No. 15-152

IN THE
SUPREME COURT OF THE UNITED STATES

CENTER FOR COMPETITIVE POLITICS,
Petitioner,
v.
KAMALA D. HARRIS, ATTORNEY GENERAL OF CALIFORNIA,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Brief *Amicus Curiae* of American Target Advertising, Inc. and 57 Nonprofit and Other Organizations in Support of Petitioner

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September 1, 2015

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IRC 501(c)(4) organizations: The 60 Plus Association, Inc., American Council for Health Care Reform, American Grassroots Council, Inc., American Policy Center, Campaign for Liberty, Citizens Outreach, Inc., Citizens United, Coalition for America (The Weyrich Lunch), Committee for the Republic, Concerned Women for America, Faith & Freedom Coalition, ForAmerica (America, Inc.), Frontiers of Freedom, Grassroots Hawaii Action, Gun Owners of America, Independent Women's Voice, Liberty Guard, Liberty Initiative Fund, Maryland Taxpayer Association, National Organization for Marriage, Patriot Voices, Securing Equal Education Development, Taxpayers Protection Alliance, Traditional Values Coalition.

Other: ClearWord Communications Group, Inc., Donor rends Corporation, Eberle Associates, Fund Raising Strategies, Inc., McFarland Messaging, MDS Communications.

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INTEREST OF THE *AMICI CURIAE*[1]

American Target Advertising, Inc. has a strong interest in the matters raised in this litigation because it is a for-profit agency that provides creative services to nonprofit organizations that communicate about their tax-exempt missions and appeal for contributions, and is registered as a fundraising counsel under the Supervision of Trustees and Fundraisers for Charitable Purposes Act.

The IRC section 501(c)(3) charitable/educational organizations and 501(c)(4) organizations listed on the inside front cover wish to protect their constitutional rights harmed by Respondent and the Ninth Circuit.

The following for-profit organizations have a strong interest in this litigation because they provide services to nonprofit organizations about communications involving appeals for contributions: ClearWord Communications Group, Inc., Donor Trends Corporation, Eberle Associates, Fund Raising Strategies, Inc., McFarland Messaging, MDS Communications.

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1 It is certified that counsel for the parties were timely notified and have consented to the filing of this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

Certiorari should be granted because the Ninth Circuit decided important questions of federal law about Respondent's demands for disclosure of federally protected confidential tax return information to her and individuals in her state office, made under threat of penalties including fines, censorship and loss of tax-exempt status, using a licensing process that is a prior restraint on the exercise of First Amendment rights. Whether those demands violate federal law and constitutional rights have not been, but should be, settled by this Court. The Ninth Circuit also decided important federal questions about state intrusion on, and disruption of, constitutionally protected private associations between citizens (including many not subject to the state's jurisdiction) and nonprofit organizations, under dragnet and extortionate conditions, in a way that conflicts with relevant decisions of this Court about the freedom of association and the First Amendment.

The court of appeals misapplied the correct standard of review for regulation of nonprofit speech and publication, and for private association between citizens and those organizations. Had the court of appeals adhered to applicable First Amendment principles governing prior restraints, it would have ruled in favor of the Petitioner.

The court of appeals failed to adhere to the correct principle that the establishment of requirements for a license to engage in rights protected by the Constitution, which itself is disfavored by the First

Amendment, must be a legislative act, and that the California statute giving unbridled discretion to the Respondent to establish conditions of application for, issuance, or denial of such licenses violates the First Amendment on its face and the guarantee of a republican form of government under the United States Constitution.

ARGUMENT

I. THE COURT BELOW DECIDED MULTIPLE IMPORTANT FEDERAL QUESTIONS IN DISREGARD OF, AND IN CONFLICT WITH THIS COURT'S FIRST AMENDMENT JURISPRUDENCE

The petition for writ of certiorari filed by the Center for Competitive Politics (the "Petition") involves application of California's charitable solicitation law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act. CAL. GOV'T CODE section 12580 *et seq.* (the "California Code"). The statute regulates "all charitable corporations, unincorporated associations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers." *Id.*, Sec. 12581. Pursuant to the statute, nonprofit organizations must obtain a license to communicate with citizens in ways that involve appeals (solicitations) for funds. *Id.*, Sec. 12585.

Section 12585(b) reads: "The Attorney General

shall adopt rules and regulations as to the contents of the initial registration form and the manner of executing and filing that document or documents." After initial registrations, entities must then file applications annually to renew their licenses for charitable solicitation.

At issue is the demand by Respondent who administers this statute, the Attorney General of California, that nonprofits file an un-redacted copy of Schedule B to Internal Revenue Service Form 990 disclosing the names and addresses of the organizations' top contributors. As explained herein below, this demand violates federal law protecting the confidentiality of tax return information. Petitioner sought a preliminary injunction against the enforcement of this regulation on the ground that it violates the First Amendment. The District Court denied the injunction, and the Ninth Circuit affirmed.

Respondent is doing through the annual licensing process, in a dragnet fashion, and for many registrants, reaching individuals with no jurisdictional contacts with California, what this Court prohibited being done by the State of Alabama, which sought to "compel petitioner to reveal to the State's Attorney General the names and addresses of all its Alabama members and agents." NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 451 (1958). Respondent is violating the freedom of association protected by the First Amendment, and for many organizations that raise money nationally, infringing on rights of individual donors not even subject to California's jurisdiction. These violations are compounded by

Respondent's extortionate use of a prior restraint licensing requirement, whereby nonprofit organizations and their principals are subject to fines, censorship and loss of tax-exempt status for operating in contradiction of Respondent's recent demands that are not required by the California Code for the licensing process.

To justify her dragnet and arbitrary violations, Respondent uses speculative claims of a need to investigate (*see* Petition at 8 – 9), yet not even with the veneer of Fourth Amendment protections.

