engaged in a charitable purpose, or is instead violating California law by engaging in self-dealing, improper loans, or other unfair business practices." CCP, 784 F.3d at 1311. Under the circumstances of the present matter that representation is sufficient to survive exacting scrutiny.

Additionally, plaintiff's argument in AFPF for the proposition that the Attorney General's office has been unable to keep confidential Schedule Bs private makes no difference to this analysis. Preliminarily, as a Central District decision, AFPF's findings are not binding on this Court in the first place. Secondly, given the amendment of California Code of Regulations § 310, effective July 8, 2016 (at a point after the AFPF decision was rendered on April 21, 2016), the Attorney General now is legally required by law as well as by practice to maintain the confidentiality of donor information contained in submitted schedules. The fact that confidentiality is now guaranteed by formal regulation weighs in favor of the reasonableness of the Attorney General's disclosure requirement.

Having determined that Plaintiff has not stated a cognizable First Amendment freedom of association claim, the Court now addresses the second prong of Plaintiff's First Amendment challenge; namely, its

argument that the Attorney General's Schedule B requirement impinges upon free speech.

B. Plaintiff's First Amendment Free Speech Claim Also Fails

In addition to alleging the associational claims rejected above, Count I of the FAC also contends that the requirement to file a Schedule B "as a predicate to Plaintiff's ability to lawfully speak about a topic or subject matter—namely charitable solicitation" violates its First Amendment right to free speech. FAC, ¶ 80. The FAC further claims, without supporting facts or elaboration, that the Schedule B requirement operates as a content-based restriction on charitable solicitation, "which is itself a form of First Amendment speech." Id. at ¶¶ 58-62.

To begin with, the FAC fails to identify any speech that is impacted by the reporting requirement. See Citizens United v. Federal Election Comm'n, 558 U.S. 310, 367 (2010) (setting forth proof to establish threshold case of harm to speech rights from disclosure). At most, as already enumerated above, the FAC simply suggests that because Plaintiff has itself elected to not comply with Schedule B's requirement and purports to have accordingly stopped fundraising in California on that basis, its speech has been impaired.

The Court agrees with Defendant that Plaintiff's argument in this respect fails as a matter of law. Although solicitation of charitable contributions is protected speech (see Riley v. Nat'l Federation of the Blind

of North Carolina, Inc., 487 U.S. 781, 789 (1988)), there is no support for the claim that any regulation that arguably affects the ability or willingness to secure or donate funds is constitutionally invalid. To the contrary, charitable solicitation is entitled to First Amendment protection not because it contemplates the right to raise money, but instead because the act of soliciting funds is "characteristically intertwined with informative and perhaps persuasive speech." Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 632 (1980); see also Friends of the Vietnam Veterans Memorial v. Kennedy, 116 F.3d 495, 497 (D.C. Cir. 1997) (noting that cases protecting the right to solicit contributions do so not based on a First Amendment right to raise money, but because "the act of solicitation contains a communicative element").

Being required to later report to the government on the outcome of charitable solicitation, on the other hand, does not have the same communicative element and does not impermissibly "burden" speech. See Riley, 487 U.S. at 800 (requiring detailed financial disclosure forms by professional fundraisers does not burden the speaker during the course of a solicitation); ACLU v. Heller, 378 F.3d 979, 992 (9th Cir. 2004) ("[R]equiring a publisher to reveal her identity on her election related communication is considerably more intrusive than simply requiring her to report to a governmental agency for later publication how she spent her money. The former necessarily connects the speaker to a

particular message directly, while the latter may simply expose the fact that the speaker spoke.").[3]

Therefore, as Defendant argues, there is a significant constitutional distinction between requiring the reporting of funds that may be used to finance speech and the direct regulation of speech itself. See, e.g., Buckley v. Am. Con'l Law Foundation, Inc., 525 U.S. 182, 187, 198-99 (1999); Heller, 378 F.3d at 987, 990-92. The former category regularly is upheld, while the latter generally is not. Compare John Doe 1 v. Reed, 561 U.S. at 201-02, and Citizens United, 558 U.S. at 366-71 and Buckley, 424 U.S. at 69-72, with Riley, 487 U.S. at 788-802 and McIntyre v. Ohio Election Comm'n, 514 U.S. 334, 345-47, 357 (1995). In the present case, charitable organizations are simply required by law to furnish information about their confidential donors to a confidential registry. That requirement places no limitations on protected speech; nor does it compel any speech by fundraisers. Consequently, because no infringement upon speech is present, Plaintiff's First

[3] Despite Plaintiff's argument to the contrary, nothing in the Supreme Court's recent decision in Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) changes this analysis of disclosure requirements, or suggests they should be subject to strict as opposing to exacting scrutiny. At issue in Reed was a sign code that subjected various signs to different restrictions depending on their content. Because those restrictions depended on the communicative element of the sign, the Supreme Court reasoned that they amounted to "content-based discrimination." Id. at 2224, 2230. The Schedule B disclosure requirement, unlike Reed, is both neutral and generally applicable.

Amendment speech claim also fails as a matter of law and must be dismissed on that basis.

C. Plaintiff's Fourth Amendment Claim is Without Merit

In Count II, the FAC goes on to allege that the Attorney General's Schedule B requirement not only violates the First Amendment, it also operates as an unconstitutional search and seizure in contravention of the Fourth Amendment. FAC, ¶ 85. According to the FAC, because the reporting requirement has "the force of a subpoena" and does not permit "precompliance review," it amounts to an unreasonable search and seizure. Id. at ¶¶ 64-68, 85.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . " To establish a viable Fourth Amendment claim, a plaintiff must show not only that there was a search and seizure as contemplated by the Fourth Amendment, but also that said search and seizure was unreasonable and conducted without consent. See Rakas v. Illinois, 439 U.S. 128, 143 (1978); United States v. Rubio, 727 F.2d 786, 796-97 (9th Cir. 1983). Governmental conduct can constitute a search for Fourth Amendment purposes in two ways. First, a search can occur when "the person invoking [Fourth Amendment] protection can claim a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by government action." Smith v.

Maryland, 442 U.S. 735, 740 (1979). Under this test, the plaintiff bears the burden of showing both a subjective and objectively reasonable expectation of privacy. See United States v. Shryock, 342 F.3d 948, 978 (9th Cir. 2003); Rawlings v. Kentucky, 448 U.S. 98, 104 (1980). Second, a Fourth Amendment search can occur where the government unlawfully occupies private property for the purpose of obtaining information without consent. United States v. Jones, 565 U.S. 400, 404-05 (2012). A "seizure" occurs when there is some "meaningful interference with an individual's possessory interests in . . . property." United States v. Jacobsen, 466 U.S. 109, 113 (1984).

Aside from bare legal conclusions, the FAC does not demonstrate that the requirement to submit a copy to the Attorney General, for nonpublic use, of the very same Schedule B already on file with the IRS amounts to a search or seizure within the meaning of the Fourth Amendment. Nor is any such conclusion obvious under the circumstances of this case. See id. at 120-124. Indeed, the FAC fails to allege that Plaintiff has any reasonable expectation of privacy that would trigger a search for Fourth Amendment purposes in information contained in Schedule B, to the extent that information is confidentially disclosed to the Attorney General. See Shryock, 342 F.3d at 978.[4] Similarly, with respect to the second alternative for establishing a Fourth

[4] Because the Court concludes that the Schedule B disclosure requirement does not amount to a search, it is unnecessary to determine there was adequate "precompliance review" as to that requirement.