Four times since 1980 this Court has needed to rebuff the over-aggressiveness of state charitable solicitation licensing laws, or the application of them, to protect the vital First Amendment interests of charitable speech and publication. "Regulation of a solicitation must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech * * * and for the reality that, without solicitation, the flow of such information and advocacy would likely cease." Riley v. National Federation of the Blind, 487 U.S. 781, 802 (1988), citing Schaumburg v. Citizens for Better Environment, 444 U.S. 620, 632 (1980), Secretary of State v. Munson, 467 U.S. 947, 959 - 960 (1984). *See also* Illinois ex rel. Madigan v. Telemarketing Associates, Inc., 538 U.S. 600 (2003).

Charitable solicitations do not involve the same perceived danger of *quid pro quo* and corruption underlying campaign finance laws (unless, perhaps, for

charities established by politicians, which could be regulated in ways other than by violating the First Amendment rights of all nonprofits). But even speech soliciting funds to advocate for the election or defeat of candidates for public office requires exacting scrutiny. "We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since NAACP v. Alabama we have required that the subordinating interests of the State must survive exacting scrutiny." Buckley v. Valeo, 424 U.S. 1, 64 (1976).

The purposes of charitable solicitations, its regulation, and charitable donations, however, are not the same as those of political campaign finance. The Ninth Circuit's reliance on Buckley to construe charity regulation is severely misplaced and detrimental to more and distinct First Amendment rights.

Nonprofit speech made with solicitations for funds involves issues far more comprehensive than speech advocating for the election or defeat of candidates for public office. While campaign appeals have one central (and important) purpose -- election or defeat of candidates -- nonprofit appeals have far more varied purposes. They inform, advocate, and foster debates about many issues -- controversial and not -- such as medicine and science, religion and politics, social welfare, public policy and private actions, cures for diseases, feeding the poor, housing the homeless, caring for wounded veterans and their families, providing care for abused and abandoned animals, and

promoting safety in our communities. Cumulatively, they touch on every major aspect of society. Some inform citizens about civil liberties, the Constitution, and the law. Many criticize actions taken by the legislative, executive and judicial branches of government, and are independent checks on government. Some even hold law enforcement officials such as Respondent accountable. They are used to criticize large private institutions and even other nonprofit entities. Nonprofits are independent of the government's officious views, and collectively are commonly referred to as the "Independent Sector."[2]

Unlike the one-way communications of standard news organizations, the speech and publications of nonprofit organizations are used specifically to interact with, and obtain the involvement of, citizens in matters of our local, state, national, or global communities or interests. This involvement and interaction may be done through communications broadcasted or published to the public, but it is also done through **private and direct** channels such as conversations, the United States mail, or email. When citizens perceive that the missions of nonprofits are worthy, donations resulting from solicitations are a means by which they may adhere to, and associate with, organizations that may be in their local communities or in locations far away. Private

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[2] *About.com* refers to the "Independent Sector" as "[a] term used to describe the nonprofit world. Made up of organizations that are neither governmental nor for-profit businesses. A coalition of nonprofit organizations." http://nonprofit.about.com/od/ij/g/.

donations are the means by which small organizations may grow into larger ones, and sustain them.

Donations to nonprofits are a valuable and irreplaceable means of **private association** integral to non-governmental, Tocquevillian democracy in American society, and for the benefit of people, animals, and the environment.

Respondent has no officious business in the private relationships between donors and nonprofits absent individualized suspicion of cause of some illegal conduct. In a way more comprehensive and arbitrary than the Alabama attorney general's warrant and demands ruled unconstitutional in NAACP v. Alabama, Respondent is using the licensing requirement as a substitute for an unconstitutional general warrant, which disrupts, intimidates, and trespasses on security of the liberty of private association. California's prior restraint on nonprofit speech therefore has rippling unlawful and harmful effects.

Petitioner's request below for injunctive relief is indicative of the urgency that the *amici* urge the Court to consider as needed to address the constitutional issues and loss of rights at stake. Because Respondent's demands are a new phenomenon to charitable solicitation registration, this Court has never sanctioned the practice, and its adjudication by this Court is needed. The Ninth Circuit's failure to enjoin Respondent's trespass on these private relationships and violations of First Amendment rights requires swift correction.

II. RESPONDENT'S PRIOR RESTRAINT ON SPEECH CREATES PENALTIES FOR HARMLESS EXERCISE OF RIGHTS

The California Code creates a prior restraint on speech, and is easily distinguishable from many forms of regulation of speech. It is unlike laws that prohibit and punish harms such as fraud in commercial solicitations, or regulations of election-related solicitations that have been justified to prohibit *quid pro quo* between donors and elected officials. Such laws are not prior restraints.

"Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Assn. v. Stuart, 427 U.S. 539, 559 (1976). "A system of prior restraint on expression comes to this Court bearing a heavy presumption against its constitutional validity." Carroll v. Princess Anne, 393 U. S. 175, 181 (1968); Freedman v. Maryland, 380 U. S. 51, 57 (1965); Bantam Books, Inc. v. Sullivan, 372 U. S. 58, 70 (1963).

Despite no harm caused by a nonprofit, Respondent is already issuing written warnings to nonprofits that failure to file IRS Form 990 Schedule B may result in suspension or loss of registration to solicit funds, loss of tax-exempt status, and late fees. Charitable assets may not be used to pay these costs, and directors, trustees, officers, and return preparers are therefore personally liable. *See* Appendix, A-1 – A-3, July 16, 2015 letter from Respondent to redacted

recipient, "WARNING OF ASSESSMENT OF PENALTIES AND LATE FEES, AND SUSPENSION OR REVOCATION OF REGISTERED STATUS."

To put the prior restraints and potential censorship of the multiple state charitable solicitation laws into broader context, multiply the effect of these prior restraints by approximately 4/5 of the states that have charitable solicitation licensing laws. Which is to say that over one-fifth of the states do not consider the prior restraint of charitable solicitation licensing laws as necessary (which is also to say that however vital this Court may believe charitable solicitation licenses are to protect citizens, eleven states do not agree).[3]

Consider also the rigors of obtaining tax-exempt status from the Internal Revenue Service, which process has been in the news and subject to congressional investigations for delays and other malfeasance based on ideological prejudices at the IRS.[4]

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[3] The following states do not require charities to obtain licenses to solicit: Arizona, Delaware, Idaho, Indiana, Iowa, Montana, Nebraska, South Dakota, Texas (unless veteran's organization), Vermont, and Wyoming. See, for example, "State Charitable Solicitation Registration Requirements – 2013 Update," National Association of College and University Attorneys, http://www.nacua.org/nacualert/docs/CharitableSolicitation/2013_JurisdictionalRequirementsCharitableSolicitation.pdf.

[4] *See* "IRS Delays in Acting on Applications for 501(c)(4) Tax Exemption Persist," *The Nonprofit Quarterly*, February 27, 2015, http://nonprofitquarterly.org/2015/02/27/irs-delays-in-

Depending on their purposes, or perhaps because they receive substantial financing from government sources or well-endowed foundations (hence solicitation from the general public is less essential for their existence), some nonprofits may be inclined to court favor with the government, public officials and large institutions, or at least temper their criticisms of them.

Others untethered from government financing are sometimes more candidly critical of powerful people and institutions, which is often why citizens may wish to privately associate with, and contribute money to, them. Those organizations give voice to citizens who may be fearful of reprisal, who otherwise guard their privacy, or who wish simply to pool resources. These nonprofits, of course, are all-the-more susceptible to the desire to censor them, whether through loss of licenses, or debilitating and humiliating investigations -- or more indirectly through intimidation of their donors. "Nonprofit leaders are some of the most effective critics of politicians and government policy. For that reason these organizations are especially vulnerable to government investigations used to intimidate and silence them." M. Fitzgibbons, "Rights Abuses:

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acting-on-applications-for-501-c-4-tax-exemption-persist/; "Senate Report: IRS Mismanagement Led to Targeting of Tea Party Groups," *Philanthropy News Digest*, August 8, 2015, http://philanthropynewsdigest.org/news/senate-report-irs-mismanagement-led-to-targeting-of-tea-party-groups.

Investigations of charities must comply with the Fourth Amendment," *The NonProfit Times*, April 1, 2015.[5] Charity regulators are often insensitive to, or disrespectful of, these First Amendment concerns; many insufficiently trained in matters of legal and constitutional principles, and even the law of matters for which they have oversight in the licensing process, such as contracts or investigations; many inefficient in their methods of regulation, raising costs of compliance. *See*, M. Fitzgibbons, "A lack of lawful and competent oversight of charities," *The NonProfit Times*, February 1, 2013, Appendix, at A-4 – A-9.

As this Court stated in Thornhill v. Alabama:

> Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. . . . The power of the licensor against which John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of particular comments, but by the reason of the threat to censure comments on matters of public concern. It is not merely the sporadic abuse of power by the censor, but the

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5 http://www.thenonprofittimes.com/news-articles/rights-abuses-investigations-of-charities-must-comply-with-the-fourth-amendment/.

> pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.

Thornhill v. Alabama, 310 U.S. 88, 97 (1940) (citations omitted).

Nonprofit appeals are also sometimes a necessary medium used for the dissemination of petitions for redress of grievances, for the free expression of religious views, to publish news and information not found in corporate media reporting, and to foster Toquevillian involvement of citizens for many beneficial causes. They therefore involve more rights protected by the First Amendment than just speech, and their causes exceed electing or defeating candidates. For the free flow of valuable information, the prior restraint of these communications poses as great a danger as -- or greater than -- regulation of other classes of speech.

III. DISCRETION GIVEN BY THE STATUTE TO THE ATTORNEY GENERAL TO CREATE CONDITIONS OF LICENSURE AND DENIAL OF RIGHTS IS UNCONSTITUTIONAL ON ITS FACE

California Code section 12585(b) gives the Attorney General unbridled discretion to decide what nonprofit organizations must file with her before they may communicate to citizens with appeals for donations.

Life is certainly more downhill with the wind at

the back of regulators or law enforcement officials who may set the terms of what it is they may regulate, and how. However, in the context of laws regulating the exercise of rights protected by the First Amendment -- and particularly prior restraints where threats to the deprivation of First Amendment rights are even more pronounced -- the constitutional harm is not merely based in *ad hoc* or instance-by-instance decisions of a licensor, but in establishing blanket or dragnet conditions that could impede or chill speech of all speakers, or even just some groups or categories of speakers. *See* Thornhill, *supra*.

California Code section 12585(b) must be declared unconstitutional on its face for First Amendment reasons. In American Target Advertising, Inc. v. Giani, 199 F.3d 1241 (10th Cir. 2000), the Utah charitable solicitation statute being challenged required fundraising counsel to "first obtain[] a permit from the division by complying with all of the following application requirements * * * *" Former Utah Code section13-22-9 (Appendix, A-10 - A-15). The statute required that registration be done by "a written application, verified under oath, on a form approved by the division that includes" -- and then the statute listed 13 explicit requirements as mundane as name and phone number of the registrant, plus a fourteenth requirement of "any additional information the division may require." *Id.*, Sec. 13-22-9(1)(b)(xiv). *See* Appendix, A-14. That last "unbridled" delegation to the licensor of what to require in the application form was declared unconstitutional on its face. American Target Advertising, 199 F.3d, at 1252.

The California Code is a broader delegation of legislative authority than the former Utah statute, and the one upheld in Whitman v. American Trucking Assns., Inc., 531 U.S. 457 (2001) (Clean Air Act requiring the Environmental Protection Agency to promulgate national ambient air quality standards). The California Code is distinguishable from the statute in Whitman as a complete delegation of discretion over a prior restraint on speech, not a regulation of acts of lesser or no constitutional protections such as pollutants emitted into the atmosphere, meriting no judicial deference under the Constitution.

California Code section 12585(b) offends the Constitution, however, on more than First Amendment grounds; it offends its republican structure. That structure, as this Court knows, is intended to protect the security of liberty of Americans.[6]

"Whether [a] statute delegates legislative power is a question for the courts." Whitman, 531 U.S., at 473. The Constitution guarantees a republican form of government within the states: "The United States shall guarantee to every state in this union a republican form of government * * * *" U.S. CONST. art IV, sec. 4. Federalist 43 makes clear that this guarantee applies to how the states must govern themselves, and that the Constitution and the "interposition of the general government" may be needed to enforce this guarantee on the states.