Amendment search, the FAC fails to allege, and could not reasonably contend, that the Attorney General's demand for Schedule B involves governmental "trespass" and/or "meaningful interference with Plaintiff's property. See Jones, 565 U.S. at 405, 407-09; Jacobsen, 466 U.S. at 120-24.

Even if the FAC did establish these threshold requirements for stating a valid Fourth Amendment claim, which the Court believes it does not, whatever minimal intrusion into Plaintiff's reasonable expectation of privacy the Schedule B requirement might entail is more than outweighed by the Attorney General's interest in enforcing the law and protecting the public from fraud. See United States v. Place, 462 U.S. 696, 703 (1983); see also CCP, 784 F.3d at 1317. Plaintiff's Fourth Amendment claim therefore fails.

CONCLUSION

For all the foregoing reasons, Defendant's Motion to Dismiss (ECF No. 44) is GRANTED, in its entirety.[5] Because the Court does not believe that further amendment will rectify the deficiencies of the First

[5] Having determined that Plaintiff's lawsuit fails as a matter of law, Plaintiff's Motion for Preliminary Injunction (ECF No. 39) necessarily also fails and is DENIED as moot.

Amended Complaint, no further leave to amend will be permitted. The Clerk of Court is directed to close the file.

IT IS SO ORDERED.

Dated: October 30, 2017

/s/ Morrison C. England, Jr.
MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INSTITUTE FOR FREE SPEECH, FKA Center for Competitive Politics, Plaintiff-Appellant, v. XAVIER BECERRA, in his official capacity as Attorney General of the State of California, Defendant-Appellee	No. 17-17403 D.C. No. 2:14-cv-00636-MCE-DB Eastern District of California, Sacramento ORDER (Filed Aug. 4, 2018)

No judge has requested a vote to hear this case initially en banc within the time allowed by GO 5.2(a). The petition for initial hearing en banc (Docket Entry No. 6) is therefore denied.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Paul Keller
Deputy Clerk
Ninth Circuit Rule 27-7

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CENTER FOR COMPETITIVE POLITICS, *Plaintiff-Appellant*, v. KAMALA D. HARRIS, in her official capacity as Attorney General of the State of California, *Defendant-Appellee.*	No. 14-15978 D.C. No. 2:14-cv-00636-MCE-DAD OPINION

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., Chief District Judge, Presiding

Argued and Submitted
December 8, 2014—San Francisco California

Filed May 1, 2015

Before: A. Wallace Tashima and
Richard A. Paez, Circuit Judges, and
Gordon J. Quist, Senior District Judge.*

Opinion by Judge Paez

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* The Honorable Gordon J. Quist, Senior District Judge for the U.S. District Court for the Western District of Michigan, sitting by designation.

COUNSEL

Allen J. Dickerson (argued), Center for Competitive Politics, Alexandria, Virginia; Alan Gura, Gura & Possessky, PLLC, Alexandria, Virginia, for Plaintiff-Appellant.

Kamala Harris, California Attorney General, Alexandra Robert Gordon (argued), Deputy Attorney General, San Francisco, California, for Defendant-Appellee.

Joseph Vanderhulst, ActRight Legal Foundation, Plainfield, Indiana, for Amici Curiae National Organization for Marriage, Inc., and National Organization for Marriage Educational Trust Fund.

Bradley Benbrook and Stephen Duvernay, Benbrook Law Group, PC, Sacramento, California, for Amicus Curiae Charles M. Watkins.

OPINION

PAEZ, Circuit Judge:

In order to solicit tax deductible contributions in California, a non-profit corporation or other organization must be registered with the state's Registry of Charitable Trusts. Cal. Gov. Code § 12585. To maintain its registered status, an entity must file an annual report with the California Attorney General's Office, and must include IRS Form 990 Schedule B. The Internal Revenue Service (IRS) requires non-profit educational or charitable organizations registered under 26 U.S.C. § 501(c)(3) to disclose the names and contributions of their "significant donors" (donors who have contributed

more than $5,000 in a single year) on Form 990 Schedule B. The Center for Competitive Politics (CCP), a non-profit educational organization under § 501(c)(3), brings this lawsuit under 42 U.S.C. § 1983, seeking to enjoin the Attorney General from requiring it to file an unredacted Form 990 Schedule B. CCP argues that disclosure of its major donors' names violates the right of free association guaranteed to CCP and its supporters by the First Amendment.

CCP appeals the district court's denial of CCP's motion for a preliminary injunction to prevent the Attorney General from enforcing the disclosure requirement. We have jurisdiction under 28 U.S.C. § 1292(a)(1), and we affirm.

I.

A.

CCP is a Virginia non-profit corporation, recognized by the IRS as an educational organization under § 501(c)(3). CCP's "mission is to promote and defend the First Amendment rights of free political speech, assembly, association, and petition through research, education, and strategic litigation." CCP supports itself through financial donations from contributors across the United States, including California. CCP argues that the disclosure requirement infringes its and its supporters' First Amendment right to freedom of association. CCP also argues that federal law preempts California's disclosure requirement.

Defendant Kamala Harris, the Attorney General of California, is the chief law enforcement officer of the State of California. *See* Cal. Const. art. 5, § 13. Furthermore, under the Supervision of Trustees and Fundraisers for Charitable Purposes Act (the Act), Cal. Gov't Code § 12580 et seq., the Attorney General also has primary responsibility to supervise charitable trusts and public benefit corporations incorporated in or conducting business in California, and to protect charitable assets for their intended use. Cal. Gov't Code §§ 12598(a), 12581. The Act requires the Attorney General to maintain a registry of charitable corporations and their trustees and trusts, and authorizes the Attorney General 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.

An organization must maintain membership in the registry in order to solicit funds from California residents. Cal. Gov't Code § 12585. The Act requires that corporations file periodic written reports, and requires the Attorney General to promulgate rules and regulations specifying both the filing procedures and the contents of the reports. Cal. Gov't Code § 12586(b), Cal. Code Regs. tit. 11, § 300 et seq. (2014). One of the regulations adopted by the Attorney General requires that the periodic written reports include Form 990.[1]

[1]California is not alone in requiring charitable organizations to file an unredacted Form 990 Schedule B. At least Hawaii, Mississippi, and Kentucky share the same requirement. Haw. Rev. Stat. Ann. § 467B-6.5 (2014); Ky. Rev. Stat. Ann. §§ 367.650-.670

Cal. Code Regs. tit. 11, § 301 (2014). Although many documents filed in the registry are open to public inspection, *see* Cal. Code Regs. tit. 11, § 310, Form 990 Schedule B is confidential, accessible only to in-house staff and handled separately from non-confidential documents.

The Attorney General argues that there is a compelling law enforcement interest in the disclosure of the names of significant donors. She argues that such information is necessary to determine whether a charity is actually engaged in a charitable purpose, or is instead violating California law by engaging in self-dealing, improper loans, or other unfair business practices. *See* Cal. Corp. Code §§ 5233, 5236, 5227. At oral argument, counsel elaborated and provided an example of how the Attorney General uses Form 990 Schedule B in order to enforce these laws: having significant donor information allows the Attorney General to determine when an organization has inflated its revenue by overestimating the value of "in kind" donations. Knowing the significant donor's identity allows her to determine what the "in kind" donation actually was, as well as its real value. Thus, having the donor's information immediately available allows her to identify suspicious behavior. She also argues that requiring unredacted versions of Form 990 Schedule B increases

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(2014); Miss. Code Ann. § 79-11-507 (2014). According to Amicus Charles Watkins, Florida and New York also require unredacted versions of Form 990 Schedule B.

her investigative efficiency and obviates the need for expensive and burdensome audits.