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[6] The separation of powers "is admitted on all hands to be essential to the preservation of liberty." Federalist 51.

Even the California Constitution does not authorize the Attorney General to exercise legislative power, but expressly vests it only "in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum." CAL. CONST. art. IV, sec. 1.

In Loving v. United States, this Court said, "[t]he fundamental precept of the delegation doctrine is that the lawmaking function belongs to Congress." Loving v. United States, 517 U.S. 748, 758 (1996). "Congress as a general rule must also lay down an intelligible principle to which the person or body authorized to [act] is directed to conform * * * [which] seeks to enforce the understanding that Congress may not delegate the power to make laws and so may delegate no more than the authority to make policies and rules that implement its statutes." Loving, 517 U.S., at 771 (citations omitted).

California Code section 12585(b) is a standardless delegation of legislative authority to Respondent to make all of the conditions of licensure over rights guaranteed by the Constitution. It does not direct an exercise of policy judgment in administration or enforcement of a law, but authorizes the Respondent to create entirely from whole cloth the application that nonprofits must file to be eligible to exercise constitutionally protected rights. When combined with Respondent's power as the law enforcement official to issue or deny these licenses, the delegation to her violates the basic constitutional guarantees of separation of powers in a republican form of

government, which exacerbates the dangers of the statute's prior restraint. This has the effect of turning a right reserved to the people into a privilege that may (or may not) be granted by the government. It becomes a prior restraint not just created by the people's duly elected legislators -- which is already constitutionally suspect -- but of one law enforcement office within the government, making rights further removed from constitutional protections in our republican form of government.

There is uncertainty here where more certainty is needed to protect rights. At what point does legislative delegation become anti-republican, and at what point does delegation of legislative authority become a subversion to, or even disdainful of, the rights that the Constitution is structured to protect? And, at what point does the "intelligible principle" doctrine become unintelligible to legislatures, fostering neglect or worse? The Constitution is structured for effective governance, but certainly not to give government the path of least resistance, especially when rights are involved. This Court needs to restore some faith in the rule of law over government by saying this delegation to Respondent has gone too far.

"Certainly all those who have framed written constitutions contemplate them as forming the **fundamental and paramount law of the nation**, and consequently the theory of every such government must be, that an act of the legislature repugnant to the constitution is void." Marbury v. Madison, 5 U.S. 137, 177 (1803) (emphasis added). Unlike its unwritten predecessor English constitution, whereby the

legislature could decide what was paramount law, the United States Constitution was an advancement in the rule of law over government by being supreme law over even legislatures. "To control the power and conduct of the legislature, by an overruling constitution, was an improvement in the science and practice of government reserved to the American states." Department of Transportation v. Association of American Railroads, 575 U.S. ___, ___ (2015) (THOMAS, J., concurring) (emphasis added and citations omitted).

Indeed, the Constitution is the law that governs government itself.[7] Despite this Court's prudent reluctance to declare acts of state legislatures unconstitutional, this is an appropriate case for the Court to declare California Code sec. 12585(b) illegal, unconstitutional, and void.

IV. RESONDENT'S DEMAND FOR DISCLOSURE OF DONOR NAMES IN THE LICENSING PROCESS VIOLATES FEDERAL LAW PROTECTING CONFIDENTIAL TAX RETURN INFORMATION, AND IS EXTORTIONATE

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[7] The Constitution is "The Law That Governs the Government," as described by Loyola Law Professor Aaron Caplan, *See*, AN INTEGRATED APPROACH TO CONSTITUTIONAL LAW, Chapter 2, at 13 (Foundation Press 2015), http://www.caplanintegratedconlaw.com/forms/SampleChapter2.pdf.

An August 5, 2015 bipartisan report of the Senate Finance Committee about the Internal Revenue Service's treatment of nonprofit organizations identifies various unlawful disclosures of confidential tax information by the IRS, including the Form 990 Schedule B information of the National Organization of Marriage, one of the *co-amici* on this brief.[8]

Recently publicized violations of disclosure of confidential tax return information by the IRS -- and of course what is publicized is based only on the times that the IRS was caught -- demonstrate that even the federal service with its supposedly sophisticated guards of confidentiality is untrustworthy. State attorneys general are partisan elected positions subject to the temptations and whims of partisan politics no matter how dedicated and professional, making their offices potentially more untrustworthy in these circumstances.

Whether or not state attorneys general could guarantee that confidential tax return information would not be leaked intentionally for nefarious reasons, or disclosed to third parties unintentionally, the fact that any would demand confidential tax information as a condition of a license to engage in

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[8] THE INTERNAL REVENUE SERVICE'S PROCESSING OF 501(C)(3) AND 501(C)(4) APPLICATIONS FOR TAX-EXEMPT STATUS SUBMITTED BY "POLITICAL ADVOCACY" ORGANIZATIONS FROM 2010-2013, REP. 119, 114th Cong. 1st Sess. (2015) 136, http://op.bna.com/der.nsf/id/klan-9z4sa5/$File/FINAL%20Bipartisan%20Staff%20Report.pdf.

speech protected by the First Amendment must be deemed a violation of federal law.

Internal Revenue Code (IRC) sections 6103 and 6104 provide for the confidentiality of tax return information, and list the **express and limited circumstances** under which states may obtain confidential tax return information. The ban on unlawful disclosure applies to the IRS and state officials. IRC section 6103(a) states: "Returns and return information shall be confidential, and except as authorized [under Title 26] no officer or employee of any state . . . shall disclose any return or return information." (Emphasis added.)

Respondent's demand that nonprofits file their partial donor lists on this federally protected form is itself unlawful disclosure. "The term 'disclosure' means the making known **to any person in any manner whatever** a return or return information." IRC section 6103(b)(8) (emphasis added). The prohibition is not merely on disclosure to the general public. "Any person" certainly must include persons within state (or federal) government whose offices are not expressly authorized to view confidential tax return information. That reading is not only consistent with the federal statutes, but is required. Otherwise, viewing confidential tax return information becomes a government free-for-all.

Respondent's demand for Form 990 Schedule B makes confidential tax return information "known" to Respondent and some unknown number of civil servants of unknown security clearances, legal

training, or affiliations in her office who may not be suitably vetted or supervised for such sensitive matters. *See, for example*, "Kamala Harris aide arrested for allegedly running rogue police force," *Politico*, May 6, 2015.[9] Her demands are therefore illegal.

As interpreted by the IRS, the federal statutes' ban on disclosure except as authorized by the statutes themselves is clear: "For a disclosure of any return or return information to be authorized by the Code, there must be an **affirmative authorization** because section 6103(a) otherwise prohibits the disclosure of any return or return information by any person covered by section 7213(a)(1)." *Disclosure & Privacy Law Reference Guide*, IRS Publication 4639, 1-49. (Emphasis added.)

Respondent's arbitrary, dragnet licensing demands for names and addresses of donors listed on Form 990 Schedule B are not affirmatively authorized by IRC sections 6103 or 6104, thereby creating illegal "disclosure" within her office. Civil and **criminal penalties** described in IRC section 7213 for state officials are not a matter for this Court to decide for the present Petition, but highlight the seriousness of confidentiality of tax return information, and are relevant to the reasons why this Court should grant certiorari to create notice that such conduct is reviewable as unlawful.

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[9] http://www.politico.com/story/2015/05/brandon-kiel-kamala-harris-aide-arrested-117683.html.

IRC sections 6103 and 6104 foreclose Respondent's dragnet licensing demands. Only "[u]pon written request by an appropriate State officer, the Secretary [of the Treasury] may make available for inspection or disclosure returns and return information of any organization described in section 501(c) (other than organizations described in paragraph (1) or (3) thereof) for the purpose of, **and only to the extent necessary in**, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations." IRC section 6104(c)(3) (emphasis added). The federal statutes are clear that such information may be obtained only in limited circumstances, and with statutory checks on **disclosure to states**.

Respondent's demands creating disclosure of confidential tax return information are not required by the California Code, and certainly are not "necessary" -- a condition required by IRC section 6104(c)(3) -- to the licensing of charitable solicitation. The court of appeals also failed to explain why such information, if ever relevant to an investigation of a particular nonprofit, could not be obtained by investigative methods consistent with the Fourth Amendment rather than through a dragnet licensing process.

Congress wisely did not presume the benevolence of state officials that the Ninth Circuit seemed to assume, and limited disclosure within states to expressly delineated circumstances.

Indeed, Respondent has already taken steps to

further violate the IRC 6104(c)(3) requirement that disclosure be limited "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." In a recently proposed regulation, Respondent would make confidential tax information available for "administrative subpoenas,"[10] which are issued unilaterally by government agencies without the need to show probable cause to judges. Respondent would therefore be acting as a hub for disclosure to other, unlimited state offices, and her violations of federal law **would be cloaked from notice to the victims**.

It is appropriate here to note that controversial former IRS official Lois Lerner collaborated extensively about Form 990 information and enforcement issues with state charitable solicitation officials and their umbrella organization, the National Association of State Charity Officials (NASCO), an affiliate of the National Association of Attorneys General.

At the same time her Tax Exempt division at the IRS was engaging in ideologically discriminatory policies, Ms. Lerner was collaborating with state officials to help "ramp up" their regulation of nonprofit organizations. As reported in the *BNA Daily Tax*

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[10] *See* "California Charity Registration: Form 990 Schedule B Disclosure," *Nonprofit Law Blog*, June 21, 2015, http://www.nonprofitlawblog.com/california-charity-registration-form-990-schedule-b-disclosure/.

Report:[11]

> The increase in federal-state cooperation is not imagined, but confirmed by both federal and state officials. According to both Lois Lerner, IRS Director, Exempt Organizations, and Mark Pacella, chief deputy attorney of the Pennsylvania Attorney General's Office, information sharing between the IRS and state AGs is ramping up. Over the past four years, Lerner said in April, state charity oversight officials referred 600 organizations to the IRS, and 90 percent of those referrals led to examinations.
>
> And as reported at *CNSNews.com*:
>
> Ms. Lerner touts a proposed rulemaking … to reduce barriers to states' participation in the [IRS'] information-sharing program * * * Lerner explained that the IRS expected to have regular interaction with NASCO about the new filing and monitor trends that arise with

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[11] "States Ramp Up Regulation of Nonprofits – With Help from the Feds," July 13, 2011" http://www.mondaq.com/unitedstates/x/138762/Corporate+Tax/States+Ramp+Up+Regulation+of+Nonprofits+With+Help+From+the+Feds

> the new Form 990 . . . .[12]

Ms. Lerner collaborated with state charity officials on her office's redesign of IRS Form 990, noting their existing "compliance relationship" would increase. As reported in 2009 by *The NonProfit Times*:

> Lerner explained that the IRS expected to have regular interaction with NASCO about the new filing and monitor trends that arise with the new Form 990 and hoped the feedback would help shape future adjustments. The IRS and state regulators already have a compliance relationship — the IRS can give some information to state regulators about enforcement activities under the Pension Protection Act of 2006, while the state regulators can lead the IRS to potential tax violations. In 2008, EO disclosed nearly 200 enforcement activities to state agencies, including terminations and revocations, and state officials made 83 referrals to EO, including political activities, employment tax and failures in operating within designated exemption

[12] "CA, NY Attorneys General Accused of Violating Donor Confidentiality Laws," August 2, 2013, http://cnsnews.com/news/article/ca-ny-attorneys-general-accused-violating-donor-confidentiality-laws.

status.[13]

The formerly accessible and collaborative Ms. Lerner has since been held in contempt of Congress for refusing to testify about her activities at the center of an IRS scandal involving its treatment of conservative nonprofit organizations and their donors.[14] Information continues to come forth about IRS targeting groups and individuals for apparent ideological reasons ("Lois Lerner Wanted To Audit A Group With Ties To Bristol Palin," *The Daily Caller*, August 5, 2015),[15] crass partisan statements ("Lois Lerner Criticized GOP As 'Crazies,' 'Assholes' In Emails," *The Huffington Post*, September 29, 2014),[16] and various alleged lawless abuses of power.