B.

CCP has been a member of the registry since 2008. Since its initial registration, CCP has filed redacted versions of Form 990 Schedule B, omitting the names and addresses of its donors. In 2014, for the first time, the Attorney General required CCP to submit an unredacted Form 990 Schedule B. In response to this demand, CCP filed suit, alleging that the Attorney General's requirement that CCP file an unredacted Form 990 Schedule B amounted to a compelled disclosure of its supporters' identities that infringed CCP's and its supporters' First Amendment rights to freedom of association. CCP also alleged that a section of the Internal Revenue Code, 26 U.S.C. § 6104, which restricts disclosure of the information contained in Schedule B, preempted the Attorney General's requirement.

As noted above, the district court denied CCP's motion for a preliminary injunction, ruling that CCP was unlikely to succeed on the merits of either of its claims, and that, therefore, CCP could not show that it would suffer irreparable harm or that the public interest weighed in favor of granting the relief it requested. *Ctr. for Competitive Politics v. Harris*, No. 2:14–cv–00636–MCE–DAD, 2014 WL 2002244 (E.D. Cal. May 14, 2014).

II.

We review a district court's ruling on a motion for preliminary injunctive relief for abuse of discretion. *See FTC v. Enforma Natural Prods.*, 362 F.3d 1204, 1211-12 (9th Cir. 2004); *Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 760 (9th Cir. 2004). We review findings of fact for clear error and conclusions of law de novo. *See Indep. Living Ctr. of S. Cal., Inc. v. Shewry*, 543 F.3d 1050, 1055 (9th Cir. 2008). Our review of a denial of preliminary injunctive relief must be "limited and deferential." *Harris*, 366 F.3d at 760.

"A plaintiff seeking a preliminary injunction 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 public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008). A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* at 22 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). Thus, CCP bears the heavy burden of making a "clear showing" that it was entitled to a preliminary injunction.

We apply exacting scrutiny in the context of First Amendment challenges to disclosure requirements. "Disclaimer and disclosure requirements may burden the ability to speak, but they . . . do not prevent anyone from speaking." *Citizens United v. FEC*, 558 U.S. 310, 366 (2010) (internal citations and quotation marks omitted). Therefore, courts have "subjected these requirements

to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Id.* at 366–67 (quoting *Buckley v. Valeo*, 424 U.S. 1 (1976)).[2] Exacting scrutiny encompasses a balancing test. In order for a government action to survive exacting scrutiny, "the strength of the governmental interest must reflect the seriousness of the *actual* burden on First Amendment rights." *John Doe No. 1*, 561 U.S. at 196 (quoting *Davis v. FEC*, 554 U.S. 724, 744 (2008)) (emphasis added).

III.

A.

CCP argues that the Attorney General's disclosure requirement is, in and of itself, injurious to CCP's and its supporters' exercise of their First Amendment rights to freedom of association. CCP further argues that the Attorney General must have a compelling interest in the disclosure requirement, and that the requirement must be narrowly tailored in order to justify

[2] Although most of the cases in which we and the Supreme Court have applied exacting scrutiny arise in the electoral context, *see John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010) (referring to long line of such precedent), we have also applied the exacting scrutiny standard in the context of a licensing regime. *See Acorn Invs., Inc. v. City of Seattle*, 887 F.2d 219 (9th Cir. 1989). Moreover, the foundational compelled disclosure case, *NAACP v. Ala. ex rel. Patterson*, arose outside the electoral context. In that case, the NAACP challenged a discovery order (arising out of a contempt proceeding) that would have forced it to reveal its membership lists. 357 U.S. 449 (1958).

the First Amendment harm it causes. This is a novel theory, but it is not supported by our case law or by Supreme Court precedent.

In arguing that the disclosure requirement alone constitutes significant First Amendment injury, CCP relies heavily on dicta in *Buckley v. Valeo*, in which the Supreme Court stated that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S. at 64. Notably, the Court said "can" and not "always does." Furthermore, in making that statement, the Court cited a series of Civil Rights Era as-applied cases in which the NAACP challenged compelled disclosure of its members' identities at a time when many NAACP members experienced violence or serious threats of violence based on their membership in that organization.[3] *Id.* The Court went on to explain that

[3] CCP also cites extensively to these cases; however, because all of them are as-applied challenges involving the NAACP (which had demonstrated that disclosure would harm its members), these cases are all inapposite: *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539 (1963) (holding that the NAACP was not required to comply with a subpoena and disclose membership lists to a Florida state legislative committee investigating communist activity); *NAACP v. Button*, 371 U.S. 415 (1963) (upholding NAACP's challenge to a Virginia statute barring the improper solicitation of legal business, which the state had attempted to use to prohibit the organization's operation); *Shelton v. Tucker*, 364 U.S. 479 (1960) (striking down on First Amendment grounds an Arkansas statute requiring public school teachers to disclose all organizations to which they had belonged or contributed in the past five years); *Bates v. Little Rock*, 361 U.S. 516 (1960) (invalidating an Arkansas local ordinance requiring disclosure of membership lists on First Amendment grounds as applied to the

"[t]he strict test established by *NAACP v. Alabama* is necessary because compelled disclosure has the *potential* for substantially infringing the exercise of First Amendment rights." *Id.* at 66 (emphasis added). The most logical conclusion to draw from these statements and their context is that compelled disclosure, without any additional harmful *state action*, can infringe First Amendment rights when that disclosure leads to private discrimination against those whose identities may be disclosed.

Of course, compelled disclosure can also infringe First Amendment rights when the disclosure requirement is itself a form of harassment intended to chill protected expression. Such was the case in *Acorn Investments, Inc. v. City of Seattle*, another opinion upon which CCP bases its theory that compelled disclosure alone constitutes First Amendment injury. In *Acorn*, the plaintiff brought a First Amendment challenge to Seattle's licensing fee scheme and its concomitant requirement that panoram businesses disclose the names and addresses of their shareholders. 887 F.2d at 220. Panorams, or "peep shows," were a form of adult entertainment business strongly associated with criminal activity. *Id.* at 222–24. Seattle's disclosure requirement exclusively targeted the shareholders of panoram

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NAACP, given the substantial record of the threats and harassment that members of the organization would experience as a result of disclosure); *NAACP v. Alabama*, 357 U.S. 449 (1958) (holding that the NAACP was not required to comply with a discovery order requiring disclosure of its membership lists). In *Shelton*, while the NAACP was not a party, the primary plaintiff, Shelton, was a member of the NAACP. 364 U.S. at 484.

businesses, and the only justification that the city advanced was "accountability." *Id.* at 226. The plaintiff argued that the disclosure requirement was intended to chill its protected expression, and, given the absence of any reasonable justification for the ordinance, we held that it violated the First Amendment. *Id.* In so holding, we found especially instructive and cited as indistinguishable a Seventh Circuit case, *Genusa v. City of Peoria*, 619 F.2d 1203 (7th Cir. 1980), in which "the court concluded that there could be 'no purpose other than harassment in requiring the individual . . . stockholders to file separate statements or applications.'" *Id.* (quoting *Genusa*, 619 F.2d at 1217). However, here, there is no indication in the record that the Attorney General's disclosure requirement was adopted or is enforced in order to harass members of the registry in general or CCP in particular. Thus, the concern animating the holdings of *Acorn* and *Genusa* does not apply here.

CCP is correct that the chilling *risk* inherent in compelled disclosure triggers exacting scrutiny—"the strict test established by *NAACP v. Alabama," Buckley*, 424 U.S. at 66—and that, presented with a challenge to a disclosure requirement, we must examine and balance the plaintiff's First Amendment injury against the government's interest. However, CCP is incorrect when it argues that the compelled disclosure *itself* constitutes such an injury, and when it suggests that we must weigh that injury when applying exacting scrutiny. Instead, the Supreme Court has made it clear that we must balance the "seriousness of the *actual* burden"

on a plaintiff's First Amendment rights. *John Doe No. 1*, 561 U.S. at 196 (emphasis added); *Chula Vista Citizens for Jobs & Fair Competition v. Norris*, No. 12–55726 ___ F.3d ___ 2015 WL 1499334 at *13 (9th Cir. Apr. 3, 2015) (en banc) (applying this standard in evaluating a First Amendment challenge to a disclosure requirement under exacting scrutiny). Here, CCP has not shown any "actual burden" on its freedom of association.

B.

CCP's creative formulation, however, does affect the scope of its challenge. In *John Doe No. 1*, signatories of a referendum petition challenged the Washington Public Records Act (PRA),[4] which permitted public inspection of such petitions. 561 U.S. at 191. The plaintiffs sought to prevent the disclosure of the names of those who had signed a referendum petition to challenge and put to a popular vote a Washington state law that had extended benefits to same-sex couples. *Id.* The complaint charged both that the PRA was unconstitutional as to the referendum petition to overturn the same-sex benefits law and as to referendum petitions generally. *Id.* at 194. Thus, there was some dispute as to whether their challenge was best construed as an as-applied or as a facial challenge. *Id.* The Court explained that "[t]he label is not what matters." *Id.* Rather, because the "plaintiffs' claim and the relief that would follow . . . reach[ed] beyond the particular

[4] Wash. Rev. Code § 42.56.001 et seq.

circumstances of these plaintiffs," they were required to "satisfy our standards for a facial challenge to the extent of that reach." *Id.*

In formulating its claim such that the disclosure requirement itself is the source of its alleged First Amendment injury, CCP's claim "is not limited to [its] particular case, but challenges application of the law more broadly to all [registry submissions]." *Id.* Were we to hold that the disclosure requirement at issue here itself infringes CCP's First Amendment rights, then it would necessarily also infringe the rights of all organizations subject to it. Even though CCP only seeks to enjoin the Attorney General from enforcing the disclosure requirement against itself, the Attorney General would be hard-pressed to continue to enforce an unconstitutional requirement against any other member of the registry.[5] Therefore, because "the relief that would follow . . . reach[es] beyond the particular circumstances of th[is] plaintif[f,] [CCP's claim] must . . . satisfy our standards for a facial challenge to the extent of that reach." *Id.* (citing *United States v. Stevens*, 559 U.S. 460, 472–73 (2010)).

"Which standard applies in a typical [facial challenge] is a matter of dispute that we need not and do not address. . . ." *Stevens*, 559 U.S. at 472. The Supreme Court has at different times required plaintiffs bringing facial challenges to show "that no set of circumstances exists under which [the challenged law] would

[5] CCP conceded at oral argument that its challenge is best understood as a facial challenge.

be valid," *United States v. Salerno*, 481 U.S. 739, 745 (1987), or that it lacks any "plainly legitimate sweep," *Washington v. Glucksberg*, 521 U.S. 702, 740, n. 7 (1997) (Stevens, J., concurring) (internal quotation marks omitted). Alternatively, in the First Amendment context, the Court has sometimes employed a different standard to evaluate facial overbreadth challenges, "whereby a law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *Stevens*, 559 U.S. at 473 (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449, n. 6 (2008)).

The least demanding of these standards is that of the First Amendment facial overbreadth challenge. Because CCP cannot show that the regulation fails exacting scrutiny in a "substantial" number of cases, "judged in relation to [the disclosure requirement's] plainly legitimate sweep," we need not decide whether it could meet the more demanding standards of *Salerno* and *Glucksberg*.

C.

Although not for the reasons that CCP posits, *Buckley v. Valeo* is instructive for assessing CCP's facial challenge. In *Buckley*, the plaintiffs challenged the disclosure requirements of the Federal Election Campaign Act[6] as overbroad on two grounds. 424 U.S.

[6] Then codified at 2 U.S.C. § 431 et seq., now at 52 U.S.C. § 30101 et seq.

at 60–61. The first ground was that the disclosure requirement applied to minor party members, such as members of the Socialist Labor Party, who might face harassment or threats as a result of the disclosure of their names. *Id.* The plaintiffs sought a blanket exemption for minor parties. The second ground of the *Buckley* plaintiffs' challenge was that the thresholds triggering disclosure were too low, because the requirement attached to any donation of $100 or more (with additional reporting requirements to a Committee, though not to the public, for donations over $10). *Id.*

After applying exacting scrutiny, the *Buckley* Court rejected the plaintiffs' minor party challenge because "no appellant [had] tendered record evidence of the sort proffered in *NAACP v. Alabama,*" and so had failed to make the "[r]equisite [f]actual [s]howing." *Id.* at 69–71. Where the record evidence constituted "[a]t best . . . the testimony of several minor-party officials that one or two persons refused to make contributions because of the possibility of disclosure . . . the substantial public interest in disclosure identified by the legislative history of this Act outweighs the harm generally alleged." *Id.* at 71–72. The Court, however, left open the possibility that if a minor party plaintiff could show "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties," then it could succeed on an as-applied challenge. *Id.* at 74. Thus, even where, unlike here, the plaintiffs adduced some evidence that

their participation would be chilled, the *Buckley* Court rejected a facial challenge.

Further undermining CCP's argument, the *Buckley* Court also rejected the plaintiffs' "contention, based on alleged overbreadth, . . . that the monetary thresholds in the record-keeping and reporting provisions lack[ed] a substantial nexus with the claimed governmental interests, for the amounts involved [were] too low." *Id.* at 82. The Court noted that they were "indeed low," but concluded that it "[could not] say, on this bare record, that the limits designated [were] wholly without rationality," because they "serve[d] informational functions," and "facilitate[d] enforcement" of the contribution limits and disclosure requirements. *Id.* at 83. Thus, the *Buckley* Court rejected the plaintiffs' overbreadth challenge both with respect to minor parties and the donation thresholds.

Engaging in the same balancing that the *Buckley* Court undertook, we examine the claims and interests the parties assert here. In contrast to the *Buckley* plaintiffs, CCP does not claim and produces no evidence to suggest that their significant donors would experience threats, harassment, or other potentially chilling conduct as a result of the Attorney General's disclosure requirement.[7] CCP has not demonstrated

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[7] The minor parties in *Buckley* feared harassment because they advocated unpopular positions. CCP has not alleged that its supporters would face a similar backlash. However, amicus National Organization for Marriage contends that, like the minor party donors and members in *Buckley*, its significant donors could

any "actual burden," *John Doe No. 1*, 561 U.S. at 196, on its or its supporters' First Amendment rights. As discussed *supra*, contrary to CCP's contentions, no case has ever held or implied that a disclosure requirement in and of itself constitutes First Amendment injury.[8]

Furthermore, unlike in *John Doe No. 1* or in other cases requiring the disclosure of the names of petition signatories, in this case, the disclosure would not be public. The Attorney General keeps Form 990 Schedule B confidential. Although it is certainly true that non-public disclosures can still chill protected activity where a plaintiff fears the reprisals of a government entity, CCP has not alleged any such fear here. CCP instead argues that the Attorney General's systems for preserving confidentiality are not secure, and that its significant donors' names might be inadvertently accessed or released. Such arguments are speculative, and do not constitute evidence that would support

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face retaliatory action if their names were ever released to the public.