Which is to say that the presumption of benevolence the court of appeals accorded the

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[13] "Attorney General Focusing On Fiduciary Responsibilities," February 1, 2009, http://www.thenonprofittimes.com/news-articles/attorney-general-focusing-on-fiduciary-responsibilities/.

[14] "House votes to hold Lois Lerner in contempt of Congress," *The Washington Post*, May 7, 2014, http://www.washingtonpost.com/blogs/post-politics/wp/2014/05/07/house-votes-to-hold-lois-lerner-in-contempt-of-congress.

[15] http://dailycaller.com/2015/08/05/lois-lerner-wanted-to-audit-a-group-with-ties-to-bristol-palin/.

[16] http://www.huffingtonpost.com/2014/07/30/lois-lerner-emails-_n_5634379.html.

government is misplaced. Information continues to trickle out under congressional investigations,[17] inspector general investigations,[18] private lawsuits,[19] and threats of contempt[20] involving government malevolence towards conservative nonprofits.

The court of appeals erred by failing to find Respondent's demands for donor information unlawful. First of all, the charitable solicitation statute itself does not authorize the Attorney General to demand donor information in the licensing process. Respondent's prior restraint **by her own regulation** would effectively supersede federal law. Secondly, even if authorized by state statute, federal law already sets the conditions under which federal tax return

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[17] *See* Footnote 8, *supra*.

[18] "Treasury Inspector General: 'Potential Criminal Activity' Surrounding Lerner Emails," *Breitbart.com*, February 27, 2015,
http://www.breitbart.com/big-government/2015/02/27/treasury-inspector-general-potential-criminal-activity-surrounding-lerner-emails/.

[19] "Pro-Israel Z Street Trumps IRS in Federal Appellate Court Ruling," *The Jewish Press*, June 21, 2015,
http://www.jewishpress.com/news/breaking-news/pro-israel-z-street-trumps-irs-in-federal-appellate-court-ruling/2015/06/21/.

[20] "Federal judge threatens to hold IRS chief in contempt," *FoxNews.com*, July 30, 2015,
http://www.foxnews.com/politics/2015/07/30/federal-judge-threatens-to-hold-irs-chief-in-contempt/.

information deemed confidential by federal law may be obtained by states or state officials for law enforcement purposes.

A third reason is that the demand is an extortionate unconstitutional condition because it forces nonprofits to choose between either parting with valuable and federally protected confidentiality of tax return information in order to exercise constitutionally protected rights, or foregoing their rights. This is akin to an unconstitutional condition to obtain a permit as described in Koontz v. St. Johns River Water Management District, where this Court held, citing other examples of unconstitutional conditions, that a permit may not be conditioned on the deprivation of the applicant's constitutional rights.[21] For the many

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[21] From Koontz:

> We have said in a variety of contexts that "the government may not deny a benefit to a person because he exercises a constitutional right." Regan v. Taxation With Representation of Wash., 461 U. S. 540, 545 (1983). See also, e.g., Rumsfeld v. Forum for Academic and Institutional Rights, Inc., 547 U. S. 47 –60 (2006); Rutan v. Republican Party of Ill., 497 U. S. 62, 78 (1990). In Perry v. Sindermann, 408 U. S. 593 (1972), for example, we held that a public college would violate a professor's freedom of speech if it declined to renew his contract because he was an outspoken critic of the college's administration. And in Memorial Hospital v. Maricopa County, 415 U. S. 250 (1974), we concluded that a county impermissibly

reasons already set forth in this brief, Respondent's demands violate the First Amendment **as a condition for** nonprofits to exercise First Amendment rights.

Since the failure to comply with this extortionate condition results in a loss of constitutionally protected rights, this is not the same as, for example, a bank asking for tax return information as a condition to issue a loan, which is *quid pro quo*, but not based on deprivation of constitutionally protected rights. Nor is this like ministerial demands in state charitable solicitation laws for mundane information such as name and address of the organization as a condition for such a permit.

Respondent's demands for donor names and addresses are an extortionate unconstitutional condition in addition to violating federal law. Further demands should be deemed illegal.

> burdened the right to travel by extending healthcare benefits only to those indigent sick who had been residents of the county for at least one year. Those cases reflect an overarching principle, known as the unconstitutional conditions doctrine, **that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up**.

Koontz v. St. Johns River Water Management District, 570 U.S. ___, ___ (2013) (emphasis added).

CONCLUSION

Nonprofits and states alike need this Court's judgment on these points of law, and we respectfully urge the Court to grant the Petition.

Respectfully submitted,

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APPENDIX

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July 16, 2015

CT FILE NUMBER:

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:

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 years ending 12/31/09 and 12/31/10. 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.

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.

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.

The NonProfit Times February 1, 2013 Page 22

Mark J. Fitzgibbons A Lack of Lawful And Competent Oversight Of Charities

Factions seeking more laws and government control over philanthropy have made claims for years that under-regulation undermines public confidence in charities.

The reality is that there is no shortage of laws regulating the charitable sector. What's missing is competent and more efficient regulation. And, by the way, some who regulate charities are the biggest and most systematic violators of laws governing the charitable sector. Too little attention has been paid to how regulators undermine the public interest through a lack of professionally following the law themselves.

Some people in our sector believe that there is a partnership of sorts between government (the public sector) and nonprofits, while others believe that entanglements with government defeat the very purposes of an independent sector. Regardless of where one stands, there's no disputing that regulators must follow the law even while enforcing the law.

Despite the occasional splashing headlines, public confidence in charities has remained higher than trust in many other major institutions, especially government, which has plummeted to all-time lows. Those institutions, and particularly government, could not withstand many of the high moral expectations and standards under which charities operate.

The federal government and a supermajority of states, for example, were insolvent in 2011 despite

budgetary gimmicks, schemes and raids of funds designed to deceive the public in ways that would assuredly send those who run charities to jail if those organizations were run in that manner.

Charities are imperfect. But more government in the charity sector is like a fox guarding the henhouse. That concept dates back to the early Romans when government first discovered the ease of plundering and corrupting philanthropy by regulating it. It is fact -- not ideology -- that government programs are magnets for fraud, waste, abuse and outright lawbreaking, which would sully the charity sector.

The U.S. Department of the Treasury's Inspector General, for example, issued a report in 2011 showing that when the Internal Revenue Service (IRS) seized taxpayer property, it failed to follow the law in 38 percent of the cases reviewed. With just the American Recovery and Reinvestment Act funds alone there have been more that 600 convictions and there are another 1,900 pending investigations of fraud, according to Recovery.gov. The examples are too many not to reach easy conclusions about the high level of lawbreaking in government enforcement and programs.

Congress, of all institutions, should be circumspect to criticize anyone about two things: ethics or fundraising. Some members of Congress launder more than 50 percent of their campaign fundraising proceeds to other candidates, which while legal under campaign finance laws written by Congress, would constitute fraud at common law.

States already have the police powers to regulate charities, but have demonstrated a disturbing propensity to violate the laws of charity governance. Charity regulators consistently ignore or fail to

understand constitutional restrictions on their actions. The current compliance systems foster regulator high-handedness and are highly wasteful of donor funds.

Charity regulators habitually violate the law they purport to enforce using the tactic of sending written demands to charities without citing the legal authority. That is either a lack of professional enforcement or a tactic to cover for their interpretations that are inconsistent with, or in actual violation of, the laws they claim to be enforcing. It takes advantage of charities' eagerness to comply with the law, their fear of regulators who hold such power over them, or the fact that many charities aren't familiar with the law or lack the resources to check.

When asked to cite their legal authority, regulators often ignore those requests. One state attorney general responded to a request for citations to law with his own demand for $1.4 million under the state's Freedom of Information Act. Some even have responded cavalierly, "So sue us" when their abuse is identified.

The U.S. Supreme Court has held that licensors may not use discretion in making conditions in the licensing process, a point driven home by the Tenth Circuit Court of Appeals in American Target Advertising v. Giani. Yet regulators use discretion to place demands on registrants, and then deny approvals or otherwise violate rights of registrants under color of state law.

Registration forms prepared by regulators are often poorly drafted to the point that they place registrants in the position of providing misleading information or making false statements under oath. One state form

asks fundraising counsel to identify charities to which any principal has made payments, and how much. Technically, that would include payments to nonprofit marriage or even crisis counseling centers. Many regulators violate the Federal Privacy Act by demanding a Social Security number during the registration process.

Regulators know that most charities will not spend the tens of thousands of dollars it costs to litigate to stop them. Charities typically concede their rights rather than fight because that's less expensive. Ultimately, donors pay for lawbreaking by regulators. The real battle in the nonprofit sector isn't over funding of Big Bird. It is whether the nonprofit sector will protect its independence by refusing to tolerate violations of law by those who regulate it.

One idea to stop such widespread regulator abuse is to require charity regulators to pay charities' costs when the regulators' enforcement actions are wrong. Charity regulators also should be subject to the same requirements charities face, including independent audits of each office's finances, and public disclosure of contracts and individuals' compensation.

The Constitution is our supreme law, yet charity regulators frequently treat it as an inconvenience or even ignore it. Four times since 1980 state regulators have lost at the U.S. Supreme Court in their efforts to deprive charities of their right to communicate when costs to do so are high. To this day, many regulators blame this paramount law rather than comply with it. Regulators hold a particular grudge against agencies paid to provide expertise to charities, especially those in telemarketing and direct mail, even though those remain effective media for multiple purposes besides

fundraising.

An October 12 Washington Post piece ("Direct mail still a force in campaigns") explained why the Obama and Romney campaigns relied heavily on direct mail. These media are used because they work in ways and for reasons not understood by regulators. Regulators have a Captain Ahab-like obsession against spending money to communicate, yet they drain donor money through their inefficient ways.

Certain highly perched charity leaders seem to forget that nonprofits are a natural target for suppression of their First Amendment and other rights protected by law. State regulators also systematically violate charities' Fourth Amendment protections by instituting investigations without "probable cause, supported by oath or affirmation particularly describing" their demands for documents.

Well-settled Fourth Amendment standards such as probable cause apply to civil, not just criminal, regulatory investigations such as those conducted by charity regulators.

Except in limited circumstances that don't apply to charities, subpoenas must be approved by an objective third party such as a judge or magistrate, and only upon oath and affirmation. Charity regulators frequently make investigative demands unilaterally, meaning without authorization of objective third parties. It is the equivalent of a police officer writing and approving a search warrant.

Charities too fearful of confrontation or that do not know the scope of their rights protected by law typically concede to such unlawful actions. But, that merely waives their rights.

Despite their budgetary problems, charity

regulators spent money lobbying three years for a terrible model law called the Protection of Charitable Assets Act (POCAA). POCAA was adopted by the Uniform Law Commission in 2011, and would require that wills and estate inventories be filed with charity regulators. It gives regulators other broad, unprecedented powers to dictate how charities use their assets. POCAA is a radical and unlawful power grab over charities and religion.

There is one bit of good news. State regulators announced an eight-state pilot program called the Single-point Website that includes major elements of this alternative online registration for charities, and better disclosure for donors.

There are plenty of things that charities can do better. It is time for all charity leaders to protect donor funds and the public interest by acknowledging and combating the massive problems with regulators.

Mark Fitzgibbons is president of corporate affairs at American Target Advertising, Inc. His blog is CharityRegulatorWatch.com

Former Utah Code Sec. 13-22-9

Chapter 22

CHARITABLE SOLICITATIONS ACT

13-22-1 Short title.
13-22-2 Definitions.
13-22-3 Investigative and enforcement powers Education.
13-22-4 Violation a misdemeanor - Damages.
13-22-5 Registration required.
13-22-6 Application for registration.
13-22-7 Repealed.
13-22-8 Exemptions.
13-22-9 Professional fund raiser's or fund raising counsel's or consultant's permit.
13-22-10 Obtaining, use and display of permits and information cards.
13-22-11 Expiration of registration and permits.
13-22-12 Grounds for denial, suspension, or revocation.
13-22-13 Prohibited practices.
13-22-14 Accuracy not guaranteed.
13-22-15 Financial reports required.
13-22-16 Separate accounts and receipts required.
13-22-17 Written agreement required.
13-22-18 Local ordinance.
13-22-19 Reciprocal agreements.
13-22-20 Renumbered.
13-22-21 Tax exempt organizations - Appeal on behalf of individual.