[8] Contrary to CCP's contention, *Talley v. California*, 362 U.S. 60 (1960), is not such a case. In *Talley*, the Supreme Court struck down a law that outlawed the distribution of hand-bills that did not identify their authors. *Id.* at 64. In so doing, the Court did not explicitly apply exacting scrutiny, though it cited *NAACP v. Alabama* and *Bates. Id.* at 65. The basis for the Court's holding was the historic, important role that anonymous pamphleteering has had in furthering democratic ideals. *Id.* at 64 ("There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression . . . Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind."). Thus, in that case, the Court was certain of the First Amendment harm that the ordinance imposed.

CCP's claim that disclosing its donors to the Attorney General for her confidential use would chill its donors' participation.[9] *See United States v. Harriss*, 347 U.S. 612, 626 (1954).[10]

On the other side of the scale, as CCP concedes, the Attorney General has a compelling interest in enforcing the laws of California. CCP does not contest

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[9] CCP also argues that only an informal policy prevents the Attorney General from publishing the forms and requires her to take appropriate measures to ensure the forms stay confidential. However, where a record is exempt from public disclosure under federal law, as is Form 990 Schedule B, it is also exempt from public inspection under the California Public Records Act. Cal. Gov't Code § 6254(k) (2015). Thus, it appears doubtful that the Attorney General would ever be required to make Form 990 Schedule B publicly available. Moreover, while the exemption under § 6254(k) is permissive, and not mandatory, *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 136 Cal. Rptr. 3d 395, 405 (Ct. App. 2012), where public disclosure is *prohibited* under state or federal law, the responsible California agency is also prohibited from public disclosure. *See* Cal. Gov't Code § 6254(f) ("This section shall not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law."). As public disclosure (distinct from disclosure to the Attorney General) of significant donor information is not authorized by federal law, it is likely not authorized by California law, either. However, because CCP has not provided any evidence that even public disclosure would chill the First Amendment activities of its significant donors, the potential for a future change in the Attorney General's disclosure policy does not aid CCP in making its facial challenge.

[10] In *Harriss*, the Supreme Court rejected a First Amendment challenge to an act imposing disclosure requirements on lobbyists, where plaintiffs presented "[h]ypothetical borderline situations" where speech might be chilled, because "[t]he hazard of such restraint is too remote" to require striking down an otherwise valid statute.

that the Attorney General has the power to require disclosure of significant donor information as a part of her general subpoena power. Thus, the disclosure regulation has a "plainly legitimate sweep." *Stevens*, 559 U.S. at 473. CCP argues instead that the disclosure requirement does not bear a substantial enough relationship to the interest that the Attorney General has asserted in the disclosure, and that the Attorney General should be permitted only to demand the names of significant donors if she issues a subpoena. CCP's argument that the disclosure requirement exceeds the scope of the Attorney General's subpoena power is similar to the *Buckley* plaintiffs' argument that the low monetary thresholds exceeded the scope of Congress's legitimate regulation.

Like the *Buckley* Court, we reject this argument, especially in the context of a facial challenge. The Attorney General has provided justifications for employing a disclosure requirement instead of issuing subpoenas. She argues that having immediate access to Form 990 Schedule B increases her investigative efficiency, and that reviewing significant donor information can flag suspicious activity. The reasons that the Attorney General has asserted for the disclosure requirement, unlike those the City of Seattle put forth in *Acorn*, are not "wholly without rationality." *See Buckley*, 424 U.S. at 83. Faced with the Attorney General's "unrebutted arguments that only modest burdens attend the disclosure of a typical [Form 990 Schedule B]," we reject CCP's "broad challenge," *John Doe No. 1*, 561 U.S. at 201. We conclude that the disclosure requirement bears a "substantial relation" to a

"sufficiently important" government interest. *See Citizens United*, 558 U.S. at 366 (internal citations omitted).

However, as the Supreme Court did in *Buckley* and *John Doe No. 1*, we leave open the possibility that CCP could show "a reasonable probability that the compelled disclosure of [its] contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties" that would warrant relief on an as-applied challenge. *See McConnell v. FEC*, 540 U.S. 93, 199 (2003) (rejecting a facial challenge, but leaving open the possibility of a future as-applied challenge).

In sum, CCP's First Amendment facial challenge to the Attorney General's disclosure requirement fails exacting scrutiny.

IV.

CCP also contends that federal tax law preempts the Attorney General's disclosure requirement. CCP argues that Congress intended to protect the privacy of the donor information of non-profit organizations from all public disclosure when it added 26 U.S.C. § 6104, part of the Pension Protection Act of 2006, and that, therefore, permitting state attorneys general to require this information from non-profit organizations registered under § 501(c)(3) would conflict with that purpose. CCP's argument is unavailing.

Federal law is supreme and Congress can certainly preempt a state's authority. However, principles

of federalism dictate that we employ a strong presumption against preemption. *Arizona v. United States*, 132 S. Ct. 2492, 2500 (2012). Therefore, federal law will only preempt state law if such preemption was "the clear and manifest purpose of Congress." *Id.* at 2501. Congress can express that intent explicitly, or the intent can be inferred when a state law irreconcilably conflicts with a federal law. *Id.* Alternatively, "the intent to displace state law altogether can be inferred" when the federal government has established a legislative framework "so pervasive that Congress left no room for states to supplement it." *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). A state law can be in conflict with a federal law when the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.*; *see also Barnett Bank of Marion Cnty. N.A. v. Nelson*, 517 U.S. 25, 31 (1996) (holding that such an obstacle can arise even where the two laws are not directly in conflict).

CCP argues that 26 U.S.C. § 6104(c)(3) expressly preempts the Attorney General's disclosure requirement. That section provides:

> 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.

(emphasis added). CCP reads this language to ban the Secretary from sharing the tax information of § 501(c)(3) organizations with state attorneys general. The language is better construed as a limited grant of authority than as a prohibition. However, even if CCP's reading were accurate, a statute restricting the disclosures that the Commissioner of the IRS may make does not expressly preempt the authority of state attorneys general to require such disclosures directly from the non-profit organizations they are tasked with regulating.

CCP further argues that the Attorney General's disclosure requirement conflicts with the purpose of § 6104, but neither of the two subsections of § 6104 upon which CCP relies can support its argument. Neither subsection indicates that Congress sought to regulate states' access to this information for the purposes of enforcing their laws, or that Congress sought to regulate the actions of any entity other than the IRS. The first subsection allows for the public availability of the tax returns of certain organizations and trusts, but goes on to qualify that "[n]othing in this subsection shall *authorize the Secretary* to disclose the name or address of any contributor to any organization or trust." 26 U.S.C. § 6104(b) (emphasis added). The second subsection lays out disclosure requirements for § 501(c)(3) organizations generally, and then provides an exception to those requirements, such that they "shall not

require the disclosure of the name or address of any contributor to the organization." *Id.* § 6104(d)(3)(A).

These subsections may support an argument that Congress sought to regulate the disclosures that the IRS may make, but they do not broadly prohibit other government entities from seeking that information directly from the organization. Nor do they create a pervasive scheme of privacy protections. Rather, these subsections represent exceptions to a general rule of disclosure. Thus, these subsections do not so clearly manifest the purpose of Congress that we could infer from them that Congress intended to bar state attorneys general from requesting the information contained in Form 990 Schedule B from entities like CCP.