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13-22-9. Professional fund raiser's or fund raising counsel's or consultant's permit.

(1) It is unlawful for any person or entity to act as a professional fund raiser or professional fund raising counsel or consultant, whether or not representing an organization exempt from registration under Section 13-22-8, without first obtaining a permit from the division by complying with all of the following application requirements:

(a) pay an application fee as determined under Section 63-38-3.2; and

(b) submit a written application, verified under oath, on a form approved by the division that includes:

(i) the applicant's name, address, telephone number, facsimile number, if any;

(ii) the name and address of any organization or person controlled by, controlling, or affiliated with the applicant;

(iii) the applicant's business, occupation, or employment for the three-year period immediately preceding the date of the application;

(iv) whether it is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity;

(v) the names and residence addresses of any officer or director of the applicant;

(vi) the name and address of the registered agent for service of process and a consent to service of process;

(vii) if a professional fund raiser:

(A) the purpose of the solicitation and use of the contributions to be solicited;

(B) the method by which the solicitation will be

conducted and the projected length of time it is to be conducted;

(C) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of what percentage of the contributions collected as a result of the solicitation are projected to remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of the flat fee; and

(E) a statement of total contributions collected or received by the professional fund raiser within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the contributions;

(viii) if a professional fund raising counsel or consultant:

(A) the purpose of the plan, management, advise, counsel or preparation of materials for, or respect to the solicitation and use of the contributions solicited;

(B) the method by which the plan, management, advise, counsel, or preparation of materials for, or respect to the solicitation will be organized or coordinated and the projected length of time of the solicitation;

(C) the anticipated expenses of the plan, management, advise, counsel, or preparation of materials for, or respect to the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of total fees to be earned or received from the charitable organization declared in the

application, and what percentage of the contributions collected as a result of the plan, management, advise, counsel, or preparation of materials for, or respect to the solicitation are projected after deducting the total fees to be earned or received remain available to the charitable organization declared in the application, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of such flat fee; and

(E) a statement of total net fees earned or received within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use of the net earned or received fees in the planning, management, advising, counseling, or preparation of materials for, or respect to the solicitation and use of the contributions solicited for the charitable organization;

(ix) disclosure of any injunction, judgment, or administrative order against the applicant or the applicant's conviction of any crime involving moral turpitude;

(x) a copy of any written agreements with any charitable organization;

(xi) the disclosure of any injunction, judgment, or administrative order or conviction of any crime involving moral turpitude with respect to any officer, director, manager, operator, or principal of the applicant;

(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds;

(xiii) an acknowledgment that fund raising in the

state will not commence until both the professional fund raiser or professional fund raising counsel or consultant and the charity, its parent foundation, if any, are registered and in compliance with this chapter; and

(xiv) any additional information the division may require. (Emphasis added.)

(2) If any information contained in the application for a permit becomes incorrect or incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required by the division.

(3) In addition to the permit fee, an applicant failing to file a permit application or renewal by the due date or filing an incomplete permit application or renewal shall pay an additional fee of $25 for each month or part of a month after the date on which the permit application or renewal were due to be filed.

(4) (a) Each applicant shall provide proof that the applicant is either bonded or provide a letter of credit in the amount of at least $25,000.

(b) The bond or letter or credit shall be payable to the state for the benefit of parties who may be damaged by any violation of this chapter.

(c) (i) The issuer of a bond shall be a surety authorized to transact surety business in this state.

(ii) The letter of credit shall be from a federally insured depository institution.

(d) The applicant shall maintain the bond or letter of credit for the entire duration of the permit and for a period of not less than one year after the division received notice in writing from the professional fund raiser or professional fund raising counsel or

consultant that all activities in the state have ceased.
(e) The division may prescribe rules under which parties may recover on the bond or letter of credit.

LIST OF CO-AMICI

IRC 501(c)(3) organizations: The 60 Plus Foundation, American Civil Rights Union, Center for Financial Privacy and Human Rights, Citizens Council for Health Freedom, Citizens in Charge, Citizens Outreach Foundation, Citizens United Foundation, The Conservative Caucus Foundation, Dreamchaser Horse Rescue & Rehabilitation, The Family Action Council of Tennessee, Inc., Family Research Council, Freedom Alliance, Galen Institute, Gun Owners Foundation, Homes for Veterans, Independent Women's Forum, Ladies of Liberty Alliance, The Leadership Institute, Media Research Center, Project Veritas, Smiling Dog Farms, Tiger Creek Wildlife Refuge/Tiger Missing Link Foundation, Tiger Preservation Center, Traditional Values Coalition Education and Legal Institute, The United States Constitutional Rights Legal Defense Fund, Inc., Virginia Institute for Public Policy, Young America's Foundation.

IRC 501(c)(4) organizations: The 60 Plus Association, Inc., American Council for Health Care Reform, American Grassroots Council, Inc., American Policy Center, Campaign for Liberty, Citizens Outreach, Inc., Citizens United, Coalition for America (The Weyrich Lunch), Committee for the Republic, Concerned Women for America, Faith & Freedom Coalition, ForAmerica (America, Inc.), Frontiers of Freedom, Grassroots Hawaii Action, Gun Owners of America, Independent Women's Voice, Liberty Guard, Liberty Initiative Fund, Maryland Taxpayer Association,

National Organization for Marriage, Patriot Voices, Securing Equal Education Development, Taxpayers Protection Alliance, Traditional Values Coalition.

For-profit organizations: ClearWord Communications Group, Inc., Donor Trends Corporation, Eberle Associates, Fund Raising Strategies, Inc., McFarland Messaging, MDS Communications.