The district court relied on our opinion in *Stokwitz v. United States*, 831 F.2d 893 (9th Cir. 1987), in holding that CCP was unlikely to succeed on its preemption argument. In that case, an attorney for the U.S. Navy was charged with misconduct and his personal tax returns were seized. *Id.* at 893. He argued that 26 U.S.C. § 6103, regulating public disclosure of such documents, forbade their use in the proceedings against him. *Id.* at 894. We disagreed: "[c]ontrary to appellant's contention, there is no indication in either the language of section 6103 or its legislative history that Congress intended to enact a general prohibition against public disclosure of tax information." *Id.* at 896. Instead, the legislative history of the section revealed that "Congress's overriding purpose was to curtail loose disclosure practices by the IRS." *Id.* at 894. Here, since

nothing in the legislative history of § 6104 suggested that its purpose was in any way different from that of § 6103, the district court concluded that the Attorney General's disclosure requirement was likewise not preempted.

While CCP is correct that Congress added § 6104 thirty years after § 6103, and that, therefore, Congress's intent may have differed, our opinion in *Stokwitz* is nevertheless instructive. The very legislative history to which CCP directs us describes the operation of sections 6103 and 6104 in tandem. *See* Staff of the Joint Committee on Taxation, 109th Cong., Technical Explanation of H.R. 4, the "Pension Protection Act of 2006" at 327-29 (Comm. Print 2006). Nothing in the legislative history suggests that Congress sought to extend the regulatory scheme it imposed on the IRS with § 6103 to other entities when it added § 6104. Moreover, when two sections operate together, and when Congress clearly sought to regulate the actions of a particular entity with one section, it is not unreasonable to infer that Congress sought to regulate the same entity with the other. Therefore, *Stokwitz* supports our conclusion that § 6104, like § 6103, is intended to regulate the IRS, and not to ban all means of accessing donor information.

Section 6104 does not so clearly manifest the purpose of Congress that we could infer from it that Congress intended to bar state attorneys general from requesting the information contained in Form 990 Schedule B. *See Arizona*, 132 S. Ct. at 2501. CCP's preemption claim must fail.

V.

In order to prevail on a motion for a preliminary injunction, a plaintiff must show a likelihood of success on the merits and that irreparable harm is not only possible, but likely, in the absence of injunctive relief. *Winter*, 555 U.S. at 20. CCP has not shown a likelihood of success on the merits. Because it is not likely that the Attorney General's disclosure requirement injures CCP's First Amendment rights, or that it is preempted by federal law, it is not likely that CCP will suffer irreparable harm from enforcement of the requirement. Thus, CCP cannot meet the standard established by *Winter*.

For the foregoing reasons, the district court's denial of CCP's motion for a preliminary injunction is **AFFIRMED**.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CENTER FOR COMPETITIVE POLITICS, Plaintiff, v. KAMALA HARRIS, Defendant.	No. 2:14-cv-00636-MCE-DAD **MEMORANDUM AND ORDER** (Filed May 14, 2014)

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

BACKGROUND[1]

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

Plaintiff has been a member of the Registry since 2008. On January 9, 2014, Plaintiff filed its Annual Registration Renewal Fee Report with Defendant, including a copy of its Form 990 and a redacted version of its Schedule B omitting the names and addresses of its contributors. Plaintiff subsequently received a

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

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

letter from Defendant dated February 6, 2014 ("Letter"). See ECF No. 1-1. In the Letter, Defendant acknowledged receipt of Plaintiff's periodic written report, but stated that "[t]he filing is incomplete because the copy of [its] Schedule B, Schedule of Contributors, does not include the names and addresses of contributors." Id. (emphasis omitted). The Letter states that "[t]he Registry retains Schedule B as a confidential record for IRS Form 990 and 990-EZ filers" and requires that Plaintiff must "[w]ithin 30 days of the date of this letter . . . submit a complete copy of Schedule B, Schedule of Contributors, for the fiscal year noted above, as filed with the Internal Revenue Service." Id. (emphasis omitted).

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

STANDARD

A preliminary injunction is an extraordinary remedy, and the moving party has the burden of proving the propriety of such a remedy by clear and convincing evidence. See Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 442 (1974). The party requesting preliminary injunctive relief must show 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." Winter v. Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter). To grant preliminary injunctive relief, a court must find that "a certain threshold showing is made on each factor." Leiva–Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011).

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

These two alternatives represent two points on a sliding scale, pursuant to which the required degree of irreparable harm increases or decreases in inverse correlation to the probability of success on the merits. Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998); United States v. Nutri-cology, Inc., 982 F.2d 1374, 1376 (9th Cir. 1985). Under either formulation of the test for granting a preliminary injunction, however, the moving party must demonstrate a significant threat of irreparable injury. Oakland Tribune, Inc. v. Chronicle Publ'g. Co., 762 F.2d 1374 (9th Cir. 1985).

ANALYSIS

A. Likelihood of Success on the Merits

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

1. Federal Law

As discussed above, Plaintiff files tax information on Form 990 with the IRS. While some of Plaintiff's tax return information is available to the public, the IRS does not publically disclose the names or addresses of any of Plaintiff's contributors. See 26 U.S.C. § 6104(b), (d)(3) (providing that the public inspection copy of 501(c)(3) organization's tax information "shall not require the disclosure of the name or address of any contributor to the organization"). Federal law also prevents the Secretary of the Treasury from releasing the names and addresses of contributors to section 501(c)(3) organizations to state agencies. See 26 U.S.C. § 6104(c)(3) ("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) <u>(other than organizations described in paragraph (1) or (3) thereof</u>) 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 added). Through this statutory language, Plaintiff argues that federal law preempts Defendant's request for a copy of its unredacted Schedule B form.

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

2. Express Preemption

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

Plaintiff's argument is unsupported by the text of the IRC. The IRC only bars the IRS from providing the requested Schedule B to state agencies, it does not address whether a state official, such as Defendant, may request such information directly from an organization such as Plaintiff. Cf. Stokwitz v. United States, 831 F.2d 893, 896 (9th Cir. 1987) (noting that "there is no indication in either the language of section 6103 or its legislative history that Congress intended to enact a general prohibition against public disclosure of tax information"). Therefore, because Congress did not express any intent 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 IRC, Plaintiff may not rely on express preemption.

3. Field and Conflict Preemption

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

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

831 F.2d at 895 (citing the Congressional Record). The Ninth Circuit explained that

> [t]he legislative history of section 6103 indicates 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. The Senate Report explained: "[T]he IRS probably has more information about more people than any other agency in this country. Consequently, almost every other agency that has a need for information . . . logically seeks it from the IRS." Congress also sought to end "the highly publicized attempts to use the Internal Revenue Service for political purposes" involving delivery of tax returns to the White House by the IRS; and to regulate "the flow of tax data from the IRS to State Governments." In short, section 6103 was aimed at curtailing abuse by government agencies of information filed with the IRS. At the same time, Congress realized tax information on file with the IRS was often important to other government agencies. Revised section 6103 represents a legislative balancing of the right of taxpayers to the privacy of tax information in the hands of the IRS and the legitimate needs of others for access to that information.

Stokwitz, 831 F.2d at 894-95 (9th Cir. 1987) (internal citations and quotations omitted) (emphasis added).

The Ninth Circuit also noted that "the statutory definitions of 'return' and 'return information' to which the entire statute relates, confine the statute's coverage to information that is passed through the IRS," not information provided by a taxpayer to another entity. Id. at 895-96 (emphasis added). Thus, it is clear that Congress's intent in regulating how confidential tax return information must be treated was to restrict how tax information is obtained from the IRS, not from taxpayers directly.

Nonetheless, Plaintiff argues that "[Defendant's] interpretation [of section § 6104] would render [it] devoid of any practical effect [and that] Congress's purpose would be plainly frustrated if state officials regulating charitable solicitations could unilaterally compel Schedule B information from tax-exempt organizations." Reply, ECF No. 11 at 6-7. However, in Stokwitz, the Ninth Circuit rejected a similar argument. In that case, the appellant argued that the "purpose of the protection afforded tax data by sections 6103 and 7213 'would be meaningless if such protection were not extended to copies of tax returns and to the pertinent data and information in the hands of the taxpayer.'" Stokwitz, 831 F.2d at 896. The Ninth Circuit rejected that contention noting that "[i]t is quite clear . . . that this was not Congress's view when it revised section 6103." Id. Citing the Senate report, the Court concluded that Congress "disclaimed any intention 'to limit the right of an agency (or other party) to obtain returns or return information directly from the taxpayer.'" Id. Therefore, there is little doubt that

Congress's intent was to regulate the IRS, not state agencies.

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

4. Freedom of Association

Plaintiff also argues that it will prevail on the merits because Defendant's demand unconstitutionally infringes upon its First Amendment freedom of association. Specifically, Plaintiff objects to Defendant's demand because "[f]inancial support is the lifeblood of organizations engaged in public debate" and because Defendant's action "threatens to curtail that necessary supply of resources." Mot., ECF No. 9-1 at 18. Plaintiff argues that while "a government may compel certain disclosures in certain circumstances[,] . . . associational freedom may [only] be limited, so long as the state does so narrowly and specifically, in pursuit of an obvious and compelling government interest." Id. at 17. Thus, Plaintiff argues that because "the Attorney General

has provided no particularized rationale for obtaining CCP's donor information[,]" Defendant's request violates the First Amendment. Reply, ECF No. 11 at 11.

However, in the Ninth Circuit, courts first address whether a plaintiff has presented a prima facie showing of arguable first amendment infringement. See Perry v. Schwarzenegger, 591 F.3d 1126, 1140 (9th Cir. 2009). Such a showing requires Plaintiff to demonstrate that Defendant's action "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." Brock v. Local 375, Plumbers Int'l Union of Am., AFL-CIO, 860 F.2d 346, 350 (9th Cir. 1988) (citations omitted); see also Dole v. Serv. Employees Union, AFL–CIO, Local 280, 950 F.2d 1456, 1459–61 (9th Cir.1991). "This must be shown by presentation of objective and articulable facts, which go beyond broad allegations or subjective fears." Van Fossen v. United States, CV-F-93-137-DLB, 1993 WL 655008 at *2 (E.D. Cal. Dec. 27, 1993) (citing Brock, 860 F.2d at 350). "A merely subjective fear of future reprisals is an insufficient showing of infringement of associational rights." Id. (citing Buckley v. Valeo, 424 U.S. 1, 71-72 (1976)). If Plaintiffs "can make the necessary prima facie showing, the evidentiary burden will then shift to" Defendant. Brock, 860 F.2d at 350.

Rather than argue that Plaintiff has satisfied the prima facie requirement, Plaintiff disputes its applicability arguing that Brock and Dole were factually

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

Brock provides a more analogous set of facts. In that case, the Secretary of Labor, pursuant to his statutory powers, "initiated a compliance audit" of Local 375 after the Department of Labor discovered a discrepancy. Brock, 860 F.2d at 348. The Secretary of Labor subpoenaed "all records pertaining to the fund" and

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

the union refused to comply, arguing that doing so would violate its First Amendment rights. Id. The Ninth Circuit held that in order to prevail on a freedom of association claim in the face of a "lawful governmental investigation[,]" the union must demonstrate a "prima facie showing of arguable first amendment infringement." Id. at 349-51.

Based on the evidence provided to the Court, Defendant's request appears to be justified by a legitimate law enforcement purpose pursuant to Defendant's role as the chief regulator of charitable organizations in the state. See Cal. Gov't Code §§ 12598(a), 12581. Under California's Supervision of Trustees and Fundraisers for Charitable Purposes Act, Defendant is charged with supervising charitable trusts and public benefit corporations incorporated in, or conducting business in California and to protect charitable assets for their intended use. See Opp'n, ECF No. 10 at 10 (citing Cal. Gov't Code §§ 12598(a), 12581). In addition, Defendant has "broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities." Cal. Gov't Code § 12598(a). Defendant may investigate transactions and relationships to ascertain whether the purposes of the corporation or trust are being carried out. Opp'n, ECF No. 10 at 10. In order to do so, Defendant may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear and to produce records. Id. (citing Cal. Gov't Code § 12588). Such an order "shall have the same force and effect as a subpoena." Cal. Gov't Code § 12589. Defendant may

also require periodic written reports from charitable organizations. See Cal. Gov't Code § 12586. Further, pursuant to the Supervision of Trustees and Fundraisers for Charitable Purposes Act, Defendant maintains the Registry, and in so doing, has the power to obtain "whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register." Id. (citing Cal. Gov't Code § 12584). In light of Defendant's role as the state's chief regulator of charitable organizations, Defendant's request is more analogous to the facts in Brock and Dole than the challenges to ordinances in Talley and Acorn Investments. Therefore, the Court concludes that the prima facie showing requirement as articulated by the Ninth Circuit in Brock is applicable in this case.

Here, Plaintiff has not articulated any, objective specific harm that will result to its members if Defendant is permitted to require that Plaintiff produce an unredacted copy of its Schedule B. Plaintiff only suggests that if it is forced to comply with Defendant's demand, such an action "threatens to curtail" its financial support. ECF No. 9-1 at 18. As Defendant notes, "[m]ere speculation about or opinion of the possible consequences of such disclosure is entirely inadequate" to support a prima facie showing of arguable first amendment infringement. ECF No. 10 at 18; see Dole, 921 F.2d at 974. For example, in Dole, the Ninth Circuit held that "two letters from members who stated that they would no longer attend meetings" satisfied the prima facie showing requirement and "clearly suggest[ed] 'an impact on . . . the members' associational

rights.'" Dole, 950 F.2d at 1460 (citing Brock, 860 F.2d at 350). Plaintiff did not make such a showing here. Therefore, because Plaintiff failed to establish a prima facie showing of arguable first amendment infringement, it has not demonstrated that it is likely to prevail on the merits at this point in the proceeding.

Moreover, even if Plaintiff had presented a prima facie showing, based on the evidence before the Court at this time, Defendant's request appears to be justified by compelling state interests and is narrowly tailored to achieve those interests. Defendant's interest in performing her regulatory and oversight function as delineated by state law is compelling and substantially related to the disclosure requirement. Defendant points out that the requested information allows her 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." Opp'n, ECF No. 10 at 19-20. Further, the required disclosure appears to be narrowly tailored with respect to Plaintiff's right of association because the Registry is kept confidential and Plaintiff's Schedule B would not be disclosed publically. On this ground too, then, Plaintiff failed to show it is likely to succeed on the merits.

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

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

CONCLUSION

Because Plaintiff failed to demonstrate that it is likely to succeed on the merits or that Defendant's

action will cause a significant threat of irreparable injury, Plaintiff's Motion for Preliminary Injunction, ECF No. 9, is DENIED.

IT IS SO ORDERED.

Dated: May 13, 2014

/s/ Morrison C. England, Jr.
MORRISON C. ENGLAND, JR.
CHIEF JUDGE
UNITED STATES
DISTRICT COURT

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1. CAL. GOV'T CODE § 12584 provides:

Register of charitable corporations and trustees

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.

2. CAL. GOV'T CODE § 12586 provides, in relevant part:

Report on assets and administration; Rules and regulations for reports; Time for filing first report; Requirements when gross revenue in excess of $2 million; Access to other audits; Review and approval of compensation

(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.

3. CAL. CODE REGS, tit.11, § 301 provides:

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.

4. CAL. CODE REGS, tit.11, § 310(b) provides:

Donor information exempt from public inspection pursuant to Internal Revenue Code section 6104(d)(3)(A) shall be maintained as confidential by the Attorney General and shall not be disclosed except as follows:

(1) In a court or administrative proceeding brought pursuant to the Attorney General's charitable trust enforcement responsibilities; or

(2) In response to a search warrant.

5. CAL. GOV'T CODE § 12591.1 provides, in relevant part:

Civil penalty; Cease and desist orders; Suspension of registration; Hearing; Opportunity to correct violation

* * *

(c) The Attorney General may impose a penalty on any person or entity, not to exceed one thousand dollars ($1,000) per act or omission, for each act or omission that constitutes a violation of this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations. At least five days prior to imposing that penalty, the Attorney General shall provide notice to the person or entity that committed the violation by certified mail to the address of record at the Registry of Charitable Trusts. Penalties shall accrue, commencing on the fifth day after notice is given, at a rate of one hundred dollars ($100) per day for each day until that person or entity corrects that violation. Penalties shall stop accruing as of the date set forth in the written notice provided by the Attorney General that the violation or omission subject to penalties has been corrected or remedied.

(d) If the Attorney General assesses penalties under this section, the Attorney General may suspend the registration of that person or entity in accordance with the procedures set forth in Section 999.6 of Title 11 of the California Code of Regulations. Registration shall be automatically suspended until the fine is paid and no registration shall be renewed until the fine is paid.

6. CAL. GOV'T CODE § 12598 states, in relevant part:

Attorney General's powers for enforcement responsibilities; Recovery of costs

* * *

(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.

7. 26 U.S.C. § 6104(c) provides, in relevant part:

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

* * *

(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.

8. 26 U.S.C. § 6104(d) provides in relevant part:

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

* * *

(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.

9. 26 U.S.C. § 7213 provides, in relevant part:

Unauthorized disclosure of information.

(a) Returns and return information.

(1) Federal employees and other persons. It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees. It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (k)(10),(13) (l)(6), (7), (8), (9), (10), (12), (15), (16), (19), (20), or (21) or (m)(2), (4), (5), (6), or (7) of section 6103 or under section 6104(c). Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) Other persons. It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) Solicitation. It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) Shareholders. It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

*   *   *

(c) Disclosures by certain delegates of Secretary. All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

* * *

(e) Cross references.

(1) Penalties for disclosure of information by preparers of returns. For penalty for disclosure or use of information by preparers of returns, see section 7216.

(2) Penalties for disclosure of confidential information. For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

10. 26 U.S.C. § 7431 provides, in relevant part:

Civil damages for unauthorized inspection or disclosure of returns and return information.

(a) In general.

(1) Inspection or disclosure by employee of United States. If any officer or employee of the United States knowingly, or by reason of negligence, inspects

or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) Inspection or disclosure by a person who is not an employee of United States. If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103 or in violation of section 6104(c), such taxpayer may bring a civil action for damages against such person in a district court of the United States.

(b) Exceptions. No liability shall arise under this section with respect to any inspection or disclosure –

(1) which results from a good faith, but erroneous, interpretation of section 6103, or

(2) which is requested by the taxpayer.

(c) Damages. In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(1) the greater of—

(A) $ 1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of—

(i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

(ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

(2) the costs of the action, plus

(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).

(d) Period for bringing action. Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

(e) Notification of unlawful inspection and disclosure. If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

(1) paragraph (1) or (2) of section 7213(a),

(2) section 7213A(a), or

(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code, the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

KAMALA D. HARRIS ***State of California***
Attorney General ***DEPARTMENT OF JUSTICE*** [SEAL]

1300 I Street
P. O. Box 903447
Sacramento, CA 94203-4470
Telephone: (916) 445-2021
Fax: (916) 444-3651
E-Mail Address:RCT @doj.ca.gov

February 6, 2014

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

CT FILE NUMBER:
CT0149998

RE: IRS Form 990 Schedule B, Schedule of Contributors

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

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

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

Sincerely,

/s/ AB
Office Technician
Registry of Charitable Trusts

For KAMALA D. HARRIS
Attorney General

KAMALA D. HARRIS ***State of California***
Attorney General ***DEPARTMENT OF JUSTICE*** [SEAL]

1300 I Street
P. O. Box 903447
Sacramento, CA 94203-4470
Telephone: (916) 445-2021 Ext 6
Fax: (916) 444-3651
E-Mail Address: Delinquency@doj.ca.gov

December 11, 2014

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

CT FILE NUMBER: CT0149998

RE: **WARNING OF ASSESSMENT OF PENALTIES AND LATE FEES, AND SUSPENSION OR REVOCATION OF REGISTERED STATUS**

The Registry of Charitable Trusts has not received annual report(s) for the captioned organization, as follows:

1. The IRS Form 990, 990-EZ or 990-PF submitted for the fiscal year ending **12/31/12** does not contain a copy of the Schedule B, Schedule of Contributors, with the names and adddresses [sic] of the contributors as required. The copy of the IRS Form 990, 990-EZ or 990-PF, including all attachments, filed with the Registry must be identical to the document filed by the organization with the Internal Revenue Service. The Registry retains Schedule B

as a confidential record for IRS Form 990 and 990-EZ filers.

Failure to timely file required reports violates Government Code section 12586.

Unless the above-described report(s) are filed with the Registry of Charitable Trusts within thirty (30) days of the date of this letter, the following will occur:

1. The California Franchise Tax Board will be notified to disallow the tax exemption of the above-named entity. The Franchise Tax Board may revoke the organization's tax exempt status at which point the organization will be treated as a taxable corporation (See Revenue and Taxation Code section 23703) and may be subject to the minimum tax penalty.

2. Late fees will be imposed by the Registry of Charitable Trusts for each month or partial month for which the report(s) are delinquent. Directors, trustees, officers and return preparers responsible for failure to timely file these reports are **also personally liable** for payment of all late fees.

   PLEASE NOTE: Charitable assets **cannot** be used to pay these avoidable costs. Accordingly, directors, trustees, officers and return preparers responsible for failure to timely file the above-described report(s) are **personally liable** for payment of all penalties, interest and other costs incurred to restore exempt status.

3. In accordance with the provisions of Government Code section 12598, subdivision (e), the Attorney

General **will suspend the registration** of the above-named entity.

If you believe the above described report(s) were timely filed, they were not received by the Registry and another copy must be filed within thirty (30) days of the date of this letter. In addition, if the address of the above-named entity differs from that shown above, the current address must be provided to the Registry prior to or at the time the past-due reports are filed.

In order to avoid the above-described actions, please send all delinquent reports to the address set forth above, within thirty (30) days of the date of this letter.

Thank you for your attention to this correspondence.

Sincerely,

Registry of Charitable Trusts

For KAMALA D. HARRIS
Attorney General

Detailed instructions and forms for filing can be found on our website at http://ag.ca.gov/charities.